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OF THE

ASSEMBLY

MEETINGS OF THE COMMITTEES

MINUTES

OF THE

FIRST COMMITTEE

(CONSTITUTIONAL AND LEGAL QUESTIONS)

GENEVA, 1929

CONTENTS

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LIST OF ANNEXES

LIST OF MEMBERS OF THE FIRST COMMITTEE

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Vice-Chairman: M. Joseph LIMBURG (Netherlands).

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Austria:	Dr. Markus LEITMAIER. His Excellency M. Max HOFFINGER.
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Germany:	Dr. Friedrich GAUS. Dr. KOCH-WESER. Dr. Carl VON SCHUBERT. Dr. GÖPPERT and Baron RHEINBABEN (Substitutes).
Greece:	His Excellency M. Nicolas POLITIS.
Guatemala:	His Excellency Dr. Carlos F. MORA.
Haiti:	His Excellency M. Luc DOMINIQUE.
Honduras:	M. Froylan TURCIOS.
Hungary:	His Excellency Count Albert APPONYI. General TÁNCZOS. His Excellency M. L. GAJZÁGÓ and M. A. DE EGRY (Substitutes).
India:	Sir W. Ewart GREAVES.

Irish Free State :	Mr. John A. COSTELLO.
Italy :	His Excellency Professor Vittorio SCIALOJA. M. Cesare TUMEDEI and M. Massimo PILOTTI (Substitutes).
Japan :	His Excellency M. Miñeitcirô ADATCI. His Excellency M. Isaburô YOSHIDA (Substitute).
Latvia :	His Excellency M. Charles DUZMANS. Dr. Paul SCHIEMANS (Substitute).
Liberia :	Dr. Antoine SOTTILE.
Lithuania :	His Excellency M. V. SIDZIKAUSKAS.
Luxemburg :	His Excellency M. Joseph BECH. M. Albert WEHRER (Substitute).
Netherlands :	M. Joseph LIMBURG. Jonkheer W. J. M. VAN EYSINGA (Substitute).
New Zealand :	The Hon. Sir James PARR. K.C.M.G. Mr. C. B. BURDEKIN (Substitute).
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Paraguay :	His Excellency Dr. Ramon V. CABALLERO DE BEDOYA.
Persia :	His Excellency Anouchirevan Khan SÉPAHBODY. Dr. Parwiz Khan KITABGI (Substitute).
Peru :	His Excellency M. Mariano H. CORNEJO.
Poland :	Professor Michel ROSTWOROWSKI. M. Szymon RUNDSTEIN. M. Charles POTULICKI (Substitute).
Portugal :	Dr. José Lobo D'AVILA DE LIMA, or His Excellency M. J. C. Franco FRAZÃO, Count DE PENHA GARCIA. Dr. Antonio DE FARIA (Substitute).
Roumania :	His Excellency M. Georges MIRONESCO. His Excellency M. Nicolas TITULESCO, His Excellency M. Constantin ANTONIADE, M. NEGULESCO, M. Constantin VISOIANU and M. Victor CADERE (Substitutes).
Salvador :	His Excellency M. Francisco A. LIMA.
Siam :	His Highness Prince VARNVAIDYA. His Highness Prince TONGTOR (Substitute).
South Africa :	Mr. Eric Hendrik LOUW. Mr. B. O'SHEA (Substitute).
Spain :	His Excellency M. Cristóbal BOTELLA.
Sweden :	Baron E. MARKS DE WÜRTEMBERG. Dr. T. M. HÖJER and M. K. I. WESTMAN (Substitutes).
Switzerland :	M. Hermann SCHÜPBACH. His Excellency M. Giuseppe MOTTA (Substitute).
Uruguay :	His Excellency Dr. Alberto GUANI, or M. José G. ANTUNA.
Venezuela :	His Excellency Dr. José GIL-FORTOUL. M. J. M. HURTADO-MACHADO (Substitute).
Yugoslavia (Kingdom of) :	His Excellency M. Jelko MAJOURANITCH. M. Constantin FOTITCH (Substitute).

FIRST COMMITTEE.

(CONSTITUTIONAL AND LEGAL QUESTIONS)

AGENDA.

1. REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.
2. ACCESSION OF THE UNITED STATES OF AMERICA TO THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.
3. PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW :
   - *(a)* Preparatory Work for the First Codification Conference ;
   - *(b)* Question of convening the Committee of Experts for the Progressive Codification of International Law :
     Draft Resolution proposed by the Colombian Delegation ;
   - *(c)* Work of the Committee of Three Jurists appointed in Accordance with the Assembly's Resolution of September 24th, 1928 (Part III) :
     (1) To draw up a Systematic Survey of the Subjects of International Law with a View to Eventual Codification ;
     (2) To report on the Question of publishing Certain General Conventions in the Form of a Code.
4. PROPOSAL OF THE GOVERNMENT OF FINLAND TO CONFER ON THE PERMANENT COURT OF INTERNATIONAL JUSTICE JURISDICTION AS A TRIBUNAL OF APPEAL IN RESPECT OF ARBITRAL TRIBUNALS ESTABLISHED BY STATES.
5. AMENDMENT OF THE COVENANT OF THE LEAGUE OF NATIONS AS A RESULT OF THE GENERAL ADHESION OF THE MEMBERS OF THE LEAGUE TO THE PACT OF PARIS FOR THE RENUNCIATION OF WAR :
   - *(a)* Draft Resolution proposed by the British Delegation ;
   - *(b)* Draft Resolution proposed by the Peruvian Delegation.
6. RATIFICATION OF INTERNATIONAL CONVENTIONS CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS :
   Draft Resolution proposed by the Danish Delegation.
7. RULES OF PROCEDURE OF THE ASSEMBLY, ARTICLE 7, PARAGRAPH 1 :
   Draft Amendment proposed by the Belgian, Chilian, Italian, Japanese and Peruvian Delegations.
8. APPLICATION OF ARTICLE 19 OF THE COVENANT OF THE LEAGUE REGARDING THE RECONSIDERATION OF TREATIES WHICH HAVE BECOME INAPPLICABLE :
   Draft Resolution proposed by the Chinese Delegation.

FIRST MEETING.

Held on Tuesday, September 3rd, 1929, at 10 a.m.

Chairman : M. SCIALOJA (Italy).

1. Election of the Vice-Chairman.

M. LIMBURG (Netherlands) *was elected Vice-Chairman* on the proposal of Sir Cecil HURST (British Empire). He thanked the Committee for the honour conferred upon him.

2. Publicity of the Meetings.

The CHAIRMAN proposed that the meetings should be public, unless at any time the Committee decided otherwise.

This proposal was adopted.

3. Adoption of the Agenda.

The Chairman's proposals concerning the Committee's agenda (Annex 1) were read.

M. ROLIN (Belgium) said, in connection with the proposed procedure, that he did not understand why the question of the revision of the Statute of the Permanent Court of International Justice and that of the United States reservations should be dealt with differently, the former being considered, in the first instance, by the special Conference and the latter, in the first instance, by the First Committee.

M. LIMBURG (Netherlands) said that the recommendations and the draft Protocol prepared by the Committee of Jurists could only be considered by the Conference if they were first approved in principle by the Assembly.

The CHAIRMAN reminded the Committee of the passage in the Council's report laying down that the Assembly's approval was required.

M. ROLIN (Belgium) drew attention to the disadvantages of the procedure proposed. If the Council's directions were carried out literally, the Conference of the Signatory States would have to divide its work ; it would have to finish with the question of the amendments before it could even take up that of the United States reservations, although there were certain unquestionable points of connection between the two subjects.

M. LIMBURG (Netherlands) thought that the Assembly's approval might, as far as the United States reservations were concerned, be obtained at the meeting that afternoon.

The CHAIRMAN shared this opinion. He proposed that the Committee should adopt the provisional agenda submitted to it, since the agenda might quite easily be modified after the Assembly's approval had been obtained.

M. CORNEJO (Peru) said he thought that the Conference should be given the widest possible terms of reference and that care should be taken that that Conference and the First Committee should not consider different aspects of the same question.

The following agenda was adopted after the explanations given by the Chairman :

1. Revision of the Statute of the Permanent Court of International Justice.

2. Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

3. Progressive Codification of International Law :

(a) Preparatory Work for the First Codification Conference ;

(b) Question of convening the Committee of Experts for the Progressive Codification of International Law: Assembly Resolution of September 24th, 1928 (Part III);

(c) Work of the Committee of Three Jurists appointed in Accordance with the Assembly's Resolution of September 24th, 1928 (Part III) :

(1) To draw up a Systematic Survey of the Subjects of International Law with a View to Eventual Codification ;

(2) To report on the Question of publishing Certain General Conventions in the Form of a Code.

4. Proposal of the Government of Finland to confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal in respect of Arbitral Tribunals established by States.

SECOND MEETING.

Held on Friday, September 13th, 1929, at 10.30 *a.m.*

Chairman : M. SCIALOJA (Italy).

4. Question of the Adherence of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

Sir Cecil HURST (British Empire), Rapporteur, stated that the Conference for the Revision of the Statute of the Court had adopted, practically unchanged, the draft (see letter dated September 5th, 1929, from the President of the Conference for the Revision of the Statute of the Permanent Court of International Justice to the Chairman of the First Committee (Annex 2)) prepared last March by the Committee of Jurists whose report had been laid before the First Committee (Annex 3).

In these circumstances, he would merely make a few statements on the question of advisory opinions, which had led to apprehension and hesitation on the part of the United States. The attitude of the United States would be understood if it were remembered that a great many persons in that country were unfamiliar with the system of advisory opinions. The report should therefore contain certain explanations regarding those opinions, the procedure in regard to which was very similar to litigious procedure. It would be necessary to show the extent to which the opinions given bound the Council, and to point out that Article 13 of the Covenant (last paragraph), which provided for the case of failure to carry out an award, did not apply to advisory opinions.

The draft Protocol (Annex 3, Appendix III) *was adopted unanimously.*

M. POLITIS (Greece) *was appointed Rapporteur.* [1]

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[1] The report presented by M. Politis to the Assembly is annexed to the Verbatim Record of the Plenary Meetings of the Assembly.

5. **Revision of the Statute of the Permanent Court of International Justice.**

M. POLITIS (Greece), Rapporteur, said that, in view of the letter from the President of the Conference to the Chairman of the First Committee (Annex 4), it was unnecessary for him to give any lengthy explanations.

The proposals of the Committee of Jurists had received the general approval of the representatives of the States at the special Conference (Annex 5).

The amendments to the Statute were the result of experience. They were designed to confer on the Court a more marked judicial character and to give it greater permanence. It was with a view to this twofold aim that the regulations regarding the functions and occupations incompatible with membership of the court had been modified and the deputy judges abolished.

The Court was constantly at the service of Governments. It had its summer vacation and did not sit during the recognised holidays. Judges belonging to remote countries were entitled to six months' leave every three years (excluding the time spent in travelling).

The Protocol provided for the entry into force of the new Statute on September 1st, 1930—that was to say, before the renewal of the Court. The present Court would continue to be governed by the existing Statute until its term of office expired, namely, until January 1st, 1931.

M. Politis indicated the scope of a stipulation regarding the United States inserted at the end of the Protocol. The object of this stipulation was to enable the United States to accede at the same time to the 1920 Statute and to the revised Statute.

He mentioned the case of a State which was a party to the Statute of the Court but not a Member of the League of Nations (Brazil). The present Statute was silent as to the participation of such a State in the elections and expenditure of the Court. To supply this omission, an addition to Articles 4 and 35 of the Statute was proposed.

The draft Protocol would be submitted to the Assembly together with a draft resolution. The latter was accompanied by the recommendation that candidates for the post of judge at the Court should have a certain knowledge of both the official languages (Annex 4, Appendix III).

M. COHN (Denmark) stated that the recommendation mentioned by M. Politis had met with a certain amount of opposition in the Conference—nine States had voted against it, while four had abstained from voting. The States which has voted in favour did not represent half of those which had taken part in the Conference.

Denmark's opposition to the recommendation was based on a principle. It was contrary to the spirit of the Statute to give instructions to national groups regarding the choice of their candidates. Article 2 stated the conditions which judges had to fulfil, and that was sufficient. The legal and moral standing of the national groups was a sufficient guarantee of the way in which they would exercise their choice.

Further, Article 2 of the Statute did not make any mention of recognised practical experience in international law. It referred to persons who "possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law". That covered judges and jurisconsults. This view was confirmed by Article 6, which recommended that a certain number of institutions should be consulted which, by their very nature, were called upon to appoint judges and jurisconsults.

The CHAIRMAN said that he proposed to take a vote and, in doing so, would separate the draft resolution and the recommendation.

As regarded the draft resolution, he thought the Committee would approve it unanimously. If any amendments were to be made, it would be necessary to re-open the whole discussion.

M. POLITIS (Greece) stated that on few occasions indeed had texts been drawn up with greater care. The principle of the revision of the Statute had been adopted unanimously by the Assembly in 1928. The Council had later appointed a Committee of Jurists, which had been assisted in its work by the authorised representatives of the Court and had enjoyed the valuable assistance of a great American jurisconsult, who had expressed the opinion of his country. For financial questions, the Committee of Jurists had been assisted by M. Osuský, Chairman of the Supervisory Commission.

The text prepared under these conditions had been submitted to the Council. The latter had approved it and had decided to call a Conference. That Conference had been at work during the past week, after Governments had had an opportunity to examine the proposed amendments and to submit others. The Conference had appointed a Drafting Committee, which, in its turn, had scrutinised the texts very carefully.

He did not, therefore, think that errors of any great moment could have crept into the documents. Unless it was proposed to make considerable changes, which would involve re-opening the whole discussion, the best thing to do was to adopt what the Conference had accepted and recommend its decisions to the Assembly for adoption.

The draft resolution (Annex 4, Appendix III) *was adopted unanimously.*

The draft recommendation (Annex 4, Appendix III, No. 2) was read.

M. DUZMANS (Latvia) explained why the Latvian representative at the Conference had not voted on the draft recommendation.

The first part of the recommendation was inconsistent with Article 2 of the Statute of the Court. The second part was unnecessary. The third part alone represented something which was both new and not inconsistent with Article 2.

Article 2 of the Statute required that candidates should be persons of high moral character. In addition to that, there was an alternative. They must possess the qualifications required in their respective countries for appointment to the highest judicial offices or else they must be jurisconsults of recognised competence in international law. The recommendation gave a general form to this second condition and thereby altered the structure of Article 2, which had only provided for one alternative.

The second part of the recommendation was unnecessary. The Statute of the Court stated that French and English were the official languages. No candidate, therefore, could be appointed who did not know these two languages, or at least one of them. There was no need to state this in the recommendation.

Only the third part—that which said it was desirable that a statement of the careers of the candidates should be attached to nominations—was of some value.

After giving the foregoing reasons why his country did not vote at the Conference, M. Duzmans recalled the desire which had been expressed to place certain parts of this recommendation in the revised Statute. He found it difficult to vote against the recommendation since, though it contained provisions which Latvia thought unnecessary, it nevertheless included one important suggestion.

He would be glad to see the recommendation, if not rejected, at least freed from everything except a reference to the statement of the careers of candidates to be attached to the nominations.

M. RAESTAD (Norway) stated that the Norwegian Government objected to the adoption of the first part of the recommendation. He considered that this was not the time to interfere with the fundamental principles of the composition of the Court at the very moment when the British Prime Minister had stated before the Assembly that the latter would be known as the "Optional Clause" Assembly.

There were two reasons for the Norwegian Government's opinion, one referring to form and the other to substance. In 1920, the principle was well established that Governments should not exercise any influence over the nomination of candidates ; they played their part only at the election in the Council and the Assembly ; to make even a simple recommendation would be to depart from this principle. The other reason was that it was one of the essential principles adopted in 1920 that judges at the Court should possess the judicial frame of mind.

Baron MARKS DE WÜRTEMBERG (Sweden) expressed the fear, as he had already done at the Conference, that, by insisting explicitly on the value of the practical experience of candidates, there was a risk that insufficient importance would be attached to other qualifications which were quite as necessary for members of the Court of Justice.

M. DUZMANS (Latvia) said that, if a candidate were nominated by a university or an academy, he would have a theoretical knowledge of international law. If at the same time he were a judge, he would have judicial experience, but would be ignorant of the practice of international law. Those who were familiar with the latter were diplomatists and the agents of the Ministries for Foreign Affairs. The scope of the recommendation submitted to the Committee might, therefore, be dangerous.

M. SCHMIDT (Estonia) recognised the value of the observations made by the delegates of Sweden, Norway and Denmark. Nevertheless, he thought it certain that the recommendation contained certain points of real value.

He hoped it would be possible to draft a recommendation which would satisfy everybody.

M. POLITIS (Greece) said, in reply to an observation previously made, that the recommendation had been adopted at the Conference by twenty-four votes to eight, with four abstentions. If the number of votes in favour did not represent half the number of the States taking part in the Conference, it should be borne in mind that a great many representatives were absent when the vote was taken, and it was necessary merely to compare the number of votes in favour of with the number of votes against the recommendation.

M. Politis noted that there had been no opposition to the third part of the recommendation. Accordingly, he would say nothing more upon that point.

Those who thought there was no need for a recommendation that candidates should have a certain familiarity with the two official languages of the Court were in error. Cases had occurred of judges who knew neither of the official languages of the Court. While these judges could, with some difficulty, follow the discussions and read the documents with the help of translations, it was very difficult for them to take any active part in the proceedings.

The recommendation also stated that it was desirable that judges should possess recognised practical experience in international law.

He did not agree with M. Duzmans' statement that the first part of the recommendation was inconsistent with Article 2 of the Statute. If the argument were pushed to its extreme logical conclusion, it would be deduced from Article 2 that a member of a national court who had never had anything to do with international law would make an excellent judge on the Court of International Justice. The candidate had to be either a judge or jurisconsult, but in both cases some competence in international law was also required. Since Article 2 mentioned competence, the whole question turned on the point whether experience should also be indicated. It had been stated that competence included both theoretical knowledge of international law and experience of international affairs, though there was some doubt on that point. This was due to the fact that the article mentioned jurisconsults and it frequently happened that they had only a theoretical knowledge of international law.

Anyone who was called upon to sit on the Court would find that experience of international affairs would be useful and help him to be a good international judge. A theoretical knowledge of international law was not sufficient. It was necessary, also, to know how questions arose in practice. M. Fromageot had therefore used a very happy expression when he had stated in the Conference that the Court must apply law by making an examination of conscience and by going to the heart of the Governments. In order to inspire that complete confidence which was essential, the Court must be in a position not only to make legal dissertations but to give real judgments. For this purpose, the judges must have a very clear conception of practice.

It was also wrong to maintain, as the Norwegian delegate had just done, that the recommendation attacked the principle that Governments should not intervene in the election of judges. There was no question, in the present case, of electing judges, but of laying down the conditions under which judges should be elected. The Governments framed the Statute, and the latter was an international agreement between Governments providing for the establishment and the working of the Court. In 1930, the Assembly and the Council, constituted separately as electoral bodies, would have to appoint the best candidates. In the opinion of certain delegates, there was therefore some confusion between the choice of the candidates and a statement of the conditions necessary to become a candidate. In addition, it could not be asserted that any attack was being made on the freedom of the national groups in appointing judges. The national groups continued to be absolutely free to submit whatever persons they pleased subject to compliance with the necessary conditions.

To sum up, the text which the Committee was discussing in the form of a recommendation was an interpretation of Articles 2 and 39 of the Statute. The suggested recommendation was entirely in keeping with the spirit of Article 2, which insisted on a practical knowledge of affairs. It was also in keeping with Article 39, which required a certain knowledge of the official languages. The object in view in making this recommendation had been to develop the principles of Article 2 in the light of experience.

The CHAIRMAN thought that there were three ways of dealing with the question under discussion. The Committee might approve the recommendation and refer it to the Assembly with a favourable opinion. It could also reject the recommendation and refer to the Assembly only the first part of the draft resolution. Finally, it could refer the recommendation to the Assembly without expressing either approval or disapproval.

Probably no one would ask that the second method should be adopted. The recommendation existed, and it would be discourteous to the Conference not to transmit it to the Assembly. Accordingly, it was necessary to send the recommendation to the Assembly with or without approval.

Baron MARKS DE WÜRTEMBERG (Sweden) thought it would be enough to indicate whether the Committee approved or disapproved the recommendation.

M. CORNEJO (Peru) considered that, as the Committee's recommendation did not bind the Assembly, it would have no authority unless accompanied by a request that it should be adopted. He desired this to be done.

M. POLITIS (Greece) apologised for intervening in this discussion, but he did not see how the Conference's recommendation could be transmitted to the Assembly without the expression of an opinion thereon on the part of the Committee.

The draft resolution consisted of two parts : there was no difficulty regarding the first. It would seem an unusual course not to pronounce on the second. The Committee could propose to the Assembly the adoption of the recommendation, otherwise this recommendation would disappear from the draft resolution. There was no intermediate solution.

M. DUZMANS (Latvia) proposed that the text of the recommendation should be divided into three distinct parts indicated in his recent speech, and that a vote should be taken on each part separately. He recalled that opinion on the first part was very much divided, whereas the members of the Committee were almost unanimous on the second and third parts.

After an exchange of views between the CHAIRMAN, M. POLITIS (Greece) and M. DUZMANS (Latvia), *it was decided* that the recommendation should be forwarded to the Assembly, but that the Committee should first pronounce on each of its parts.

The CHAIRMAN read the first part of the recommendation :

> "The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law . . . "

A vote by roll-call was taken at the request of Baron Marks de Würtemberg.

The first part of the recommendation was adopted by a majority of 27 votes (Albania, Austria, Belgium, British Empire, Canada, China, Colombia, Czechoslovakia, Finland, France, Germany, Greece, Guatemala, India, Irish Free State, Italy, Netherlands, New Zealand, Peru, Persia, Portugal, Roumania, Siam, Spain, Uruguay, Venezuela, Kingdom of Yugoslavia) *to* 13 (Australia, Cuba, Denmark, Dominican Republic, Estonia, Hungary, Japan, Latvia, Norway, Poland, South Africa, Sweden, Switzerland).

The second part of the recommendation :

> " . . . and that they should be at least able to read both the official languages of the Court and to speak one of them",

was adopted unanimously.

The end of the recommendation :

> "It also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature",

was adopted by a majority, the Cuban delegate voting against.

The CHAIRMAN proposed that M. Politis should be appointed Rapporteur on the question to the Assembly.

M. POLITIS (Greece) said that it would be sufficient to complete the report of the Committee of Jurists.[1]

The CHAIRMAN considered that the fourth question on the agenda, *i.e.*, the Finnish proposal to confer on the Permanent Court of International Justice jurisdiction as a tribunal of appeal for the decisions of the arbitral tribunals instituted by the various States, was connected with the questions which had just been discussed. It would be for M. Erich to state the reasons of his proposal, and the Committee would discuss it.

6. Appointment of a Rapporteur for the Question of the Progressive Codification of International Law.

M. ROLIN (Belgium) *was appointed Rapporteur for the third question on the agenda* (Progressive Codification of International Law).

THIRD MEETING.

Held on Saturday, September 14th, 1929, at 10.30 a.m.

Chairman : M. SCIALOJA (Italy).

7. Proposal of the Government of Finland to confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal in respect of Arbitral Tribunals established by States (Annex 6).

M. ERICH (Finland) stated that the very nature of jurisdiction made it essential that, under certain conditions, resort might be had to a higher authority than that which had rendered a disputed decision. There could not, however, be any question of merely copying the municipal judicial organisation. Under present circumstances, all that was required was to supplement the organisation of international jurisdiction by the few points which met a real need.

He pointed out that the draft resolution proposed by his Government was very wide. The Council was merely asked to examine the question whether, and to what extent, there might be conferred upon the Permanent Court of International Justice jurisdiction as a tribunal of appeal in respect of arbitral tribunals established by States. The value of this suggestion could scarcely be disputed. The action of the Finnish Government was connected with that taken by M. Rundstein in the Committee for the Codification of International Law. The general idea of M. Rundstein's proposal seemed, indeed, to be the same as that of the Finnish proposal.

M. Erich thought that there was no need for him to enter into details, as these would be held over for subsequent investigation. He wished merely to give explanations on a few points mentioned in the preliminary considerations of the Finnish proposal.

If the functions of a tribunal of appeal were in general conferred on the Court, it would be open to the parties to accept pleas against, and to give a definitive character to, the awards pronounced by such tribunals as had been instituted by it.

The aim of the Finnish proposal, in essence, was to confer on the Court jurisdiction in regard to disputes relating to the absolute incompetence of another tribunal, or the case of a tribunal which had exceeded its jurisdiction. If it were desired to institute a form of appeal in international jurisdiction it would be essential to proceed by stages. At present, it would be difficult to modify fundamentally the system by which jurisdiction was divided between the Court of Justice and the arbitral tribunals as regards questions of substance and the application of the rules of law. While he was not opposed to the very important proposal made by M. Rundstein, which went much further and which recognised that the infraction of a rule of law could, under certain conditions, be a ground of appeal, he insisted on the point that the Finnish Government had had principally in view the case of disputes connected with absolute want of jurisdiction or that of a tribunal exceeding its powers.

The Finnish proposal met a need that had long been felt. The special gravity of a plea of absence of jurisdiction or the plea that a court had exceeded its powers had long since been recognised and there had been a feeling that in such a case recourse should perhaps be had to a higher authority.

As far back as 1875, the Institute of International Law had proposed in its draft regulations for international arbitral procedure a stipulation (Article 27) which was as follows :

> " The arbitral award shall be null and void if the special agreement ('compromis') is null, or if the tribunal has exceeded its powers, or if one of the arbitrators has been proved to be guilty of corruption, or in the case of essential error."

The case of a tribunal exceeding its powers was even at that date recognised as a very serious matter, but there was no international authority which could take cognisance of it.

Differences of opinion might very well exist between States, acting in perfect good faith, on the question whether a court had correctly interpreted its own jurisdiction, and the idea should be rejected that a dispute of this nature was evidence of caprice on the part of a State or of lack of respect for the international jurisdiction. Nor was there anything derogatory to the dignity of an arbitral tribunal in submitting to the judgment of the Court of Justice the question whether, in

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[1] The report presented by M. Politis to the Assembly is annexed to the Verbatim Record of the Plenary Meetings of the Assembly.

doubtful cases, it had correctly defined its own competence. Such a procedure might even help to strengthen the authority of the tribunal and of its members in particular. It would, moreover, be desirable, as regards the fixing of competence, to lay down certain rules, thanks to the authority of the Court.

He reminded the Committee in this connection that the Court had already, on more than one occasion, dealt with questions of competence. He referred to Advisory Opinions Nos. 2, 3 and 13 regarding the competence of the International Labour Organisation, Opinion No. 4 regarding the competence of a State in the matter of determining the nationality of individuals, Opinions Nos. 7 and 12 on the competence of the Council of the League of Nations and Opinions Nos. 14 and 18 on the competence of a European Commission.

In addition, it should be borne in mind that, in virtue of various conventions and of the General Act, the Court was called upon to settle questions of competence. Article 41 of the General Act stated that differences relating to the classification of the disputes and the scope of reservations—disputes relating to competence—should be submitted to the Court. There were also other questions in regard to which it seemed suitable to entrust this function to the Court. For example, a convention laid down that the competence of arbitral tribunals should extend to certain categories of disputes, with the exception of those which were within the competence of municipal courts : extremely complicated questions of interpretation could arise in this way. In such cases, there would be every reason for recognising appeal to the Court of International Justice.

Competence of this nature conferred on the Court would, moreover, be quite in keeping with the general character of the Court. Indeed, the question whether a tribunal had exceeded its powers or gone beyond its jurisdiction always referred to the interpretation of a treaty ; it, at the same time, constituted a point of international law.

The object of the Finnish proposal, therefore, was not to confer on the Court the functions of a judge of appeal. The Court would play the part of an authority of appeal only when a party raised the plea that a tribunal had exceeded its powers or the plea of absolute absence of competence. He recognised that it might be difficult to fix in any certain manner the idea of a tribunal exceeding its powers, but difficulties of this kind were met with at every turn in the law of procedure, and, though its limits were not absolutely precise, the conception of a tribunal exceeding its powers could be retained.

As regards the idea of absence of competence, M. Erich declared that the case of a tribunal wrongly declining jurisdiction should be regarded as being of the same nature as cases where the tribunal had exceeded its powers.

M. Erich was unaware whether the Committee would think it desirable to proceed forthwith to an examination of his proposal. He merely asked that it should follow up these suggestions, which were intended to ensure the investigation of a matter which was bound constantly to arise until it was finally and satisfactorily settled.

M. RUNDSTEIN (Poland) desired in the first place to thank the Finnish delegation for the very useful step which it had taken. He hoped that, after an exchange of views, the First Committee would discover suitable means of arriving at a definite conclusion as a result of this initiative.

It would perhaps be premature to enter immediately into the details of the Finnish proposal. Under the terms of the draft resolution, the Assembly requested the Council to examine the question whether, and to what extent, there might be conferred upon the Permanent Court of International Justice jurisdiction as a tribunal of appeal in respect of arbitral tribunals established by States.

Was there any advantage in a general investigation of the problem thus stated ? Would a solution of that problem represent an advance in the matter of international justice ?

The Finnish proposal was an expression of the general confidence now felt in the Permanent Court of International Justice. He might perhaps remind the Committee of the question asked at the first Peace Conference in 1899 by the great jurist, Asser, who asked whether it would not be possible to discover an authority on which would devolve the duty of declaring an arbitral award null and void. At the moment when this question was asked there was no such authority. But it had been created by the Protocol of December 16th, 1920.

All that was involved was an optional extension of the jurisdiction of the Permanent Court of International Justice, which would be effected with all possible precautions and accompanied by all desirable reservations.

It might be objected that such an extension was unnecessary, because Article 41 of the General Act had already confided to the Permanent Court all differences regarding the classification of disputes and the scope of reservations. Any such competence, however, of the Permanent Court, which had already been provided for in many bilateral arbitration treaties, did not settle disputes except *in limine litis*. The provisions of the General Act had in view jurisdiction in regard to the preliminary question. This jurisdiction remained inoperative when a case had already been regularly submitted to the arbitral tribunal, without any dispute regarding the definition of the case or the scope of the reservations having first of all been raised. This jurisdiction also remained inoperative if the judgment had already been given and if one of the parties was compelled to urge a serious objection regarding an authority having exceeded its powers.

If it were possible, by means of a request for annulment, to prevent a dispute of a purely legal character from being converted into a political dispute, important progress would be made.

In the memorandum which he had submitted to the Committee of Jurists appointed to consider the question of the revision of the Statute of the Court of International Justice (Annex 7), he had proposed to give the Court more extensive jurisdiction; that was to say, to secure recognition for it as a tribunal of appeal in the case of every dispute regarding the violation of a rule of international law.

It might be thought that this suggestion was too rash; at the same time, it seemed certain that it might contribute to strengthening the international legal system and that it might dispel many

mischievous doubts as to the existence and scope of certain international rules which were somewhat ambiguous. The creative function of the Permanent Court would be enhanced, and that area of international law where there was uncertainty would fortunately be narrowed.

If it were thought desirable to restrict the appeal in question, as was done in the Finnish proposal, it should be pointed out that absolute absence of competence was not identical with an act *ultra vires*.

The former case was connected with certain defects in the special agreement—that was to say, defects in the arbitral convention involving the absolute cancellation of the basis on which the proposed procedure rested ; the second case was one of erroneous application of the powers conferred on judges, and the question of the material basis of the special agreement itself could not come into consideration.

There were a great many different aspects of the questions which have just been touched upon, and if it were decided to follow up the Finnish proposal it would be advisable to call upon experts to examine it exhaustively.

M. Rundstein stated that he was in favour of accepting the Finnish proposal as it stood.

M. BOTELLA (Spain) thought it necessary to establish, with all possible clearness, the real scope of the Finnish proposal.

He understood that the Finnish proposal did not necessarily aim at instituting a channel for revision. Such remedy would only exist if provision were made for it in the Convention between the parties, or in the decision to refer to arbitration. It was universally recognised that the law of arbitration was the will of the parties. It would be very difficult to establish an obligatory jurisdiction irrespective of the will of the parties.

M. LIMBURG (Netherlands) thought that the institution of the channel of appeal contemplated by the Finnish delegation raised very delicate problems. It would be a pity if the Committee merely produced a patchwork. There was even a difference between the title of the Finnish proposal and the text of that proposal. The text itself showed that the Finnish delegation only proposed to make the Permanent Court a tribunal of appeal in cases of lack of competence and acts that were *ultra vires*.

He pointed out that the Hague Convention of 1907 already provided that the parties coming before courts of arbitration might expressly stipulate in their agreement that there should be a right of appeal. Secondly, Article 61 of the Statute of the Court, which concerned the jurisdiction of the Court itself, recognised that the discovery of a fresh fact justified a re-hearing. That same principle was admitted under Article 83 of the Hague Convention of 1907.

The authors of the 1907 Convention, and of the Statute of the Court, had carefully avoided entering into details ; they had not specified what the new fact should be, so that, at the present time, case-law was perfectly free to develop along its own lines. On consulting the publicist, it was seen that a new fact might be one of many things, such as the invalidity of the agreement, corruption of judges, material errors on the part of the judges, and acts which were *ultra vires*.

He had said the Committee must beware of patchiness in its work, because, if it mentioned merely lack of competence or acts which were *ultra vires*, it would be only stating two of the cases that doctrine accepted as reasons for revision, or it would at all events be creating a patchy appeal procedure.

A whole network of arbitration treaties now existed. An examination of these treaties would reveal slight differences everywhere. Half-measures would therefore be dangerous ; on the other hand, a great deal of time would be necessary if the work were to be done thoroughly.

On examining the Finnish proposal, he thought that it would be necessary to adopt one of two alternatives ; either the question was a very simple one, or it called for long and careful study. The question would be very simple if the Committee merely adopted a resolution calling upon States Members to utilise the option they already possessed of making provision for ultimate re-hearing in the text of the agreement itself.

If the Committee were not prepared to accept his very simple proposal, it would then have to study the various cases of revision and would have to consider the point which had already arisen in 1899; was there, for instance, any difference between non-validity and circumstances that justified a re-hearing ? And where was the difference between revision and, for example, appeal on grounds of *ultra vires*? In that case it would be necessary to consider in detail what were "new facts", "*ultra vires*", and "lack of competence".

Even if the Assembly adopted the system proposed by the Finnish delegation, and conferred on the Court jurisdiction as a tribunal of appeal from the awards of arbitral tribunals in cases of *ultra vires* or lack of competence, might there not be some danger that, in actual practice, the possibilities of revision, would be restricted instead of enlarged?

From another point of view, the adoption of the Finnish proposal would lead to the inclusion in a general convention of clauses providing for revision in cases of lack of competence or acts that were *ultra vires*. What would then be the relationship with Article 61 of the Statute of the Court, which allowed revision on the strength of a new fact ? There would naturally be a tendency to interpret it in a more limitative manner than at present, and in any case a difference would be established between revision by the Court and revision before arbitral tribunals when the agreement contained a clause to that effect.

M. Limburg wondered whethert he remote cause of the Finnish proposal had not been the lack of all channels of appeal against the awards of mixed arbitral tribunals. If that were the case, it should be noted that the proposal could not apply to such awards ; it could only apply to the awards of arbitral tribunals as between the States themselves.

M. Rundstein's proposal, however, met the first hypothesis—his Article 6 made allowance for such a channel of appeal.

M. Rundstein, however, would be the first to admit that his proposal raised various questions. First of all, would a State be obliged to lodge an appeal on behalf of its nationals ? If so, a hothouse for international disputes would be established and a permanent cause of international tension. Even if States were merely allowed the option of appeal, it was very doubtful whether the Court would be able to grapple with all the appeals from the decisions of mixed arbitral tribunals laid before it.

He had said that, in spite of its general wording, the Finnish proposal obviously had in view only lack of competence and acts that were *ultra vires*. What would be done in other cases calling for revision ? Would they be left to the arbitrators of first instance, or transferred to another jurisdiction ?

In his Article 3, M. Rundstein appeared to touch on this point. M. Limburg thought—unless his ideas on revision, appeal and annullation were mistaken—that *(a)* of Article 3, "violation of the rules of international law", was an appeal *cassum facere*, but that *(b)*, "acts which were *ultra vires*", concerned a tribunal of appeal. It might also be said that, when appeal was admitted, every fact (including acts that were *ultra vires)* might be covered by the appeal. According to the Finnish and Polish proposals, however, acts that were *ultra vires* were one of the causes for a re-hearing.

In short, the Committee must either decide that it would be sufficient to adopt a resolution calling upon States Members to make more ample use of their option under Article 83 of the Hague Convention, or it must institute a careful enquiry into the whole question of tribunals of appeal—a complete and not a fragmentary enquiry. In the latter case, the Finnish delegation should modify its text. It could no longer say "requests the Council to examine the question whether, and to what extent, there might be conferred upon the Permanent Court of International Justice jurisdiction as a tribunal of appeal", as most cases of re-hearing would not, according to the intention of the Finnish delegation, go before the Court. The proposal should be amended as follows :

> "Requests the Council to examine the question whether it would be desirable to lay down general rules regarding a tribunal of appeal in respect of the decisions of arbitral tribunals established by the various States, and the decisions of the various mixed arbitral tribunals and claims committees."

M. DUZMANS (Latvia) said that he cordially welcomed the proposal put forward by his Finnish colleague at the present session, which was, so to speak, a red-letter session from the point of view of international jurisdiction.

He thought, however, that any piecemeal action would be dangerous, particularly in view of the present imperfect state of terminology. The various organs of the League of Nations ought to take joint action to ensure that the terminology of the new international judicial law should emerge from its somewhat infantile state—as one of the delegates had aptly put it.

He reminded his colleagues, for instance, that Count Apponyi had found it necessary, when addressing the Assembly, to state that arbitral jurisdiction and judicial jurisdiction were identical in the eyes of the public. Therein lay a possible danger. Lawyers knew that judicial justice was in a higher sphere than arbitral justice. A better understanding of this fact would be to the advantage of international jurisdiction as a whole.

The use of the term "*revision*" might, he thought, give rise to confusion. The Committee should avoid the use, in any documents that left its hands, of that term, which, in several respects, was ambiguous.

He reminded the Committee of the judicial system as it had existed previously to 1864 in Imperial Russia, before the great judicial reform : decisions given in one court very often went automatically before the higher court for "*revision*", without any intervention by the parties. In Latvia, there was still a vast domain of agrarian jurisdiction in which decisions under administrative law went automatically before a special department of the Supreme Court of Cassation. He thought that was one reason for not employing the term "*revision*" in the texts which were to be prepared.

M. Duzmans regretted that he could not agree with M. Limburg's remark to the effect that the right of "*revision*" should be regarded by individual States a sa maximt—hat was to say, that they should always insert a clause allowing the "right of revision" in special conventions or agreements to submit to arbitration. He thought that such a procedure would be very dangerous. There could be no question of the "right of revision", since "revision" would, in view of Article 61 of the Statute of the Court, be quite impossible in the cases mentioned by M. Limburg, and this term could not be employed in any other sense than that in which it was used in Article 61. This article referred to the revision of judgments by the same court which had given them and only if new facts were discovered.

It was necessary, therefore, to find a new word. The word "*recours*" employed by M. Rundstein was felicitous, but possibly a little too vague. It was, however, a general notion which would not give rise to immediate confusion. If it were decided to employ an already existing term, the word "*cassation*" might perhaps be used, for, if they had in view acts which were *ultra vires* and lack of jurisdiction, these were two circumstances which justified annulment *(cassation)*.

In any case, it must be admitted that it would be difficult to apply the term "*revision*" in the full sense of Article 61, since arbitral tribunals *ad hoc* disappeared, and since, if the rigid need for "*revision*" were maintained solely in the sense of Article 61, there would be many cases in which no such ground for appeal could exist.

The Committee might therefore allow itself a slight derogation from so rigid a rule, and, in arbitration cases, admit that revision would also take place when the Hague Court had reconsidered an arbitral award. In many cases there would be no other solution in this special category of procedure. That, however, would be piecemeal work, and, as M. Limburg had pointed out, the Committee should not be satisfied with a partial solution.

If the Committee were not too strict with regard to concepts and was also fairly precise in the matter of terminology, it would prepare the way for the Committee which was to deal with the question and which, under its own terms of reference, would be able to provide all the necessary definitions.

The CHAIRMAN observed that, in their speeches, several delegates had interpreted the Finnish proposal in different ways. Possibly, the Finnish delegation might desire itself to give an exact interpretation of the text it had submitted, in order to avoid all useless discussion.

Moreover, M. Limburg had indicated one difficulty, namely, the different meanings of the same terms in different countries. It would be necessary to agree on a definite meaning for each expression.

Finally, if the First Committee decided to approve the Finnish proposal, the Council would doubtless decide to appoint a committee of jurists. Under those circumstances, it would be necessary to ask the Assembly to vote a credit of 40,000 francs.

M. ERICH (Finland) said he entirely agreed with the Chairman as to the uselessness of prolonging the discussion regarding the exact meaning of certain legal terms.

Replying first to M. Botella, he said that it was perfectly clear, both from the introductory arguments to his proposal and his own explanations, that the contracting parties would be entirely free to recognise or refrain from recognising the competence of the Permanent Court.

As far as existing conventions were concerned, no means existed by which the parties could be obliged to recognise such competence, but the parties themselves would naturally be entitled to do so.

The ordinary terminology of legal procedure included, of course, a variety of phrases describing the different kinds of tribunals of appeal. The terms "*appel*" and "*cassation*" were sufficiently precise in meaning ; "*revision*" was wider, but the term "*instance de recours*" was particularly wide in scope.

Differences of opinion existed regarding legal terminology not only as between different countries but as between different persons in the same country, so that there were always certain divergencies of opinion on the subject. The best course would be to employ the most general term : "*instance de recours*" (tribunal of appeal).

He did not think that M. Limburg was right when he spoke of a contradiction between the introductory arguments and the conclusion of the Finnish proposal. The resolution said : "Requests the Council to examine the question whether, and to what extent", etc. The words "to what extent" clearly showed that there was no intention of conferring a general jurisdiction on the Court.

M. Limburg had also asked whether the Finnish Government had had the mixed arbitral tribunals particularly in mind. When the Finnish Minister for Foreign Affairs, M. Procopé, had drawn the attention of the Assembly to the Finnish proposal, he had definitely stated that he had not any particular category of arbitral tribunal in mind ; he was dealing with the question of arbitral tribunals from a purely general standpoint.

It was therefore obvious that the reply to M. Limburg's query was in the affirmative. The Finnish proposal did not in any way exclude the mixed arbitral tribunals before which a private individual could be a party. It might, however, be as well, in order to avoid all misunderstanding, to add the word "international" and say : ". . . in respect of international arbitral tribunals".

M. Limburg had also referred at some length to Article 83 of the 1907 Convention. The Finnish Government had duly referred to that article. But it was obvious that the article in question was inoperative in so far as recourse to a higher court was concerned, and could not in any case take the place of the Finnish proposal.

According to Article 83 of the above Convention, a request for revision could only be based on the discovery of a new fact. According to the Finnish proposal, there was no question of sacrificing what had already been obtained either in Article 83 of the 1907 Convention or in Article 41 of the General Act. On the contrary, the proposal was to widen the sphere in which revision could take place and to confer on the Court the functions of a genuine tribunal of appeal.

He accepted the modifications that he had himself indicated. He was, however, not opposed to other changes that might be suggested later in order to make the meaning of the resolution clearer.

The discussion was adjourned until the next meeting.

8. Revision of the Statute of the Permanent Court of International Justice : Significance of the Presence of the President and Vice-President of the Court at the Meetings of the Committee of Jurists.

The CHAIRMAN read a letter, dated September 13th, 1929, which he had received from the Registar of the Court.

> "In the Minutes of the second meeting of the Conference for the Revision of the Statute of the Permanent Court of International Justice (Wednesday, September 4th, 10 a.m.) appears (page 51) the following version of a statement made by one of the Rapporteurs of the Committee of Jurists which met from March 11th to 19th last :
>
> " 'The Court of Justice was also called upon to give its opinion, and the President and Vice-President of the Court were good enough to join the Committee . . . They were accompanied by the Registrar . . . '
>
> "At its meeting this morning, the Rapporteur of the First Committee also made a statement to the effect that the Court had been fully represented in the preparation of the amendments to the Statute which it was the Committee's mission to study.

"Having brought the above to the notice of the President of the Court, I have been instructed by him to draw the attention of the First Committee to the true significance of the presence of the President and the Vice-President of the Court at the meetings of the Committee of Jurists.

"I therefore venture most respectfully to quote below certain extracts from the statements made to the Committee by the President of the Court, M. Anzilotti.

"At the first meeting of the Committee of Jurists, M. Anzilotti states (page 8 of the printed Minutes) :

" 'Our proposals, however, should not be regarded as emanating from the Court itself. On the contrary, I must state that the members of the Court have not failed to attach great importance to the sentence which was inserted in the report adopted by the Council on December 13th, 1928, under which "it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court". '

" And, at the last meeting of the Committee (page 92), M. Anzilotti reminded the Committee that 'M. Huber and he had not taken part in the work of the Committee as official representatives of the Court, but thought that it would perhaps be in order to submit the draft revised Statute and the corresponding report to the Court '.

"On the same occasion (page 94) he made a formal declaration to the effect that anything he or M. Huber had said 'represented nothing but their own personal opinion and must not in any way be held to express the views of the Court '.

"Finally, the exact significance of the attitude thus adopted by M. Anzilotti and M. Huber in the Committee is demonstrated beyond all doubt by the following declaration made by M. Anzilotti at the fourth meeting of the Committee (page 25) :

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

(Signed) HAMMARSKJÖLD."

The CHAIRMAN said that this letter would be included in the Minutes of the First Committee

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FOURTH MEETING.

Held on Monday, September 16th, 1929, at 3.30 p.m.

Chairman : M. SCIALOJA (Italy).

9. **Proposal of the Government of Finland to confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal in respect of Arbitral Tribunals established by States** (continuation).

M. DOMINIQUE (Haiti) stated that the revision of an arbitral decision could only relate to the absence of competence *ratione materiæ* and the exceeding of its powers by a tribunal and not to the absence of competence *ratione personnæ* nor the erroneous application of the law. Thus restricted in its scope, the Finnish proposal was still of great importance and in no way dangerous.

The question of terminology was a subsidiary consideration and the appeal could be considered as a procedure of *revision, cassation,* or appeal *sui generis.*

M. RAESTAD (Norway) thanked the Finnish and Polish delegates for having raised the question under discussion and at the same time for having restricted their proposal to the case of absence of competence and to a court's exceeding its powers. The question of the competence of an arbitral tribunal was extremely important, in view of the great number of arbitration treaties in existence and the complicated regulations which some of them laid down.

There might, however, be some reluctance to consider the prospect of a new Protocol of Signature. Might it not be sufficient to make use of what already existed ? A new fact had just occurred : a large number of States had signed the Optional Clause of Article 36 of the Statute of the Court. In the case of States bound by Article 36, the Court of International Justice might perhaps act as a tribunal of appeal.

Article 73 of the Hague Convention, 1907, did indeed state that an arbitral tribunal was empowered to fix its own competence. Nevertheless, even if an arbitration treaty referred to this Convention, there was nothing to prevent the parties from declining to apply that article when drawing up the "*compromis*" or special agreement.

In any case, this point raised a question of international law which came under the terms of Article 36 of the Statute.

M. Raestad wished to make a proposal which he would withdraw if it were not approved by the Committee. The Secretary-General might be asked to consider how far the Permanent Court of International Justice could, in virtue of Article 36 of the Statute, serve as a tribunal of appeal in connection with the arbitral tribunals set up by States. The result of this consideration would be communicated to the Members of the League of Nations for discussion at a subsequent session of the Assembly. It would appear that the question had not yet been fully cleared up and it was desirable to define the present position of international law.

M. ANTUNA (Uruguay) approved the Finnish proposal.

The extension of the competence of the Permanent Court of International Justice provided for by that proposal would be of great importance for the American continent. The appeal authority whose creation was contemplated would prove of undoubted value. The need for such an authority had already been felt.

Uruguay had always been in favour of strengthening the judicial organisation of the League of Nations. The Uruguayan delegation had expressed itself in that sense as far back as 1920, when the original draft of the Statute of the Court was being discussed.

He did not think that the question should be considered by a Sub-Committee or investigated by the Secretariat. What the Committee had in mind was not a revision strictly so called of arbitral awards, but an appeal limited to cases where the tribunal was without competence or had exceeded its powers. His country, which had been the first to accept the Optional Clause of Article 36 of the Statute without any reservation, had great pleasure in approving the Finnish proposal, which was of special importance for America, where the practice of arbitration had reached a very advanced stage. If, as had been pointed out, the appeal involved examination of a point of international law, and if the competence of the Court appeared *prima facie* to be founded on Article 36 of the Statute, that was a result which could be noted with satisfaction.

Sir Ewart GREAVES (India) said he did not suppose that it was the intention of the Government of Finland to open the way in arbitration matters to a general right of appeal to the Court. Any such right of appeal would clearly be a mistake. The proposal, as he understood it, had in view cases where an award given by arbitral tribunals was alleged by one of the parties to be vitiated through the Court exceeding its powers, or failing to exercise those powers, or where the award contained an error of law on the face of the record. He thought it necessary to examine definite cases in which this hypothesis might occur.

First of all, there was the case of two States which had signed the Optional Clause and which might decide to submit a particular dispute to a tribunal agreed upon by themselves. The text contained no provision referring to any dispute arising from the award of the nature he had indicated. Nevertheless, it was open to the parties to refer to the Court of Justice, under Article 36 of the Statute, in the event of any difference arising such as he had indicated, and this whether the States had or had not signed the Optional Clause.

Secondly, there was the case where the parties agreed, in the submission to arbitration, that questions of the nature he had indicated should, if they arose, be submitted to the Court. In that case no difficulty would arise.

A third case arose where there was no question of submission in respect of any appeal in matters of the nature he had indicated, and where one of the parties desired to submit such matters to the Court while the other refused. He did not think that in that case, which was the only case in which any difficulty arose, any effort should be made to force an appeal to the Court. The parties should be trusted to act reasonably and it was to him unthinkable that, in cases where the parties had chosen their own tribunal to decide a dispute, they should be forced to allow an entirely different tribunal to decide any dispute which arose out of the award of the tribunal they had chosen themselves. He was opposed to spending 40,000 francs on setting up a committee of jurists to study the question.

In conclusion, the speaker stated that Article 61 of the Statute of the Court, which referred to revision, had, in his view, been wrongly brought into the argument. In a case under Article 61, the Court itself which had dealt with the dispute revised its own judgment. This was a well-recognised procedure and, apart from any special provision, was probably inherent in the jurisdiction of any Court which still had *seisin* of the matter. But it was not a procedure which could be applied to the decisions of an entirely different tribunal.

M. COHN (Denmark) stated that the Danish delegation had examined the Finnish proposal with great interest.

Like M. Raestad, he considered that, in certain cases, the Court of Justice might decide as a tribunal of appeal in virtue of Article 36 of the Statute of the Court, provided always that the competence of the Court was not expressly excluded, as it could be, by Article 73 of the Hague Convention.

The Danish delegate supported M. Raestad's proposal that the question should be investigated by the Legal Section of the Secretariat.

Baron MARKS DE WÜRTEMBERG (Sweden) also supported M. Raestad's proposal.

He pointed out that the Optional Clause of Article 36 had now been signed by a majority of the States Members of the League of Nations. This was a new fact which had not existed when the Finnish proposal had been drawn up. In these circumstances, the Court of Justice would be called upon to adjudicate as a tribunal of appeal in connection with arbitral tribunals, should their competence be disputed. Perhaps, therefore, it was not expedient, at least for the moment, to enlarge still further the competence of the Court.

M. ROLIN (Belgium) wished to come to a practical solution.

He thought that it had been very advantageous to raise the question, for it had enabled the Committee to examine certain aspects of the question of the pacific settlement of disputes which had not been sufficiently considered during the previous year.

He agreed with several of his colleagues that the word "*revision*" had undoubtedly been used in error. That term applied to the quite definite idea of a "new fact", the new fact, under the terms of Article 83 of the Hague Convention, being a fact the character of which might exercise a decisive influence on the award but which, when the discussion had been terminated, had been unknown to the Court itself and to the party which had applied for the award to be revised.

It would be going too far to desire to extend this conception of the new fact to the question of the absence of competence or of a court exceeding its powers, or the case of error made in determining the facts.

Nevertheless, now that the "new fact" was being discussed, it might be asked whether a gap had been left last year in the General Act when provision had not been made for revision *de jure* in order to give satisfaction to a party pleading a new fact.

Reverting to the question of absence of competence and to a case of a tribunal exceeding its powers, M. Rolin stated that it was somewhat difficult to distinguish between these two conceptions. Absence of competence would arise in cases where the law regarding jurisdiction was infringed. A tribunal would have exceeded its powers when the terms of the judicial contract were infringed. In international law, however, it was usual for the same document to constitute both the judicial contract and the law.

It had been thought that the difficulty might be settled by reference to Article 73 of the Hague Convention of 1907. The terms of this article were as follows :

> "The court shall be authorised to fix its own jurisdiction by interpreting the special agreement and the other acts and documents which may be brought forward in the matter and by applying the principles of the law."

According to most publicists, this article meant that the tribunal was the judge in regard to its competence : it did not mean that the tribunal was the sovereign judge of its competence and that there was no appeal from its decision.

Certain speakers had stated that Article 36 of the Statute would, in the case of States bound by that article, be able to give the answer to the question. That was doubtful. Would the Court of Justice be "deciding a point of international law" if it gave a ruling on the question not only whether the arbitral tribunal had or had not been entitled to adjudicate on its competence, but also on the value of the judgment which had been rendered in regard to competence ? At present it would be just as imprudent to answer that question in the negative by creating a new conventional instrument in which States would give the Court power to decide as it would be for the Committee to desire authoritatively to settle the question by giving an answer in the affirmative.

Should difficulties arise in practice, there would, moreover, under present circumstances, be a way of escape, which, it seemed, had been overlooked. The Council of the League of Nations was entitled under the Covenant to take any suitable steps to ensure the execution of arbitral awards or judicial decisions (Article 13). If a State should claim that an award was vitiated through the tribunal exceeding its powers, the Council could not simply decline to consider the matter, but would be bound to use the means at its disposal—more particularly by having recourse to advisory opinions—to elucidate the question.

In conclusion, what course should be adopted ?

Three alternatives had been suggested : (1) The Council should be asked for its opinion ; (2) the Council should be asked to undertake an investigation ; (3) an enquiry into the question should be entrusted to the Secretariat.

It was hardly possible to ask the Council to assume the responsibility of giving a decision. The Council, if it were asked to do so, would entrust the investigation of the question to a committee. Not only would this investigation be an expensive business, but it was hardly likely to lead to a solution. If the Secretariat were asked to carry out an investigation, it would probably be found that the task was beyond its capacity and political powers.

In reality, the States Members of the League should give their opinion and take a decision. He would put forward a suggestion that had been made to him, namely, that States should first of all be consulted as to the advisability of adding, if necessary, a stipulation to the General Act providing for revision on the ground of a "new fact", and thereafter laying down in a new document the competence of the Court of Justice as an authority of appeal in the case of arbitral awards vitiated through the tribunal exceeding its powers or being without competence.

M. RAESTAD (Norway) agreed with M. Rolin. He proposed that the Governments should be consulted, but he would be glad to see the Secretariat preparing a memorandum which would indicate the various solutions which might be found for the problem.

The CHAIRMAN concluded that the question was not yet ripe, and that, before thinking of a solution, the Governments should be consulted. The problem might be investigated by the Secretariat, and there was no need to say that the members of the Committee could consider it with advantage.

The problem should be examined in all its aspects. He therefore proposed to defer the decision until such time as the States consulted had communicated their views, and to instruct the Secretariat to undertake an investigation.

The continuation of the discussion was adjourned to a later meeting.

10. **Progressive Codification of International Law.**

M. ROLIN (Belgium) proposed that the Committee should examine the various factors in the question one after the other.

1. *Preparatory Work for the First Codification Conference* (Annex 8)

M. Rolin observed that the Committee was about to reap the results of its long-continued work, and the Swedish delegate would see his initiative taking practical shape.

Two years ago it had ben decided to make an experiment by submitting to a Conference the questions of nationality, territorial waters, and the responsibility of States for damage caused in their territory to the person or property of foreigners. It had been decided to appoint a Committee of five members to prepare the work of this Codification Conference. At the same time the Council had been asked to frame draft regulations for the Conference.

The Commitee of five members had completed its work, and M. Rolin desired to express his very great admiration of that work.

Eighteen months ago the Committee of Five had sent very full questionnaires to the various Governments. The replies from these Governments had been employed in preparing the bases of discussion. The whole had been published in three volumes by the Secretariat.

The replies from Governments and the work of learned bodies resulting from this experiment in codification had already thrown a great deal of light on international law.

It was essential for the success of the Conference that the bases of discussion should be investigated by the various Governments with great care. It was also essential that delegates and technical experts should be appointed at an early date so that they would be in a position not only to examine thoroughly the point of view of their Governments, but also to know and to examine the points of view of the other Governments.

M. Rolin did not consider that the First Committee should examine the bases of discussion.

The question of the rules of procedure should be discussed more exhaustively. The Council had taken the initiative in applying to the Committee of five members to enable it to carry out the duties entrusted to it by the Assembly at its last session.

Countries had been asked to supply information particularly regarding : (1) The possibility, if occasion should arise, of the States represented at the Conference adopting among themselves rules accepted by a majority vote ; (2) the possibility of drawing up, in respect of such subjects as might lend themselves thereto, a comprehensive convention and, within the framework of that convention, other more restricted conventions ; (3) the organisation of a system for the subsequent revision of the agreements concluded; (4) the spirit of the codification, which should not be confined to the mere registration of the existing rules but should aim at adapting them, as far as possible, to contemporary conditions of international life.

These four points were touched upon in the report of the Committee of Five. The latter said, first of all, that, after consideration, it did not consider it possible to insert in the draft rules particulars on the four points enumerated by the Assembly.

As regards the form to be given to the conclusions of the Codification Conference, M. Rolin thought that the Committee's conclusions were somewhat lacking in clearness. The fault lay, perhaps, in the manner in which the various points at issue had been worded.

The fact remained that, in these draft rules, the form ultimately to be given to the Conference's conclusions was laid down in four distinct articles which were not even consecutive. Article XX said :

> "If the Committee cannot reach unanimous agreement on all points it shall incorporate the provisions upon which the Committee has unanimously agreed in a special instrument.
>
> "The Committee shall also formulate the provisions which have obtained the assent of the majority of the delegations.
>
> "It may also establish the terms of a Declaration setting forth the principles regarded, at least by a majority of the delegations represented on the Committee, as the expression of existing international law."

This was the general formula referring to these conclusions. M. Rolin confessed that he did not quite understand what was proposed. In so far as it was a question of recognising existing law, everyone would agree that a declaration without time-limit was obviously the most appropriate form. But, in case unanimity was not obtained, it appeared that provision had been made for a Convention which might be general or which might only be supported by the majority. These two forms of convention or declaration, both of which were represented as liable to be either unanimous or limited to a certain number of States, seemed to overlap to some extent in the conclusions which were communicated. It would perhaps be well for further explanations to be submitted in this connection.

The same question arose in regard to Articles XXIII, XXIV, and XXV.

Since there was unanimous agreement, and since it was a question of existing law, was it not an error to ask the Conference to determine the duration of the provisions ? Moreover, if the agreement were a unanimous one, was it wise to provide for the possibility of reservations ? Provision seemed to have been made for a general act with reservations and individual acts to which everyone might accede. These were two procedures which could not easily exist side by side.

The Belgian delegate thought it would be well for the Committee to direct its attention to the points he had noted.

M. LIMBURG (Netherlands) pointed out that the document on which M. Rolin had just commented had not been distributed to the members of the Committee.

M. ROLIN (Belgium) replied that reference was made to this document in the supplementary report on the work of the League. There could be no question of a discussion on the basis of the short summary which had been distributed.

Mr. McKinnon WOOD (Secretary) said he had not thought that this question would be raised before the Assembly since the Council had forwarded the draft rules to all Governments, explaining that they were intended simply as a basis for discussion and that the Conference could amend the text as it wished.

M. ROLIN (Belgium) asked what, in that case, was the purpose of placing this question on the agenda.

M. URRUTIA (Colombia) agreed that the idea was for the Conference to discuss the draft rules.

In reply to the question just put by M. Rolin, he thought that the placing of this question on the agenda of the Committee meant that the members could make observations regarding it.

He recalled the proposal he had submitted concerning the convocation of the Committee of Experts for the Progressive Codification of International Law.

M. ROLIN (Belgium) said that he had not known that the draft rules had already been referred to the Governments ; he recognised that in these circumstances there could be no question of amending them.

Baron MARKS DE WÜRTEMBERG (Sweden) reminded the Committee that two years earlier he had proposed that the League should make systematic efforts to bring about by treaty the codification of international law. He was happy to observe that the work which had been begun at the instance of his Government had progressed, and that a Conference was to be held to deal with three questions of international law.

The preliminary work so far accomplished had been done in the face of great difficulties. It was as yet too soon to judge of the future results of the Conference. Further difficulties would be encountered, but the preparatory work that had been carried out by jurists of universally recognised authority gave ground for hopes that the Conference would arrive at a definite result constituting an important step towards the progressive codification of international law, and would thus help to strengthen that international understanding which it was the aim of the League to attain.

M. POLITIS (Greece), referring to the procedure of the Conference, was of opinion that the Conference's first business would be to decide upon its procedure, having regard to the suggestions made to it.

He did not think the Assembly should be content with expressing its satisfaction with the work that had been done ; it might make a number of recommendations to the Conference. In particular, it might say that it would be highly desirable for the Governments to appoint their delegations at an early date, so that the members of those delegations would have time to acquaint themselves thoroughly with the documentation laid before the Conference.

M. URRUTIA (Colombia) shared the view expressed by M. Politis.

He would be glad if the Assembly would call the attention of Governments to the importance of this Conference, which might be regarded as a continuation of the first and second Hague Peace Conferences.

It would be desirable for the Assembly to recommend that Governments should send plenipotentiary delegates to the Conference.

M. ROLIN (Belgium) announced his intention of laying before the Committee a draft resolution embodying these recommendations.

M. POLITIS (Greece) thought that the questions before the Conference would take some considerable time to examine. Several sessions would be required. It would not be possible for delegates to sit uninterruptedly at The Hague for more than two months at the First Session. If it were desired to make proper use of that period, a certain amount of preliminary work would have to be done. The organisation of such a Conference involved a somewhat complicated machinery. The Conference would be divided into Committees, which would have at their disposal a staff of secretaries, shorthand-writers and typists. Had the League Secretariat already considered this question ?

Sir Cecil HURST (British Empire) said that, when the Preparatory Committee had laid down the bases of discussion which had been published in three stout volumes, only about thirty Governments had sent their replies. Since then, two late replies had been received, but a large number of Governments had not yet replied to the questionnaires which had been sent to them eighteen months earlier.

He would like an appeal to be made to those Governments to send their replies without delay. It was desirable that as many replies as possible should be obtained, so that the Conference might know the views of all the Governments.

The Committee agreed that this should be done.

2. *Continuation of the Work of the Committee of Experts for the Progressive Codification of International Law* (Annex 8).

M. ROLIN (Belgium) referred to the decision taken by the Assembly in 1928, noting the conclusions of the Committee of Experts to the effect that two new questions were sufficiently ripe to be codified, and noting also that a new questionnaire had been drawn up by the Committee of Experts regarding the matter of domicil.

Mr. McKinnon WOOD (Secretary) stated that about a dozen replies had reached the Committee in regard to this latter question.

M. ROLIN (Belgium) thought that in that case all that could be done as regards domicil was to address a further appeal to the Governments asking them to reply.

He then read the following draft resolution in regard to this question proposed by the Colombian delegate :

> "The Assembly decides to request the Council to invite the Committee of Experts for the Codification of International Law set up by the Assembly to continue its work.
>
> "The Committee will meet in 1930 after the close of the first Codification Conference, and thereafter on dates to be fixed by the Secretary-General of the League of Nations."

It was his personal opinion that it was perhaps too early as yet to decide the date of the meeting of the Committee of Experts. He was ready, however, to abandon that opinion if the majority of the Committee did not agree with it.

The first Conference on Codification would meet in March, and would finish its work in May. The Assembly would meet in September and it would be difficult for the Committee of Experts to hold a session between these two dates. It was probable also that the Committee of Experts would be glad to receive further instructions from the Assembly after the Conference had taken place.

M. URRUTIA (Colombia) said that the Assembly of 1928 had admitted, in principle, that the Committee of Experts should hold another session and should proceed with the preparation for codification.

He said that his proposal was merely the result of the decision taken by the Assembly last year. (See the resolution adopted by the Assembly on September 24th, 1928, reproduced in Annex 8.) As he had said in the Assembly, the forthcoming Conference on Codification should not be regarded as an end. This Conference would deal with three very important questions : nationality, territorial waters, and the responsibility of States. The Committee of Experts, however, had drawn up a questionnaire on two other questions : the juridical status and functions of consuls, and the competence of tribunals in regard to certain foreigners.

Other questions might also be codified. The work of codification was therefore unlimited. If the preparatory work of the Committee of Experts had shown good results it would be wise to continue it.

He was not attached to any one draft rather than another, but he desired that the Assembly should let it be understood that the work of the Committee of Experts was not finished and that the Committee should, if possible, meet after the Conference in 1930.

The Committee of Experts could then consider the results of the Conference and undertake preparatory work for another session. It was important to point out that the Assembly's intention was that the method followed with a view to codification should remain unchanged, and that the work for codification should continue.

M. COHN (Denmark) supported the Colombian proposal. He did not think it necessary that any recommendation should be made in regard to replies to the questionnaire concerning domicil. The reason why a number of countries had not replied was that they were uncertain whether the Committee of Experts was going to continue its work.

Baron MARKS DE WÜRTEMBERG (Sweden) supported the Colombian proposal. He reminded the Committee that at the last Assembly the Committee of Experts had been instructed to consider the possibility of formulating a declaration of the fundamental rights of States. He thought it desirable that the Committee should meet shortly after the session of the Assembly to be held in 1930.

M. BOTELLA (Spain) supported the Colombian proposal.

M. POLITIS (Greece) welcomed M. Urrutia's proposal. He was quite convinced that the first Codification Conference was only a beginning. Everybody was agreed on that point. Everybody was also at one in approving the method that had so far been followed. The only question that arose was whether it was to be decided forthwith that the Committee of Experts should meet immediately after the first Conference. He thought it would be better to postpone taking a decision regarding the date when the Committee of Experts should meet until the Eleventh Session of the Assembly. It might be said that the Assembly considered that the Committee of Experts could meet after the first Codification Conference, at the end of 1930.

M. URRUTIA (Colombia) said he could not accept M. Politis' suggestion, which he regarded as tantamount to a rejection of his proposal. His proposal was to state that the work of the Committee of Experts was to continue. So far as concerned the best date for the meeting of the Committee of Experts, the wording of the resolution could be changed.

M. POLITIS (Greece) thought that the only difference between M. Urrutia and himself was on a question of dates.

M. LIMBURG (Netherlands) thought that everybody could accept the following wording :

> "The Assembly decides to ask the Council to request the Committee of Experts for the Codification of International Law set up by the Assembly to continue its work at the first suitable date."

This proposal partially satisfied M. URRUTIA, who suggested :

> "The Council requests the Committee to continue its work and to meet at a date to be fixed by the Council."

M. ROLIN (Belgium) thought that M. Limburg's text had one defect, namely, that it did not settle who was to judge whether it was expedient for the Committee to meet.

It had been proposed by M. Urrutia that the Council should decide. He thanked M. Urrutia for his conciliatory spirit, but would call the Committee's attention to the administrative aspect of his proposal : even if it were simply decided that the Codification Committee could meet, or might in certain circumstances meet, there would have to be an item in the budget for it. The amount in the present budget was one hundred francs ; in other words, the reference to the meeting was purely formal. It was doubtful whether the Fourth Committee would be prepared to allot an additional sum of about 45,000 francs for a session of the Committee.

M. URRUTIA (Colombia) said that he had foreseen the financial objections.

He would point out that in 1926 the Committee of Experts had held a session lasting a fortnight and it had cost 47,297 francs. Moreover, 327,000 francs which had been voted for the Codification Conference in 1928 had been left as a surplus in that year's budget. There was therefore available the sum in question, which had been voted for a Conference that had not taken place.

He thought that 45,000 francs was not too much to ask for such an admirable object as the codification of international law, when it was remembered that other larger items were set aside for objects that did not so closely concern all the Members of the League.

In putting forward his proposal, he had been inspired by a very high ideal, unaffected by any personal or national interest, direct or indirect. The Committee of Experts had only one American member. To prove his conciliatory spirit he would willingly accept M. Limburg's proposal, which he repeated in the following form :

> "The Assembly decides to ask the Council to request the Committee of Experts for the Codification of International Law to continue its work and to meet, when invited by the Council, at the first suitable date. "

He would ask the Chairman to inform the Fourth Committee of his proposal.

M. ROLIN (Belgium) pointed out that the sum of 327,000 francs that had been mentioned was not in the budget. There had been differences of opinion between the First and Fourth Committees and the final solution adopted was that there should be an alternative appropriation either for the Disarmament Conference or for the Codification Conference.

He did not think the Council could be asked to invite the Committee of Experts both to continue its work and to meet when invited by the Council. It would be rather hypocritical to tell the Committee to go on with its work and at the same time not to allow it to meet until it was invited to do so.

M. Urrutia's proposal was accepted by the Committee, subject to certain drafting amendments.

3. *Work of the Committee of Three Jurists appointed under an Assembly Resolution of September 24th,* 1928 (Annex 8).

M. ROLIN (Belgium) said that the Committee's terms of reference were to establish a systematic survey of questions of international law and to report upon the publication of certain general conventions in codified form.

The first of these tasks was a theoretical work which could not be discussed at the moment, but which, subject to later modifications, could be used in the later work of codification (Annex 9).

In connection with the second item, the Committee of Three had made a most interesting report (Annex 9) . With the Secretariat's assistance, it had considered a very large number of conventions which might at first sight be regarded as general. It had fixed upon 250 conventions which it proposed, if the Assembly agreed, to publish in a series of volumes—two of which containing about 500 pages each—might appear during 1930. The various conventions would be arranged in an order specified in the report.

Personally, he thought it inexpedient to advise the Assembly to give orders at the present juncture for the publication proposed by the Committee of Three. This publication of a series of volumes of 500 pages each did not correspond to the intentions of M. Fromageot, and doubtless of other advocates of such a publication. They were thinking of a small, handy, easily consulted publication containing the most important texts in universal law. Such a volume would have been of the utmost practical value, and would have had a wide circulation and been frequently reissued.

The difficulties of producing such a publication had appeared clearly in the course of the Committee's work, and it was plain that it could be regarded from another angle, in which case, it would acquire a new kind of importance.

M. Rolin had taken care to consult the list of conventions that had been drawn up. The idea of generality appeared to him to have been extended beyond what was essential. The list included a large number of conventions designed to settle questions of strictly local concern, as, for example, various conventions dealing with the Danube and the Rhine. If these texts were published, they would duplicate other publications.

Another point was that it was very difficult to be certain just what texts were actually in force. In the matter of railways, for example, there were dozens of conventions which partly cancelled one another and partly supplemented one another. In many cases, successive conferences—as, for example, those of the Postal Union—had stated that the provisions of earlier conventions were abrogated so far as they were altered by the new conventions, with the result that expert enquiry was needed to determine what clauses had been cancelled.

The texts of the Berlin Treaty of 1884 and the Brussels Treaty of 1890 on colonial questions had been cancelled in respect of a large number of the signatories and replaced by the Treaty of St. Germain. It was open to question whether those texts could be regarded as belonging to world international law.

His conclusion was that the work in question was not mere routine work, but a delicate task that could not be simply entrusted to a meeting of jurists. It would be wiser for the League not to give orders for a publication whose scientific value would be open to dispute, but to proceed cautiously, in order to arrive eventually at more durable results.

Instead of setting up a new Committee or entrusting this work to the Preparatory Committee to which M. Urrutia had referred, he thought it would be better, at all events for the time being, to request the advisory bodies of the League to find out what conventions there were on the various

questions under consideration—transit, humanitarian questions, labour, and so forth—and to ask the Council to request the various Governments to approve the results of these investigations.

To sum up, M. Rolin thought that, quite apart from the work of codification that would be undertaken at The Hague, there was one aspect of codification upon which sufficient stress had not been laid ; he referred to the codification of international treaty law. Before the League of Nations came into existence, general conventions were only too often not properly co-ordinated, and this resulted in very serious difficulties which were apt to have the effect of weakening international law and making it more difficult for the public to understand. In that direction there was a great deal of work to be done, and it could be done without any fresh expenditure. It was certainly work in the nature of codification.

The CHAIRMAN said that M. Rolin's remarks were most interesting. Before such an important work of publication were undertaken, would it not be possible to follow a method that was very often used in such cases and publish a small pamphlet showing what was contemplated, so that everybody could say what he thought on the subject ?

The meaning of the expression "general convention" was not yet entirely fixed. If it were intended simply to make a collection of conventions already in force, it was necessary only to publish an index. It could not be said that the object of the League was merely to make it easier for people to consult texts. One of the League's objects must be to create an instrument that would assist progress. For that reason, it would be desirable to regard even conventions concluded between a small number of States as general conventions when they represented a new type. That was the kind of convention that it was worth while to bring to the notice of other countries. That was the kind of convention that was of most importance to the progress of international treaty law.

Other ideas would doubtless be expressed if a pamphlet were to be published as had been suggested. It was worth while, therefore, to decide upon an adjournment to enable all the experts to reflect upon the matter.

M. ROLIN (Belgium) reminded the Committee that it had been his own conclusion that orders should not at present be given for a publication, but he would like some preliminary work to be done by the technical organisations of the League.

The CHAIRMAN said he had no objection whatever to that suggestion.

In regard to the suggested publication, the same procedure should be followed as had already been followed in other cases—the opinions of those who were specially experienced in the matters in question should be asked.

The Committee might therefore suspend any decision on the point.

M. ROLIN (Belgium) asked leave to draft a text and lay it before the Committee.

M. LIMBURG (Netherlands) wished to know whether the Committee thought that the technical organisations of the League ought to make a collection of conventions.

M. ROLIN (Belgium) answered that that was not what he had proposed. Before anything was published, there must be some preliminary work. The technical organisations of the League must be asked to decide what international conventions ought to be published, and to state how they could be codified. The matter might be put to the technical organisations in the following way : We are asking you to come to a decision on a question which you are competent to decide. Do you think it is worth while to simplify this arsenal of texts ? If so, will you please carry out some preliminary work to see how the best results can be obtained ?

The Committee agreed that M. Rolin should draft a text to be submitted to it at the next meeting.

FIFTH MEETING

Held on Tuesday, September 17th, 1929, at 3.30 p.m.

Chairman : M. SCIALOJA (Italy).

11. Amendment of the Covenant of the League of Nations as a Result of the General Adhesion of the Members of the League to the Pact of Paris for the Renunciation of War.

The CHAIRMAN read the British and Peruvian proposals, which, he said, could be discussed together ; the text of these proposals is as follows :

1. *Draft resolution proposed by the British Delegation (September 6th, 1929).*

"The Tenth Assembly of the League of Nations :

"Notes with satisfaction the general adhesion of States Members of the League of Nations to the Pact signed in Paris on August 27th, 1928, imposing on its signatories the renunciation of war as an instrument of national policy and the undertaking to have recourse only to pacific means for the settlement of their disputes ;

"Considers that, in order to take account of the progress thus made in the organisation of peace, it is desirable to re-examine Article 12 and Article 15 of the Covenant of the League in order to determine whether it is necessary to make any modifications therein."

2. *Draft resolution proposed by the Peruvian Delegation (September 10th, 1929), and text of a letter addressed by M. Cornejo to the President of the Assembly.*

Draft Resolution.

"The Assembly shall appoint a Committee of five members to report on the form to be adopted for the inclusion of the Kellogg Pact in the Covenant of the League of Nations, and on the alterations necessary therein to give effect to the prohibition of war as an instrument of national policy."

Letter.

"Acting upon instructions from my Government, I have the honour to propose that the Assembly should examine the Covenant of the League of Nations in order to consider how far it may be desirable to amend or supplement that instrument with a view to bringing it into accord with the Kellogg Pact.

"The British delegation having submitted a similar proposal, I desire to associate myself entirely with the action taken by the British delegation in agreement with the French, Chilian, Italian and Danish delegations.

(Signed) M. M. CORNEJO,

First Delegate of Peru."

Sir Cecil HURST (British Empire) said that, at the meeting of the Assembly on September 6th last, Mr. Henderson had proposed a resolution on the subject of bringing the text of the Covenant into conformity with the text of the Pact which was signed at Paris during the previous summer and had come into force at the beginning of the present year. By the terms of the Paris Pact, its signatories pledged themselves to renounce war as an instrument of national policy. The obligations thus assumed went somewhat further than the provisions of the Covenant. It was now ten years since the Covenant came into force, and, at the time it was drawn up, it was not possible to embody in it, obligations so far-reaching as those accepted in the Pact of Paris last year. That such obligations would now be accepted was shown by the great measure of adhesion the Paris Pact had received.

Because the British resolution involved some modification of the Covenant, he trusted the Assembly would not think that the people of the United Kingdom were in any way discontented with the terms of that instrument. The remarkable thing was not that there was now something to correct in the terms of the Covenant in the light of the experience of the last ten years, but that the progress made since the Covenant came into force had been so great as to enable the world to accept the more far-reaching stipulations embodied in the Paris Pact.

When the Covenant had been drawn up, it was felt that, unless certain loopholes were left, it would not secure general acceptance. It was not intended that Members of the League should resort to war by taking advantage of these loopholes, but it was felt that, if the obligations of the Covenant extended to the cases in which war was more likely to arise, it was all that could then be achieved.

The Government of the United Kingdom was now of opinion that some of the provisions of the Covenant required re-examination. Article 12 stipulated that, if there should arise between Members of the League any dispute likely to lead to a rupture, then "they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council", and the Article went on to say: "They agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council". The right to go to war after those three months had elapsed was not excluded. The framers of the Covenant thought that, if they could prevent war during those three months, it would be stopped altogether, since public opinion on both sides would ensure a peaceful settlement. Beyond that, those who drew up the Covenant feared to go, lest the instrument should be regarded as Utopian.

The great majority of the States had now, however, accepted an overriding obligation in no circumstances to resort to war, and it was clear that the obligation in Article 12 was less far-reaching than that. It therefore seemed to the British Government that steps should be taken to make the obligation under Article 12 at least as far-reaching as that embodied in the Paris Pact. For that purpose, the change required was small. Down to the words "or to the enquiry by the Council" no change was required, and after that the text should be altered to read," and they agree that they will in no case resort to war". That undertaking would be precisely in line with the obligation embodied in Article 2 of the Kellogg Pact, which stipulated that "the High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be which may arise among them shall never be sought except by peaceful means". The Members of the League would continue to agree that, "if there should arise between them any dispute likely to lead to rupture", then "they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council" and they would agree not to go to war.

If an amendment of that sort were made—and for States which had accepted the Pact of Paris that modification would involve no change in their obligation—it would involve two minor consequential amendments in other provisions of the Covenant. Article 13 stipulated that the Members of the League agreed that, whenever any dispute arose between them which they recognised to be suitable for submission to arbitration or judicial settlement, and which could not be satisfactorily settled by diplomacy, they would submit the whole subject-matter to arbitration or judicial settlement. The fourth paragraph of the Article provided that "the Members

of the League agree that they will carry out in full good faith any award or decision that may be rendered and that they will not resort to war against a Member of the League which complies therewith". It continued : "In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto".

What operation could that central phrase of the paragraph possess if there was already in existence for those Members of the League, embodied in the Pact of Paris, an obligation not to use war as an instrument of national policy, and if they consented to a modification of Article 12 of the Covenant to the effect that, if there was a dispute, it should in no wise be made the excuse for recourse to war ? Consequently, that central phrase of the fourth paragraph of Article 13 ceased to be useful and he submitted that it might be amended to read :

> "The Members of the League agree that they will carry out in good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

A second consequential amendment would be that, in the sixth paragraph of Article 15, an alteration would have to be made. At the same time, that provision could not be amended by the simple method he had suggested with regard to the fourth paragraph of Article 13, because there was an essential difference between the two proposals. In the case of a submission of a justiciable dispute to a body which could give a binding decision, there was the obligation to accept the decision which was recognised in the opening phrase of Article 13 ; but, when States were submitting to the conciliatory proceedure of the Council, there was not, and he did not think there could be, any similar obligation to accept the recommendations of the Council. Just as in the existing sixth paragraph of Article 15 States were only obliged to accept the unanimous report to the extent that they undertook not to go to war with the State which complied with it, so he submitted that, in the altered form, all that it would be possible to provide would be that, if a report of the Council was unanimously agreed to by the Members thereof other than the representatives of one or more parties to the dispute, the Members of the League agreed that, as against any party to the dispute which complied with the recommendations of the Court, they would take no action which was inconsistent with its terms. It was unnecessary there to oblige them not to go to war. That obligation would already have been embodied in the suggested amendment to Article 12, which would bind them, not merely not to go to war for a period of three months, but not to go to war at all.

The second main modification which he suggested was necessary in the terms of the Covenant in order to bring it into harmony with the Pact of Paris was this : In Article 15 of the Covenant provision was made that, if the Council was unable to arrive at a unanimous decision, the Members of the League reserved to themselves the right to take such action as they should consider necessary for the maintenance of right and justice. That was the provision which had been so often described as the gap in the Covenant, leaving Members of the League the right to resort to war in certain events. But the circumstances in which they would resort to war would be covered by the terms of Article 1 of the Pact of Paris. They would be resorting to war as an instrument of national policy. The amendment which he submitted ought to be made to that provision of the Covenant was as follows :

> "If the Council fails to reach a report which is unanimously agreed to by the Members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war."

There might be many other actions which could be so taken.

Those were the formal modifications which it seemed to his Government were required in the terms of the Covenant in view of the fact that a major obligation had now been accepted by most States when they became parties to the Pact of Paris.

Some minds might be troubled by the fact that all the Members of the League were not parties to the Pact of Paris. That was true, but at the same time the number of the States which were Members of the League and which had not accepted the obligations of the Pact of Paris was not large, and they were in most cases—he hoped in all—States which had been deterred from announcing their acceptance of the Pact of Paris by constitutional reasons. For the vast majority of the Members of the League, the obligations of the Pact of Paris had already become a reality.

The Committee would observe that he had made no mention of two articles as requiring amendments which, in discussion, had frequently been mentioned as articles that would require amendments if the changes he had suggested were made. The first of these was Article 10, providing for the preservation of the existing political independence of all Members of the League. He did not think this Article required modification by reason of the acceptance of the Pact of Paris ; and to touch Article 10 would be very unwise and even dangerous. Since the Covenant came into force, there had been two camps or groups which held somewhat divergent views on the subject of Article 10. Some States thought that the burden it imposed upon Members of the League was so heavy that it was unreasonable to ask States to accept it, and there had been proposals for the elimination of Article 10 altogether. On the other hand, there were States which looked to Article 10 as the keystone of the arch of security which the League gave them, and which would view with dismay any attempt whatever to weaken its terms. In the presence of views so divergent, he ventured to think it would be far better not to think of touching Article 10.

The second article of which he had made no mention, because his Government thought no change should be made in it, was Article 16, the Article providing for sanctions. It was clear from that Article that the Members of the League only undertook to apply those sanctions if there was violation of Articles 12, 13 and 15. If the obligations of Articles 12, 13 and 15 were extended, it was clear that the cases in which the Members of the League would be called upon to apply sanctions

would also be extended. Consequently, the suggested modifications did in a sense increase the burden which membership of the League imposed upon its Members. On the whole, his Government thought that that small extension of the obligations involved in Article 16 was the wisest course to take. It would lead to great complication if it were sought to embody in the terms of the Covenant two different sets of obligations, of which one was covered by the sanctions and the other was not. If, for instance, under Article 12 as it now stood, a State waited for three months before resorting to war and then went to war, it did not violate Article 12, and, consequently, there was no obligation upon other Members of the League to apply sanctions against it. If, on the other hand, Article 12 was modified in the way he had indicated and the obligation to refrain from resorting to war became indefinite in duration and the State went to war four months after the award or decision, then, if the amendment was accepted, it would go to war in circumstances that would oblige other Members of the League to apply sanctions to it. But this extension of the obligations of Article 16 seemed to his delegation to be no more than a theoretical extension and not a practical one. The application of sanctions was only a burden if other States did in fact resort to war. The more the possibility of war was reduced, the less possibility there was of having to apply sanctions and, consequently, the less onerous did the burden of sanctions become.

It would be seen that the modifications he had suggested as necessary in the Covenant as the result of the acceptance of the Pact of Paris covered but a very modest field. They implied no radical revision of the charter which bound all the States Members of the League. They were but minor corrections, which it seemed reasonable to make in view of the progress that the world had made in the course of the last ten years. If he was right in thinking that the field in which amendments were proposed was modest, andif the terms of the amendments which he had indicated seemed to be adequate to achieve their purpose, why should not acceptance by the Assembly of these proposals be secured in the course of the Assembly which was still in session ?

He had read with great interest the corresponding proposal that had been put forward by the Peruvian delegation. The Peruvian delegation had proposed that a Committee of Five should be set up to consider any amendments that were necessary in the terms of the Covenant in order to bring it into harmony with the Pact of Paris. If the majority of the members of the Committee thought this question was so big that it ought to be made the subject of study after the Assembly, Sir Cecil would agree that it ought to be committed to some body which would have adequate time and opportunity to deal with the question. If that was the general view of the Committee, the members of the British delegation would quite understand and would be perfectly ready to accept it ; but its own view was that the amendments which he had suggested were so modest in their nature, and covered so restricted a field, that, in reality, it would not be either difficult or unreasonable for the members of the Assembly to put this matter through right away. After all, it was now ten years since the League was started. Great progress had been made in the course of that decade, and would it not be an admirable opportunity to mark their sense of the progress realised by bringing the terms of the Covenant up to date ?

A phrase had been used by his own Prime Minister in the course of his speech before the Assembly, when it was said that the moment had come to cut away the dead wood from the Covenant. It had occurred to him that perhaps the phrase might create in the minds of some an idea that the British Government thought the Covenant a dying tree in which dead wood was beginning to appear. Let him suggest rather that the Committee should consider that what was wanted was the elimination only of boughs of that tree which had ceased to be useful because the tree had grown so high that the lower boughs ceased to operate. He hoped at the conclusion of the meeting that it might be possible, either for a general preponderance of view to have been expressed in favour of appointing or recommending the appointment of some body to go into the question after the Assembly had met, or that there might have been expressed a generality of opinion in favour of some more immediate effort at amendment of the Covenant so as to put the whole business through in the course of the present session of the Assembly.

M. CORNEJO (Peru) said that the Peruvian delegation shared the views of the British delegation and accepted the amendments to the Covenant so brilliantly explained by the fine speaker whose lofty idealism had always been and would always be a torch to lighten the path of the League of Nations. The Peruvian delegation had, however, proposed the appointment of a Committee to bring the Pact of Paris and the Covenant of the League of Nations into harmony. That Committee should consider whether, apart from Sir Cecil Hurst's amendments, other articles of the Covenant ought not to be amended so as to bring the two instruments entirely into line.

It was quite true that, when the Pact of Paris was signed—and Peru had been one of the first countries to sign after the original signatories,—certain jurists had had the impression that there might be discrepancies and even inconsistencies between the Pact and the Covenant ; it was now generally admitted, however, that the Pact of Paris had developed, strengthened and consolidated the principles on which the Covenant was based.

Ten years earlier, as Sir Cecil Hurst had reminded the Committee, it had not been thought possible to obtain the assent of all countries to an absolute condemnation of war, and the door had been left open for certain wars which had been regarded as lawful. After the lapse of three months, a country that did not conform to the Council's recommendations might declare war. The Paris Pact, however, had outlawed war as an instrument of national policy.

He must dwell at some length on this idea of national policy. Policy was one of the means employed by a country to preserve and develop its existence. Consequently, if war were condemned as an instrument of national policy, it was condemned absolutely. No country could resort to war in order to increase its power, or in order to defend its vital interests. In other words, a country which, for example, suffered a denial of justice, could not resort to war in order to obtain redress, but must have recourse to the peaceful methods contemplated in the Covenant.

There was, however, another consideration to be borne in mind. War was only a means ;

the end was peace, which came into being when the conquering State imposed its will upon the conquered. Thus the Paris Pact, in forbidding wars of aggression, condemned dictated peace. He therefore thought that the Pact and the Covenant ought perhaps to embody provisions to deal with the case of a powerful country's having a weaker country at its mercy and claiming the right to impose its own peace terms.

Was a country which was guilty of the crime of war to be allowed to profit in its national policy by the peace it would impose upon the conquered country ? In his view, the whole object of the Paris Pact was to prevent any such peace.

What terms would the conquering country impose in its dictated peace ? Either territorial annexations or a war indemnity. One no longer saw, of course, as in ancient pictures, the victor in his chariot, crowned with laurels and dragging the vanquished in fetters in his train ; but the chariot and the laurels were represented in these days by jurists, diplomatists and financiers, who translated the victory into territorial annexations or cash.

Such profits from war were prohibited by the Paris Pact, as they were also in spirit by the Covenant ; he therefore thought it necessary that it should be made quite clear that, if the Paris Pact were violated, the League would intervene to prevent the territorial situation of any State Member of the League from being changed as the outcome of a war—to prevent the crime of war from yielding the victor a profit in the form of any kind of national advantage. If such countries could be convinced that they would in no case gain anything by an unexpected attack, there would be no fear of any country's resorting to war. Countries did not make war for fun ; they made war when they hoped for victory and when they were convinced that they could win the peace —a much more important thing than winning the war.

Another point that he wished to discuss, and that he would like the proposed Committee to study, was that of neutrality.

Before the Paris Pact, any country was entitled to declare its neutrality. Now that war was forbidden as an instrument of national policy, no country had the right to be neutral. It was the duty of every country to defend the principles to which it had subscribed in the Paris Pact. That was an idea already accepted by the League of Nations, as witness the scheme for financial assistance to States which were the victims of attack—now under discussion in the Fourth Committee. He would repeat, however, that it was desirable to state clearly in the Covenant that no country had any longer the right to remain neutral.

There was one last point which the Committee ought to study—the question of the Council's unanimity.

If war was allowed in certain cases, the reason was that national sovereignty was a principle that still subsisted unimpaired. Up to the present, all Council resolutions concerned with the settlement of a dispute had to be passed unanimously.

As war was henceforth forbidden as an instrument of national policy, unanimity was no longer essential. When it had proved impossible to settle a dispute by conciliation or arbitration, a majority of the Council should suffice to pass a resolution calling upon the States concerned in the dispute to accept the Council's opinion. Otherwise, one dissentient voice in the Council could prevent any possibility of a settlement. He was not in a position to say in what cases a majority should suffice ; the Committee could go into all the possible cases.

In conclusion, he said that the tenth Assembly would do itself high honour by filling the gap in the Covenant and bringing the Covenant into line with the Pact of Paris, thus making international co-operation an effective reality.

M. COHN (Denmark) noted that the Committee had before it two different proposals regarding the inclusion of the Kellogg Pact in the Covenant of the League of Nations—two proposals of which the scope was different.

The British Government's proposal merely concerned the question of a further examination of Articles 12 and 15 of the Covenant, in order to decide whether it would be desirable to make any modifications. The Peruvian delegation's proposal went much further, since it aimed at an entire remodelling of the Covenant in order to render effective the prohibition of war as an instrument of national policy. The Peruvian point of view had already received a certain amount of support during the discussions in the Assembly, Several delegations had declared that the problem could not be limited to Articles 12 and 15 of the Covenant and that they ought above all to consider the system of sanctions referred to in Article 16.

Denmark was one of the countries which had had the honour to sign the proposal submitted by the British delegation. He would therefore venture to explain the reasons which, in his opinion, militated in favour of limiting the question in accordance with this proposal. He desired to speak frankly and freely, even if some of the reasons he advanced were of a somewhat unusual nature. The short time at the Committee's disposal obliged it to go straight to the root of the question without any hesitation.

His Government had submitted the question of the relationship between the Kellogg Pact and the Covenant of the League of Nations to very careful consideration : first of all, when the Kellogg Pact was laid before the Danish Parliament and had been unanimously accepted by all parties, and subsequently when the instructions to the Danish delegation to the present Assembly were being prepared.

The Danish delegation had arrived at the conclusion that the Kellogg Pact did not entail a real outlawry of war to the extent that war, when it broke out for some reason or another, would be a state of affairs outside the law, one for which no rules of law would exist. The Danish Government and its delegation were of the opinion that the rules of the Hague Conventions relating to the laws of war and neutrality, modified by the system of the Covenant of the League of Nations, should also be applied to any war which broke out notwithstanding the provisions of the Kellogg Pact. The latter did not even contain an unconditional renunciation of warfare. It was valid

only as between the contracting parties, so that war between States not bound by the Pact was not included. Furthermore, its preamble laid down that a State which had recourse to war had no right to protection under the Pact. The renunciation of war did not therefore apply to the case of a State which itself had recourse to war.

Finally, during the diplomatic negotiations which had preceded the Pact, all had agreed that acts which merely constituted a case of legitimate defence could not be excluded by the Pact.

The Danish delegation thought it necessary to recognise these limits to the scope of the Kellogg Pact. It thought, however, that, within these limits, the Pact involved strictly juridical renunciation by all countries of their right to wage war, without any reservation except those he had already mentioned. As compared with the Covenant of the League of Nations, the Kellogg Pact therefore marked very considerable progress. It made good certain omissions in the Covenant of the League of Nations. When the latter was revised in conformity with the Kellogg Pact, there would be no further excuse, either direct or indirect, for resorting to war.

Denmark willingly accepted the modification of the Covenant of the League of Nations in the direction indicated. The Danish delegation was indeed of opinion that it would be necessary to prohibit war as such, and considered it quite useless to endeavour to draw any distinction between lawful and unlawful warfare, between wars of aggression and defensive wars, or to maintain the concepts of crime, culpability or responsibility in this matter. Those were concepts of national criminal law which could hardly be adapted to international relations.

The comittee might wonder why Denmark, in view of her attitude, did not desire a radical alteration of the whole system of the Covenant of the League of Nations, in conformity with the new principle of the Kellogg Pact. He wished to explain the reasons. On leaving for Geneva, the Danish delegation had not thought to take the initiative in raising this question. It had indeed approved the British proposal, but that was on account of the limited nature of the proposal itself. The reasons which led the Danish delegation to take this decision were four in number.

First, it had thought that it would be preferable, before discussing the principles of the Kellogg Pact, to allow themtime to spread and take a hold on national opinion. Any premature re-examination of this question might produce the following result : those who had already expressed their scepticism with regard to—or had even opposed—the Covenant continued their criticisms by alleging that, in reality, the Kellogg Pact did not go any further than the Covenant of the League of Nations. That might do great harm to the new Pact, not only from a juridical, but also from a moral point of view.

Secondly, the Danish delegation had thought that the Assembly was not perhaps qualified to give a very precise interpretation of the Kellogg Pact, to which certain States not represented at Geneva, such as the United States of North America and the Union of the Soviet Socialist Republics, had acceded. It would perhaps not be quite correct to give an authoritative decision regarding the scope of the Kellogg Pact without the assistance of these States.

Denmark's third reason was connected with the system of penalties in the Covenant. Certainly, the Danish delegation was of opinion that the Kellogg Pact did not affect Article 16 of the Covenant of the League of Nations in its present form and that the latter Article remained applicable. As, he had pointed out at the beginning, the reservation to the preamble of the Kellogg Pact must be interpreted to mean that renunciation of warfare was not applicable in the case of a State which itself resorted to war. That was exactly the situation provided for in Article 16 of the Covenant of the League of Nations, which laid down that sanctions should be applied to a State which resorted to war in violation of its obligations under the Covenant.

If, however, they modified Articles 12 and 15 of the Covenant in order to bring them into line with the Kellogg Pact, the indirect result would be a modification of the system of sanctions provided for in Article 16. Indeed, these sanctions would become applicable, not only to the State declaring war in violation of Articles 12 and 15—according to their present limited meaning —but also when war had been declared in all other cases covered by the new text of the articles. The indirect result would therefore be a considerable extension of the application of sanctions.

Denmark would agree to such extension with regard to economic and political sanctions taken under Article 16, for the Danish delegation was of opinion that in all cases war should be combated in as effective a manner as possible. But that was not the case with regard to the military sanctions under the Article. Denmark had always felt some doubt with regard to the military sanctions mentioned in Article 16. She saw in them a vestige of the former law of war and regarded them as being contrary to the great fundamental idea of the Covenant with regard to disarmament and the preservation of peace. Such sanctions would also be contrary to the spirit of the Kellogg Pact. The Danish delegation considered any extension of these military sanctions, even indirect, as not very desirable.

The fourth reason which actuated the Danish delegation was that it was not absolutely necessary to alter the Covenant of the League, for the Members of the League of Nations had also accepted the Kellogg Pact, the latter being a more recent Convention which superseded the rules of the Covenant of the League of Nations when there was any contradiction between these two Pacts. If matters were left as they were, the rules of the Kellogg Pact would remain fully applicable, the gaps in the system of the Covenant would be filled, while the system of sanctions under the Covenant would only retain its present limited scope.

Finally, the Danish delegation thought it might be dangerous to endeavour to solve this question on too broad a basis. There was an old English maxim : "Do not bite off more than you can chew". He strongly urged the Committee merely to adopt the British proposal, to which

they might perhaps add, in addition to the commentaries on Articles 12 and 15, a commentary on Article 13.

The Danish delegation could not share the British delegation's view that the indirect effects of the amendments proposed in connection with the system of sanctions would be rather theoretical than practical. He reminded them of his previous remarks concerning the extension of the system of sanctions.

He thought, however, they might easily avoid that difficulty by appropriate drafting. He ventured to suggest, for example, the addition to the Covenant of the League of Nations of a new Article *17a* reproducing the Kellogg Pact, but leaving untouched the system of sanctions laid down in the previous articles of the Covenant. Other solutions were also conceivable.

He felt bound to express doubt as to the the utility of referring this question to the Committee on Arbitration and Security, as had been proposed. In the limited form he suggested, the question did not come within that Committee's terms of reference.

On behalf of the Danish delegation, he recommended that the question should be referred for examination to a committee of enquiry which would also be a drafting committee, consisting of nine members, to be set up by the Assembly. This committee might—as soon as it possibly could—submit to the Council a report on the result of its work, and the question might then be included for ultimate discussion in the agenda of the next Assembly.

M. LIMBURG (Netherlands), although agreeing upon the desirability of bringing the Covenant into line with the Kellogg Pact, thought that the Committee might reasonably hesitate before taking a decision. It was apparently Sir Cecil Hurst's opinion that the present Assembly could adopt his amendments ; and his proposal for the appointment of a committee of enquiry was only a subsidiary measure. He (M. Limburg) thought Sir Cecil Hurst was too optimistic. In the first place, the question was a purely technical one, and the text of the proposed amendments had not yet been submitted to the Committee. Secondly, he thought the British proposal only aimed at amending Articles 12 and 15. The British delegate had quite rightly referred in his speech to Article 13, which might also require modification. There might perhaps be other articles, such as Article 17, that would call for consideration.

He was doubtful whether the principle of the Kellogg Pact could be, as it were, incorporated, by means of certain small modifications, into the League Covenant, which was already complete in itself. They might be compelled by force of circumstances to carry out a more complete overhaul than the British delegate had proposed. He might be wrong, but he thought that, if a continental jurist had proposed this method of modifying the Covenant, Sir Cecil Hurst would have made comments on the continental legal mind.

If Sir Cecil Hurst's amendments were adopted, the question arose whether a distinction should be drawn in Article 15 between the case where the Council was unanimous and the case where there was only a majority. He thought that it was necessary to study this question. On the other hand, it was perhaps desirable to introduce into the Covenant a general article laying down that resort to war was in all circumstances forbidden.

M. ROLIN (Belgium) pointed out that this was already done by Article 12.

M. LIMBURG (Netherlands) answered that that was not the case if Article 12 was amended as Sir Cecil Hurst proposed. Moreover, Articles 13, 15 and 16 would also be modified, but there would be no article which laid down the principle once and for all.

Those were his technical reasons for hesitating to believe that the proposed amendments could be adopted at the present session of the Assembly.

It might be urged that advantage should be taken of the existing favourable atmosphere to get the amendments passed. Had the League's experience of amendments to the Covenant been so very satisfactory ? He thought they ought to be very careful about that matter. If the amendments were accepted at that session, and if, after all the justifiable enthusiasm that the Kellogg Pact had aroused, they were not ratified by an adequate number of States Members, the effect would be deplorable.

On the subject of sanctions, Sir Cecil Hurst had said that, by reducing the possible cases of war, they would reduce the cases in which sanctions might be called for. The speaker said he did not understand this argument and added that, in any case, the field of application of sanctions would be enlarged, for there would be, not only sanctions—military and other—against wars which were already unlawful but, also sanctions—military and other—against wars which hitherto had not been unlawful according to the Covenant.

There were some countries that had signed and ratified the Kellogg Pact but which had not considered the problem of sanctions, for the simple reason that it had not arisen. If, at that session of the Assembly, they adopted the British delegation's amendments, the possible enlargement of the system of sanctions might cause certain countries to hesitate to ratify those amendments.

Although agreeing upon the principle, he did not see how Sir Cecil Hurst's amendments could be adopted at that session.

M. RAESTAD (Norway) said that it would undoubtedly be desirable to eliminate from the Covenant such parts of it as were in contradiction with the Kellogg Pact. He then referred to the Danish delegate's remark that, if they tried to reproduce the substance of the Kellogg Pact in the Covenant, they would find themselves interpreting the Kellogg Pact, which would be a rather delicate thing to do in the absence of certain of the Powers that had signed it.

Further, it should be observed that the underlying principle of the Kellogg Pact was different from that of the Covenant. The British proposal regarding Article 12 showed that this introduced a certain element of danger. The British delegation had proposed to say : "The Members of the League agree that they will in no case resort to war". Under the Kellogg Pact system, there was at least one case in which war was lawful ; whereas, according to Sir Cecil Hurst's text, war would not be lawful in that case.

In the text of the Kellogg Pact, it was stated that the High Contracting Parties "abandon war as an instrument of national policy". Further, in the preamble, it was said that "henceforward any signatory Power that attempts to develop its national interests by resorting to war shall be deprived of the benefits of this Treaty". That meant that, if there was a war between two States signatories of the Kellogg Pact, a third signatory State could resort to war against whichever of the other two had, in its opinion, acted in violation of the Kellogg Pact. That was an essential feature of the Kellogg Pact system, because it was based on an individualistic conception, unlike the Covenant system, which was on a collective principle.

Moreover, if the scope of Article 16 were enlarged, the sanctions provided under Article 16 would operate against a State which had done what, under the Kellogg Pact, it was entitled to do.

It would be seen that, if they simply deleted from the Covenant those phrases which were incompatible with the Kellogg Pact, if they tried to reproduce the system of the Kellogg Pact, they might find themselves embodying in the League Covenant a system which would really be incompatible with that of the Pact of Paris.

On the question of sanctions, he agreed with the Danish delegate. There were several reasons for not interfering with the system of sanctions. The Pact to renounce war did not bind its signatories to any sanctions. Consequently, it did not, in itself, constitute for the Members of the League a definite reason for extending now the existing system of sanctions. He had, however, no objection in principle to the extension of sanctions, but he regarded it as a question to be considered inside the League and independently of the Kellogg Pact.

He agreed with the Danish delegate that the League should aim, first and foremost, at the suppression of such phrases in the Covenant as were incompatible with the Paris Pact.

In any case, the question was undoubtedly a delicate one, and they ought to think twice before they started re-writing the Covenant. Consideration should therefore be given to the Danish delegate's proposal to appoint a committee to study the question and also to ask for the opinions of Governments.

M. ROLIN (Belgium) said he was amazed and disappointed by the objections that had been made and the hesitation that was displayed. The British proposal had not come as a surprise to him, any more than had the Lithuanian proposal of the previous year. Those who were interested in the League had asked themselves, as soon as the Kellogg Pact was signed, how it was to be made to fit in with the Covenant of the League, and international jurists of distinction had promptly begun to consider what alterations might be made in the Covenant in order to codify the conception of non-aggression, for that was what it amounted to. The two texts covered different ground, and it was desirable to make the present situation in regard to the international law concerning war comprehensible to everybody.

So far as non-aggression in all its aspects was concerned, it was necessary to enable the simplest minds to understand the effect of the obligations that had been assumed ; those who had carried on propaganda among the masses knew how difficult it was to explain the difference between arbitration and appeal to the Council, or between unanimous decisions and majority decisions.

The question was to lay down in unequivocal terms that resort to war was prohibited. The text proposed was a simple one ; it changed the limited undertaking in Article 12 into an unlimited undertaking and consequentially cancelled the limited undertakings in Articles 12 and 13.

That resulted, of course, in extending the sanctions to all cases of resort to war, but that was apparently the intention of all the Members of the League which had signed the Kellogg Pact, and it was impossible to leave two kinds of obligation side by side.

Two objections had, however, been raised from the technical point of view. M. Limburg had said that, if Sir Cecil Hurst's suggestions were followed, a new distinction would have to be introduced into Article 15 between unanimous decisions and majority decisions, because in the Covenant resort to war was prohibited when the recommendation was unanimous.

M. LIMBURG (Netherlands) said that he did not think the distinction in question need be maintained.

M. ROLIN (Belgium) said that, if Sir Cecil Hurst's text had been distributed, M. Limburg would have seen that the only point on which the British delegate added anything new was where he re-established the distinction in another form by emphasising that, in the case of a unanimous vote, the parties could not take up an attitude incompatible with the recommendations of the report, whereas in the case of a majority decision they retained their freedom, provided always that they did not resort to war ; and all the Members of the League were as much bound as the parties.

Other suggestions might be made ; for instance, the Council's recommendation might be regarded as equivalent to an arbitral award, for the enforcement of which the Council would take all proper steps. The question might be discussed, but it had not escaped Sir Cecil Hurst's notice.

It had also been said that a single undertaking was needed ; but the new Article 12 laid it down that the Members agreed that they would in no case resort to war. That was undoubtedly a general formula.

It was likewise possible to have other preferences on that point ; some delegates might like it to be specified that such a prohibition should not prevent either resistance to an attack or military action taken in pursuance of the Council's or the Assembly's recommendations. Those were purely technical questions, on which it would be easy to secure agreement. The matter had

been under consideration in every quarter for a long time, and it could hardly be said to be too late to devote one or two sub-committee meetings to it.

M. Raestad had raised a technical objection which he (M. Rolin) had not understood quite so clearly : he had said that there was a certain incompatibility with the Kellogg Pact system, because Article 12 absolutely prohibited any resort to war, whereas, if the Pact should be violated by one of its signatories, all the others, and not merely the country attacked, were to regard themselves as released from the non-aggression undertakings into which they had entered so far as concerned the aggressor.

He did not think there was any sound basis for this criticism, for, under one of the clauses of the Covenant, a State which broke its engagements was regarded, *ipso facto*, as having committed an act of war against all the other Members of the League, which were then entitled to consider themselves at war with that State.

Another objection had been raised of a political order ; it had been said that to explain the Kellogg Pact in a document to which certain signatories of the Pact were not parties would be an act of political discourtesy. If that had been the real trend of the solution, he would have opposed it, but it was not so. Whatever form the solution might take, such solution would not apply to the signatories of the new Pact which were not Members of the League. But it was quite logical for the Members of the League to endeavour to bring their Covenant into line with the spirit of the Kellogg Pact. They should not have any hesitation in defining, if necessary, the reservations which they thought indispensable and which he hoped they would reduce to a minimum. But it was desirable that the Council should be aware of the scope of the obligations they had sanctioned.

"Sanctioned"—that was the fateful expression, and there had been no attempt to hide the fact that sanctions were the main cause of the difficulties. That was an old controversy within the League of Nations. From the very first Assembly, a number of States Members of the League had hoped to define and strengthen Article 16 and increase security ; they had hoped to reinforce the machinery of sanctions. For nine years they had been marking time and had finally, because of the resistance encountered, more or less renounced every general effort to reinforce these sanctions. They had even, indeed, had recourse to an international volunteer force intended to strengthen the sanctions and provide the Council with some material expression of its power in this direction. With this end in view, the draft for financial assistance was drawn up.

There was one case in which it had been thought there would be no opposition because there never had been any opposition and because it was a case, not of inventing new means, but of maintaining intact those which had already swayed for years the thoughts of most of the Members of the League : the general application of the prohibition of warfare.

On this point, the Treaties of Mutual Assistance and the Protocol had, when they came to be discussed and after their adoption, met with general approval.

Many objections to the system of the Protocol had been raised, but, as far as he was aware, no Member had protested in any Parliament against the final decision, based on the sanctions of the Covenant, to prohibit all resort to war. That showed that public opinion, in spite of the traditions and attachment to certain historical conceptions, realised that there was an essential need for solidarity and loyalty, and that it would be impossible to create undertakings of two kinds protected by sanctions of two kinds : on the one hand, the sanctions envisaged by Article 16 ; on the other hand, following the system which their Danish colleague preferred, political or economic sanctions ; and, if they were to follow M. Raestad, no sanctions at all.

If the League of Nations were to embark on this course, it would suffer a serious moral defeat. What would be thought, even in the United States, of a League of Nations which had embodied the substance of the undertakings of the Kellogg Pact in its own Covenant, but, wherever these undertakings went further than the former ones, had relegated them to a secondary position, without providing them with any support or material penalty ?

That would be a decision entailing a grave responsibility. When they spoke of neutrality, wishing to retain as far as possible its character according to the former notions of international law, they totally and utterly disregarded the new juridical fact of the nature of the collective undertakings of non-aggression. Formerly, a state of neutrality existed when a State was a spectator in the event of a conflict between two other States ; and whether the aggression was or was not a violation of an existing treaty of one State did not concern the neutral State, either as to such violation or as to the treaty violated.

In the present state of international law, since the Kellogg Pact had been ratified, no single case of aggression could occur without the violation of an engagement, not only as between the two parties to the dispute, but as between the aggressor and each of the signatory States, each of the Members of the League of Nations.

What could be more monstrous under such circumstances than a claim to remain neutral ? The claim would be so monstrous that various politicians in the United States had already dropped more than a hint in their speeches that, although the Government of the United States was not in any way bound by the Covenant, it could never treat a State which had been attacked in the same way as the attacking State, since the latter would have violated engagements entered into in respect of the United States itself.

For that reason, if for no other, he was in favour of referring the question to a committee. He earnestly hoped that his colleagues, who had expressed the present opinion of their Governments, would reconsider the problem in this new light, which he thought to be the light of international confidence.

Baron MARKS DE WÜRTEMBERG (Sweden) said that, before the discussion, there had been some uncertainty regarding the scope of the British proposal and that of the Peruvian proposal.

Some thought that the aim had been merely, now that most of the Members of the League of Nations had acceded to the Briand-Kellogg Pact, to draft the Covenant of the League of Nations in such a manner that it would clearly express the progress already achieved by the Briand-Kellogg Pact with regard to the organisation of peace.

Others had thought that these proposals also took into account and, indeed, mainly referred to the extension of the application of the economic and military sanctions provided in Article 16 of the Covenant of the League, and that, consequently, they would render more effective the obligations which bound the signatories of the Briand-Kellogg Pact, over and above those already imposed by the Covenant of the League.

During the discussions in the Committee, it had become quite clear that what they had in view was a revision of the Covenant of the League of Nations, whichever proposal were adopted.

A revision from a purely drafting point of view would doubtless be desirable in certain respects. It might avoid various misunderstandings with regard to the interdependence of the two important international agreements in question. He thought there was no reason to oppose a revision of that kind. They must also consider, however, the difficulties which would be involved. The League of Nations would hardly, without coming to a previous agreement with the countries non-Members of the League which had acceded to the Briand-Kellogg Pact, interpret the provisions of the Briand-Kellogg Pact itself. Any person acquainted with the provisions of the latter knew that they were open on various points, and even on important points, to different interpretations. The situation would be rather complicated if the interpretation given by a modification of the Covenant of the League of Nations was not that upheld by signatories of the Paris Pact which were not Members of the League. Though there were difficulties in the way of a revision of the Covenant from a drafting point of view, the Swedish Government, taking these difficulties into account, nevertheless was prepared to give serious consideration to the question of such revision.

Neither with regard to the problem of the application of military and economic sanctions in certain cases of war, which, under the present provisions of the Covenant, could not bring such sanctions into operation, would the Swedish Government be opposed to their studying the question most carefully. But in that respect also it felt that difficulties would arise to complicate the solution.

If the League of Nations could assume the responsibility of a guarantee against every kind of warfare and could render that guarantee effective, it would have succeeded in its efforts to establish lasting peace.

Resort to war would then have been practically excluded. But they might ask whether such a programme would not impose upon the League of Nations a task which at present it had not the necessary means of fulfilling.

Without entering into the details of the problem, he would give a concrete example. Let them suppose that the Council, having to deal with a dispute under Article 15 of the Covenant, had unanimously approved the attitude of a certain State, or let them suppose a State had won its case before the International Court of Justice and the other party to the conflict refused to comply with the decision of the Council or the Court. He was not convinced that the League of Nations, faced with this test, would be strong enough in relation to States in general to apply economic or military penalties to the State which resorted to force, with a view to itself enforcing the decision of the Council or the Court. Such a setback might be nothing less than a catastrophe for the League.

These remarks did not mean that the Swedish Government was opposed to a very careful study of these diverse problems ; but they must not lose sight of the difficulties which lay in the path of any immediate decision with regard to basic points.

The best method perhaps would be, in the first place, to ask the various Governments their opinion on the question. But he was not opposed to the appointment of a committee to study all these problems.

Sir Cecil HURST (British Empire) made a proposal as to procedure. In opening the discussion, he had indicated that his Government was willing to accept the view that the question should be referred for study to some appropriate body at the close of the Assembly, if the Committee so desired. His Government had hoped the restrictive limits within which it proposed that amendments should be made would render it possible for the Committee to decide that the whole matter might be put through during the present Assembly, but so many members of the Committee doubted whether that was feasible that it would not be appropriate to press for it. He had also indicated in his preliminary remarks that, if the Committee thought it right, a sub-committee might be nominated after the discussion to consider whether the list of articles to which the British Government had suggested amendments represented all those to which amendments should be made and whether the terms of the amendments proposed were satisfactory.

He suggested that a sub-committee should be set up with the duty of recommending to the Committee : (1) whether or not it was feasible to put the matter through during the present Assembly, or whether it was desirable that the question should be studied after the Assembly was over, and (2) if the latter, what recommendations should be made on the point.

The Committee decided, in conformity with the proposals of the British delegation, to appoint a Sub-Committee.

On the proposal of M. POLITIS (Greece) *it decided to leave the Chairman free to appoint the members of this Sub-Committee.*

The Sub-Committee thus appointed was composed as follows :

M. ADATCI (Japan).
M. COT (France).
M. CORNEJO (Peru).
Sir Cecil HURST (British Empire).
M. LIMBURG (Netherlands).
M. POLITIS (Greece).
M. ROLIN. (Belgium).
Baron MARKS DE WÜRTEMBERG (Sweden).

SIXTH MEETING.

Held on Wednesday, September 18th, 1929, at 3 p.m.

Chairman : M. SCIALOJA (Italy).

12. Ratification of International Conventions concluded under the Auspices of the League of Nations : Resolution proposed by the Danish Delegation.

M. ANDERSEN (Denmark) stated that, as was clearly brought out in the outline of the question prepared by the Secretariat (Annex 10), the League of Nations was not dealing for the first time with the question raised in the Danish draft resolution. Numerous difficulties had previously been experienced, which, in spite of the combined efforts of the Secretariat and the Council, it had been impossible to overcome.

There was a great difference between the number of conventions adopted by conferences held under the auspices of the League of Nations and signed by the Governments of the different countries and the number of treaties which were ratified and put into force. These non-ratified conventions dealt with the most varied questions. One of the most recent cases was the Convention for the Abolition of Import and Export Prohibitions and Restrictions.

M. Andersen had no intention of giving a list of such conventions. He would merely refer the Committee to the statement made by the Right Hon. William Graham, President of the Board of Trade, in his admirable speech before the Assembly. He had said that, since 1920, approximately forty-five conventions have been drawn up by the League, of which twenty-two had made no progress at all, or practically no progress, and he imagined it was true of the other twenty-three that they had not received anything like the number of ratifications which was desirable in existing conditions.

The Danish delegation considered that this state of affairs was liable seriously to affect the authority and the prestige of the League. It was dangerous to arouse, year by year, hopes which were not realised. Arguments were unintentionally supplied to the sceptics and to all who were inclined to ridicule the work done at Geneva. Even friendly critics were tempted to ask if there was any advantage in voting and signing a large number of conventions if they were to remain a dead letter.

The Danish delegation thought that efforts should be made to improve this state of affairs.

Mr. Graham had stated in his speech to the Assembly :

> "We should do our best to get our Governments to set aside some time in each Parliamentary session for the express purpose of giving effect to this class of international legislation. . . I think we shall find very soon, and certainly in the long run, that this is much more important, much more valuable, than a good deal of the domestic legislation to which in many cases we devote our time."

Mr. Graham was perfectly right. Many questions dealt with in these conventions were of great importance for the social and economic progress of States, and it was the duty of the delegates to the Assembly to urge their Governments to deal with the ratification of the conventions. Experience had shown how inadequate were the efforts that had been made so far.

The resolution adopted by the seventh session of the Assembly in 1926 at the suggestion of Viscount Cecil (Annex 10) had not produced any effect. The Council had responded to the Assembly's appeal, but its action had apparently been of no avail. The procedure followed by the Secretariat, and the various steps so far taken, were given in detail in document A.I.7 (Annex 10), to which he asked his colleagues to refer.

If the methods hitherto adopted had been found to be inadequate, new methods should be tried. He offered two suggestions by way of example :

(1) A special period would be laid down in the proposed convention within which it would have to be ratified, and a provision might be included whereby a new meeting of the Contracting States would be held if the number of ratifications obtained on the expiration of that period was not sufficient to enable the Convention to come into force.

(2) At the opening of each session of the Assembly, the delegations would report on the progress of the ratifications in their respective countries, and on any reasons for failure to ratify.

Other methods could no doubt be found, and the Danish delegation would warmly welcome any other means which might prove effective.

Would there be any advantage in the Assembly and the Council appointing a mixed committee to consider methods of accelerating the ratification of conventions ? The Danish delegation considered that a committee of this kind should be a temporary one, which would go fully into the reasons why such a very large number of conventions were not ratified, and ascertain whether there were any reasons of principle, or any technical or practical difficulties, which could be overcome by the adoption of suitable methods. If reasons of principle were found to exist, it should be ascertained why States signed conventions which they were not prepared to ratify.

Perhaps the real source of the trouble would be found in insufficient preparation of the work of conferences, or absence of instructions to delegates.

The Committee in question would prepare a report for the next Assembly, and future conferences would probably find this report valuable.

Apprehensions had been entertained that the suggested Committee might infringe the sovereign rights of States. There was no reason for any such fear and the sovereignty of States would remain unaffected.

The CHAIRMAN said he would give the Committee his own experience as Rapporteur to the Council on the question of ratifications. The Council had always expressed concern at the delay which had occurred in ratifications and thus prevented many decisions of the Assembly from becoming part of League of Nations law. He felt bound to point out, however, that, after having passed amendments, the Assembly sometimes passed further amendments to these amendments. States thus felt entitled to think that there was no reason for any very speedy ratification.

The first step would therefore be to carry through a careful investigation of proposals before referring to Governments.

There was one striking fact which had been noted some time ago. At one of its sessions the Council had found that some of the States which complained of delay in ratification had been States which had not ratified. It had then decided to publish a full list of ratifications, and this was sent to all Governments from time to time. As a result of the first published list, a number of ratifications were secured. But the movement had slowed down very rapidly.

That being the case, what course should be adopted ? Was there any higher authority than the Council ? Would a special Committee prove more successful than the Council ?

Further, States could not be compelled to ratify. The idea had been mooted that all decisions adopted by the Assembly could perhaps be regarded as having the force of law without ratification.

That idea had been put forward at what might perhaps be regarded as the least suitable moment—at the time of the last Conference which had examined the Statute of the Court and which had inserted an article that he personally could not approve, as it constituted an infraction of the sovereign right of States.

That being so, the only means that could be employed was to try to rouse the somnolent States. But it should be remembered at the same time that, more often than not, it was the national Constitution which forced Governments to shut their eyes.

Occasionally—and that was true of Italy—ratification could be carried through by the Government itself. More frequently, however, this prerogative was not vested in the executive power. The approval of the Chambers was often necessary, and the relations between the Chambers and the Government were sometimes such that the latter put off asking the Chambers to take a decision.

If a committee were asked to remind the signatories of conventions to do something which, in the case of States, was not a duty but a right, its action might become a nuisance. Even Governments, if annoyed, might throw the reminders into the waste-paper basket. In that case, the cure would be worse than the disease.

If the League of Nations attempted to compel States, it would be exceeding its powers. All it could do was to remind States that they had not ratified some particular convention. As a matter of fact, this reminder was given twice a year ; if the letters were sent out more often, the probable result would be that they would be simply ignored.

There was, however, one method which might prove of some value. Delegates should be asked to inform their Governments on returning home of the delays arising in connection with ratification. Representations made by them two or three times every year would certainly be more effective than all the other proposals which had been advocated. He himself had tried this method. As Rapporteur on the question to the Council, it was for him to give an example. Italy had, indeed, very speedily ratified some twenty conventions. He proposed to return to the attack when he went back to Rome ; he hoped that the other members would follow his example, and in this way the number of ratifications would be increased.

He was speaking from his own experience. He had even been fortunate enough to improve the method adopted by the Council. Originally, the lists sent out merely gave the names of States which had ratified ; at present they mentioned ratifications pure and simple and ratifications accompanied by reservations. If the delegates cared to look at these lists, they might learn much from them that would be useful in following the course he had recommended.

Professor BAKER (British Empire), in answer to the Danish delegate, gave his fullest support to the Danish proposal. He was in favour of the appointment of a Committee of Enquiry, but he thought that suggestions might be made regarding the composition of the Committee and the nature of the Council's action.

The question of ratification was extremely important, for it was becoming increasingly clear that a great part of the work done by the League led up to the making of general conventions. The League of Nations had attacked economic, social, health and transit questions, and sometimes failure had been recorded. In all these matters it would not be possible to do anything unless conventions were concluded.

Forty-five conventions had been signed, and of those less than half had actually entered into force, while of the remainder many had not been ratified or had been ratified with undue delay. It would be wrong to exaggerate the evils of the case. The results achieved had been incomparably better than results in the making of general conventions before the war. It was true, however, that the situation was serious.

There were some particularly glaring examples of failure : the Convention on the Traffic in Arms and the Convention for Assistance. The Opium Convention signed in 1925 had only entered into force in September last, and it was still largely ineffective, because a great number of Governments had not ratified it, only fifteen of the signatories having done so.

It was not enough to secure ratifications ; the ratifications must be obtained within a fixed period if the object which had been laid down was to be secured. Without this, the action taken, particularly in the economic field, would sometimes be condemned to failure.

The development of international law was also related to the question of the ratification of conventions. It was necessary to secure the participation of the greatest possible number of States in any collective effort for the conclusion of a general convention. The situation would be bad indeed if the network of general conventions could not be extended.

The causes of the comparative failure so far recorded should be investigated.

It was sometimes said that delegates at Geneva were influenced by the "pernicious atmosphere" of that city and that they too readily signed conventions which their Governments did not accept. It had also been said that some delegates were induced to sign merely because they did not wish to be the only ones that did not do so.

If, however, Governments sent delegates to Geneva, the reason was that they appreciated the importance of regulating some particular problem. There must thus be other reasons.

There was, first of all, the *vis inertiæ*. Thus, thirteen signatories of the Statute of the International Court had not ratified it, though they were paying towards the cost of the Court, which seemed to be somewhat inconsistent.

Moreover, in many countries the machinery for ratification was cumbrous. This was perhaps the case in all countries. In many cases various administrations dealt with treaties ; one was concerned with their preparation and another with their ratification. As a result there was a trivial conflict of jurisdiction and unnecessary delay.

According to most Constitutions in democratic countries, the approval of Parliament was necessary for ratification. In some cases, indeed, it was necessary to pass special domestic legislation. Experience showed that all Parliaments were over-burdened with work. The questions had to be arranged in some order and the urgent ones taken first. As had been stated by the Chairman, most national legislators had not yet fully appreciated the value of general conventions. They had not made a fair comparison between these conventions and domestic laws, which their electors frequently asked should be adopted speedily.

Certain changes might be made which, without giving very sensational results, would nevertheless be of some value.

As the Chairman had suggested, delegates could, when they returned to their own countries, approach the appropriate ratification authority, which as a rule was the Ministry for Foreign Affairs, and point out the need of ratification. That would give important results.

Consideration might also be given to the various forms of ratification according to the nature of the treaties : a clause might be inserted stipulating that ratification should be carried through as speedily as possible.

As was provided in the Treaty of Versailles in connection with the ratification of labour conventions, Governments might undertake to submit conventions to their Parliaments within a specified period (one or two years), with any domestic legislation which might be required.

In the same way, a procedure might be adopted which was similar to that used in connection with the Conventions on Hides, Skins and Bones. A new Conference would be convened to go into the question again if, after a specified period, a sufficient number of ratifications had not been obtained. If that procedure had been adopted for the Convention on the Traffic in Arms, the latter would probably have been ratified long since.

As regards conventions which had to be ratified very quickly, as in the case with the Protocol governing the Statute of the Court, the difficulty could be avoided by stipulating that the conventions would come into force within a certain period unless Governments decided to refuse their consent. The present position would in that way be reversed, and the results obtained would be much better.

Mr. Graham's suggestion at the Assembly might also give satisfactory results. It consisted in setting aside every year some of the time of the national Parliaments for the ratification of a number of conventions.

Other changes might be made in the system of ratification, but that was a matter to be looked into by the Committee of Enquiry, the appointment of which was proposed by the Danish delegation.

It would also be possible to improve the system of "reminders" or to lay down as a permanent rule that a Committee should meet shortly before the opening of the Assembly, get into touch with Governments, and submit a report on its work to the Assembly. In the same way the Secretariat might keep a list of ratifications as was done in the International Labour Office.

The Committee of Enquiry would therefore have a very wide field of activity, since it would have to consider national legislative enactments and parliamentary procedure. It should therefore include experts on legislative matters, and perhaps business experts as well, who were interested in the ratifications being effected speedily.

In supporting the Danish proposal, the British delegation suggested that the Council should, in the first instance, send a questionnaire to the Governments asking them for information as to

their practice on certain specific matters in connection with ratification. Upon the basis of the material so collected, the Committee of Enquiry could make a report to the Assembly at its next session.

The standpoint of the British Government in this matter, as in every other matter in connection with League of Nations business, was entirely practical, and he believed that his proposal might lead to a practical result in a matter which his delegation considered particularly urgent and important.

M. URRUTIA (Colombia) also considered that an effort should be made to obtain the ratification of conventions, but he was not sure if there would be general agreement as to the methods to be employed.

The Danish proposal raised three different questions :

Firstly, why had such a large number of conventions, which had been voted by the organs of the League or at conferences convened by the League, not been ratified ?

Secondly, how could this state of affairs be remedied and a larger number of ratifications obtained ?

Finally, how could the continuance of the present position be avoided, and especially its repetition ?

With regard to the first point, it would be very difficult to give a definite answer, in view of the varied nature of the conventions (Labour Conventions, Amendments to the Covenant, Conventions on Communications and Transit, Conventions relating to humanitarian, political and economic subjects, etc.).

The causes of non-ratification varied according to whether it was a question of labour conventions or other kinds of conventions. He would not deal with the former category of conventions, which came within the province of the Labour Conferences and of the Governing Body of the International Labour Office, and the procedure for the ratification of which was rather special.

Generally speaking, the conventions could be divided into three groups—those which had obtained a large number of ratifications, such as the Statute of the Permanent Court of International Justice ; those which were obtaining each day a larger number of ratifications and had already come into general operation ; finally, those which they could not hope to see put into force, such as the Convention relating to Maritime Ports, voted at the second general Conference on Communications and Transit.

Those conventions which met an urgent and recognised need had been ratified after thorough examination. Others, which met a less urgent need, had not been ratified. In certain cases no account had been taken of the interests of the countries in certain parts of the world, as was the case at the Conference on Communications and Transit ; the accession of overseas countries had not been possible owing to the divergency of interests as between one continent and another.

How could the position be remedied ? M. Urrutia agreed with his Danish and British colleagues, but he preferred that the Committee which had been mentioned should consist of a representative of each of the technical organisations of the League (Committee on Communications and Transit, Health Committee, etc.), as there were many different matters on which the representatives of each organisation would be able to give their points of view.

He agreed with what had been said by the Chairman. He had sat on the Council and had had an opportunity of appreciating the efforts made by the Council to obtain ratifications, but unfortunately it had often been impossible to do so.

Most of the States Members of the League had a parliamentary system and, in spite of the efforts made by the Governments, their Parliaments were unable to ratify—sometimes for reasons connected with the substance of the convention, but sometimes—perhaps more often than not—because they were not interested in the question.

Anything which might be done to arouse the interest of the Governments would be useful.

What were the best means of avoiding a repetition of this state of affairs in the future, which had a bad effect on the prestige of the League ?

It might perhaps be as well to have fewer international conferences. The League of Nations had been sowing during the last ten years, and the time for reaping had come. It was only after it had reaped what it had already sown that fresh work should be undertaken. It was true that there were urgent conferences, such as the Economic Conference announced for next year, and the International Codification Conference for which preparation had been made for some years, but there were other conferences that were not so urgent. The League had been rather overburdened with all these conferences, and it might perhaps be as well to slacken the pace a little. The conventions voted would, on account of their smaller number, thus receive more attention from the various countries.

When an international conference was convened, it was necessary first to make certain that a large number of countries would participate. In July, the Swiss Government had convened a conference for the revision of the Geneva Convention, had carefully prepared for it and had secured the participation of a large number of countries. More than sixty had been represented.

When countries agreed to participate in a conference and sent delegates to it, they thereby committed themselves to some extent.

There was another question on which the Chairman of the Committee might give his valuable opinion. The speaker considered that an international convention should be concluded relating to treaties and the manner in which they should be framed and ratified. He did not desire to submit a definite proposal, but thought that his suggestion might perhaps facilitate the ratification of conventions in the future.

M. DUZMANS (Latvia) thanked the Chairman for the very interesting statement which he had

made upon the causes of the non-ratification or the delay in the ratification of conventions. He said that, henceforth, no further attention need be paid to these difficulties. There were, however, still other causes.

He thought that this was a case in which the psycho-physiological law of Fechner applied, according to which the more a stimulus was brought to bear upon a receptive agent the more its capacity to react diminished.

The Danish delegate had very well explained the efforts made by the highest authority of the League of Nations to induce Governments to ratify conventions. For years, however, the situation had remained the same. It was accordingly reasonable to suppose that, in addition to the causes which were visible to everyone, there existed causes which were unknown. M. Duzmans had read in a Swedish social democratic newspaper a criticism on the work of Georges Brandès, the celebrated countryman of his Danish colleague, in which Brandès had tried to show that Jesus Christ had never existed. On this occasion the Swedish critic had said that the best works were those which had never been written. It might be said that the best international conventions were those which had never been concluded or ratified. The League of Nations was acquainted with several conventions of that kind. There was the Protocol of Geneva, the Pact for Mutual Assistance, and, during the present year, the conventions dealing with financial assistance and the amendments to the Covenant proposed by the British delegation which were intended to increase security.

If the delegates returning from Geneva could say to their Governments and their parliaments that the above conventions represented what the League of Nations had done in the most important sphere of its activity, namely, the safeguarding of peace, the Governments would do their best in this matter of ratifications. If, however, the delegates were obliged to confess that this or that question of the utmost importance had been postponed to next year or later, it was not surprising that the Governments in their turn should wait some little time before sending in their ratifications. It must, moreover, be noted that all these multilateral general conventions represented a great international effort to which, generally speaking, the world was not yet accustomed. In order to enable the Governments to make a real effort, it was necessary for them to meet the opposition which had its principal source in a certain scepticism towards the League of Nations as the guardian of peace.

He had done his utmost for four years to combat that scepticism, which existed in his own country, as to some extent it existed everywhere. He would again insist, however, that, in order to induce public opinion, the parliaments and the Governments to surpass their previous performances, it was necessary that they should be offered something in exchange. These were the underlying considerations of the utmost importance which, in the present instance, must be taken into account.

The Kellogg Pact had been so quickly ratified because it had been instinctively felt that it was necessary to provide a basis for future activities. Within the framework of the League of Nations itself such a basis—which was a condition whose importance could not be estimated for the encouragement of goodwill, including the goodwill required in this matter of ratifications—would best be assured if the same haste which was now recommended to those who were delaying their ratifications of secondary measures had been observed in connection with more important conventions. He was referring to conventions which had never been concluded or ratified, and he had given a few examples of such conventions.

The mover of the proposal under discussion, his Danish colleague, had not on the previous day helped forward one of the "better" conventions, namely, the British suggestion that the Covenant of the League of Nations should be brought into harmony with the Paris Pact. His Danish colleague had, in fact, done the contrary and had asked for the postponement of that suggestion.

In criticising the work of Georges Brandès, who had sought to prove the non-existence of Jesus Christ, the same Swedish critic he had just quoted had added that it would be much more interesting to learn that the devil had never existed and did not exist. This brought him back to the special devil who had now to be exorcised, the devil which lay in wait for the League of Nations—the devil of war, insecurity and rivalry in armaments. This devil which the League was endeavouring to combat and to drive away was an impious trinity in opposition to the holy trinity which inspired the hopes of the League of Nations, namely, compulsory arbitration, security and disarmament. The day on which this holy trinity was better safeguarded by conventions of major importance, such as had never been concluded or ratified, there would be a firmer basis for, and a better means of hastening, the ratifications of other conventions which were not fundamental. The delegates and responsible Governments, in advising their parliaments and public opinion to make the necessary sacrifices, would not in that case be coming to them with empty hands.

He desired to formulate an objection to the drafting of the Danish resolution, in which reference was made to means which were likely to accelerate the ratification of international conventions voted by conferences held under the auspices of the League of Nations or by the International Labour Organisation. He proposed to delete the final passage of this sentence from the text of the resolution.

He had participated in three general Labour Conferences, and would point out that the competent organs of the International Labour Organisation made more serious efforts than the League of Nations to hasten the ratification of Labour Conventions by the Governments. To further these efforts in respect of Labour conventions, Part XIII of the Treaty of Versailles already provided an extensive system of rules for the supervision of ratifications, and there would be double or triple overlapping if the League of Nations itself returned to this particular matter.

He would conclude by examining a few special points. The possibility had been contemplated of providing a time-limit for the ratification of conventions. He did not think this procedure would give happy results. It must not be forgotten that the entry into force of a convention often required an amendment of domestic legislation, and in order to carry out such an amendment a certain time was necessary. He would quote as an example the convention on counterfeiting

currency, in which it was laid down that, before the Convention was ratified, there should be introduced into the penal legislation of the countries concerned the obligations imposed by that convention. Similarly, he had doubts as to the desirability of the proposal of the British delegate, Mr. Baker, who contemplated as a rider to ratification within a fixed period that it should be stipulated in the conventions themselves that they should enter automatically into force though they were not ratified within the time fixed by the convention. These two proposals were difficult to reconcile with the sovereignty of the signatory States, even in the modern acceptance of the term, according to which sovereignty was regarded as relative and less rigid than the absolute sovereignty formerly recognised.

He shared the opinion of M. Urrutia that there were too many international conventions. It would not be a bad thing to leave Governments a period of leisure in order to digest the conventions which had been signed and to proceed rather more slowly with the international conferences from which such conventions arose.

While not being opposed to the Danish proposal, he was doubtful whether the Committee which it was proposed to set up would serve any useful purpose.

Sir Harrison MOORE (Australia) thought that the credit and reputation of the League were more important than even the question of the ratification or non-ratification of conventions. When conventions signed by a large number of countries could not be put into force because they had not been ratified, the impression gained by the public was that the League's work was unreal and insincere. That being so, he thought perhaps the output of conventions ought to be somewhat reduced. He agreed with the Chairman that in most countries a convention could not be put into force until it had been accepted by Parliament, and this generally involved amendments to the domestic legislation. During this process a number of difficult questions might arise. Before one part of a code was amended it was necessary to consider what other parts would have to be consequently amended. This was comparatively easy in the matter of essentially political problems and international relations, but it was considerably more difficult when matters of internal law were in question—though the League had not hesitated to deal with such matters, and that was one of its highest titles to glory. The difficulties were greater in the case of small countries, which had not always a large and experienced staff available, and which tended to put off the more complicated questions.

He hoped that the Chairman's suggestion that delegates should make representations to their Governments would have a good effect.

He agreed with M. Urrutia that a special mode of procedure ought to be introduced for the framing of treaties.

He had been struck by one particular point—the case of conventions by which permanent institutions were established. When an organisation was set up, its constitution could not be interfered with unless all the States which were parties to the convention consented. That might lead to the complete prevention of all progress. It was necessary, therefore, to consider whether some other rule than that of unanimity could be adopted—on the understanding, of course, that national susceptibilities should not be wounded, nor national sovereignty encroached upon.

M. ANDERSEN (Denmark) said he thought the Chairman had not perhaps clearly understood his proposal. The suggested Committee would not have to remind States of their duties. It would be a Committee of Enquiry to ascertain the reasons why States did not ratify Conventions which they concluded.

Neither did M. Duzmans' remarks seem to be justified. No blame was attached to any particular State ; it was necessary to decide whether it was harmful to the authority of the League for Conventions which had been signed by a great number of States to remain unratified. A State which refused to sign a convention adopted by an international conference was making a normal use of its sovereign rights ; but the position was somewhat different when a State signed but did not ratify. He agreed with the Chairman in thinking that no higher organ existed than the Council and that a Committee could not force the hand of Governments any more than the Council itself could do. It was none the less true that, if the Council were to limit its action to arousing sleeping States, he might perhaps turn against the countries in question a Danish proverb which said : "A sleeping man is an innocent man". He would say that sleeping States were sinning States.

A Committee of Enquiry would be able to find out the different reasons for delay in ratification. He thought it might begin by sending out a questionnaire to Governments asking for the reasons for their delayed ratification. The suggested Committee might also carry out investigations.

The Danish proposal should be regarded as giving a helping hand to the Secretariat and the Council in order to make their efforts more successful.

Professor BAKER (British Empire), replying to what the Colombian and Latvian delegates had said as to allowing Governments time to catch up with the numerous conventions adopted, stated that he had examined the list of ratifications and had found that, in the last ten years, some Governments had signed certain conventions but had not ratified a single one. To wait until the slowest Government caught up might mean waiting for ever.

Moreover, it was not practical politics to hope that no more conventions would be framed. The Second, Third and Fifth Committees were proposing that conferences should be summoned which would elaborate new conventions, and these instruments were being drawn up, not by idealists, but by responsible officials in charge of the social and economic interests of the peoples they represented.

The situation had to be faced ; the number of conventions was bound to increase and action should be taken to deal with non-ratification.

With regard to what the Colombian and Australian delegates had said as to a general treaty laying down procedure in connection with the signature, ratification and so on, of Conventions, the British delegation was not opposed to such a Treaty. He thought that the work of the Committee of Enquiry would be a first step toward that end, and he accordingly supported the Danish proposal But it was not a matter for codification ; it was a matter for legislation, and the distinction was important.

Professor Baker said he wished to apologise for having alarmed a number of delegations. He had indicated as a possibility the insertion of a clause in certain conventions the ratification of which was urgent, to the effect that these conventions should come into force unless denounced. That was only one of the hypotheses which the proposed Committee might take into consideration.

Naturally, Governments could not be compelled to ratify. However, it was possible to contemplate practical measures, and the enquiry instituted by the Committee would certainly give important results.

M. HAMBRO (Norway) said that, while he was in sympathy with the British delegate's observations, he wanted to lay stress on what had been said by the Australian delegate. In many countries Governments would be prevented by the Constitution from signing conventions if these had to come into force on the date of signature and before ratification took place.

There was one thing that might perhaps be done. Government delegates, who were always courteous, tried to please their colleagues and were inclined to accept all proposals put before them. If they had the moral courage to vote against conventions which they thought irrelevant or of little value, the number of conventions that States would be asked to ratify would no doubt decrease.

M. FERRARA (Cuba) supported the Danish text, but he could not agree to the proposal that conventions should be put into force prior to ratification. An innovation of this kind would be contrary to the settled practice of his country, and of that of many other countries. He mentioned Article 4 of the Procotol of Signature of the Statute of the Court, which, he thought, created a precedent by which the Council could, in certain cases, ratify a convention on behalf of States which had not ratified it.

M. POLITIS (Greece) stated that the case referred to was not one of ratification by the Council, but of the entry into force of the Act.

M. FERRARA (Cuba) said that that Protocol constituted a convention modifying a convention already accepted by States—that was to say, an international agreement—and that it would come into force without the consent of the original signatories of the original convention. He refused to admit a conception of this kind, which would invariably lead to a super-State, a thing which no one had ever wished the League of Nations to become.

He refused to recognise that States should be bound, unless they had expressed their desire in accordance with their constitutional machinery.

M. ANDERSEN (Denmark) said he agreed with M. Hambro. There could be no question of imposing certain conventions on States. For that reason, and in order to render the Danish proposal clearer, he would suggest replacing the words "with instructions to take steps to hasten the ratification of the conventions which have been signed" (Annex 10) by the words "with instructions to consider the means of hastening ratification".

Modified in this way, the draft resolution would remain within the limits laid down by the Norwegian delegate.

The CHAIRMAN wished to make a number of observations. He thought that, if the very interesting remarks made in the Committee had been made by delegates to their Governments, great progress would have been made. He wished that not only members of the Committee but all delegates to the Assembly would do this service to the League of Nations, and strongly urge their Governments to give the required ratifications.

He then noted that the only proposal still maintained was that made by the Danish delegate for setting up a Committee of Enquiry. He was bound to remind delegates at this point that any proposal of this kind had to be referred to the Fourth Committee with a view to obtaining the necessary credits. The Secretary of the Committee had estimated that the amount required would be some 40,000 Swiss francs.

He did not think that, if Governments were asked for the reasons for delay in giving the necessary ratifications, their replies would reach the Secretariat very quickly, nor that they would indicate the real grounds for the delay. No doubt, work might be done which would throw some light on the causes of the trouble, but this work could be done without incurring the cost of 40,000 francs.

He then asked the Danish delegate to forward in writing to the Bureau the definitive text of his resolution. He added that he had received from the Latvian delegate proposals for the following amendments :

1. To omit from the resolution the words "or by the International Labour Organisation", and

2. To replace at the end of the resolution the words "to hasten ratification of conventions which have been signed" by the words "to investigate the causes of delay in connection with the ratification of conventions which have been signed".

The Chairman pointed out, in connection with this second amendment, that the Danish delegation itself proposed to terminate the resolution by the words "to consider the means of hastening the ratification of conventions which have been signed".

M. DUZMANS (Latvia) stated that he agreed to the new text.

The CHAIRMAN desired to make another remark which might affect the voting.

The whole discussion had centred round the question of ratification—but there were numerous draft conventions that had not even been signed by many countries. That did not mean that those countries had refused to accede to a convention, but that they had delayed even their signatures. It was necessary, therefore, to consider not only how to accelerate ratifications, but also how to ensure that draft conventions became law as a result of their signature and ratification.

He would make one last remark. There were certain very old draft conventions which he despaired of ever seeing ratified and which, through their very existence, blocked the way for new draft conventions. This was a very delicate matter which should be considered by the competent body. It was only one aspect, however, of a question that should be considered in all its bearings. Hence, if there were to be a vote, he would prefer it to be taken on a wider text. He did not wish to propose one himself, however, because he was still sceptical as to results. The important thing, in his opinion, was that, as soon as delegates returned to their own countries, they should do everything possible to persuade their Governments to give the desired ratifications.

M. BOTELLA (Spain) suggested a solution that might perhaps remove the financial difficulty mentioned by the Chairman. The enquiry recommended by the Danish delegate might be carried out by the Secretariat.

As regards the substance of the question, since everyone was agreed that the sovereignty of States was not involved, there were no objections to be raised on the score of principle. Nevertheless, he was not hopeful as to the results of the enquiry contemplated.

M. DANDURAND (Canada) suggested the following draft resolution :

"The First Committee, having considered the draft resolution submitted by the Danish delegation, decides to suggest to the Assembly that all delegations should agree to submit at the opening of each Assembly :

"1. A list of ratifications deposited since the close of the last Assembly ;
"2. A list of the conventions that the State concerned does not intend to ratify ;
"3. A list of the conventions which are at present being considered."

If he were President of the next Assembly and had to apply that resolution, he would invite a delegate of each State to come to the platform and deposit the lists in question. In that way a delegate of each State would come to the platform and inform the Assembly of the ratifications which had been deposited since the last session.

Canada, he said, had ratified thirteen conventions.

Sir Harrison MOORE (Australia) said that, according to a report before him, Australia had signed fourteen treaties and had not signed one that it had not ratified. If there were twenty-three treaties that Australia had not signed, the explanation was that Australia was a federal country and that many of the conventions concluded under the auspices of the League of Nations did not come within the sphere of action of the Federal Government, but of the States Governments, which had independent powers.

M. DANDURAND (Canada) pointed out that Canada was in the same position.

M. ROLIN (Belgium) thought it was absolutely necessary to change the form in which the statement of the position regarding signatures was published. The fifty-page document distributed to members of the Committee was unreadable. Endless lists had to be gone through to discover, in the case of each of the forty-five States, whether its name appeared in one of the three columns.

The International Labour Office periodically published a double-entry table giving much information as to signatures, accessions, the state of legislation, etc. The International Labour Office was, of course, concerned only with about twenty conventions, but he himself did not desire so much information. He would be satisfied with a double entry table showing whether countries had signed, ratified or acceded, and, if necessary, indicating by the letter "R" that they had made reservations. That would be sufficient, and the nature of the reservations could then be ascertained merely by reference to official tables and publications.

Such a publication would make it possible to ascertain the position of his own country or other countries in the matter of ratifications and would make it easier to ask Governments for information as to any objections they might have which prevented them from ratifying.

In that spirit, he proposed the following addendum :

"The Assembly requests the Secretariat to draw up, each quarter, double-entry tables giving the position as to signatures, ratifications and accessions in the case of the various conventions negotiated under the auspices of the League of Nations."

The CHAIRMAN remarked that the amendments proposed by M. Duzmans might be considered as withdrawn since they were included in the new Danish text.

M. ANDERSEN (Denmark) thanked M. Botella for his suggestion that the work should be entrusted to the Secretariat; but, as the question was so important, he thought it best to maintain his proposal and to urge the need of constituting a mixed Committee such as that proposed in the draft resolution.

Some expense was obviously involved and, as the Chairman had emphasised, the draft resolution would have to be submitted for the consideration of the Fourth Committee; but the sum of 40,000 Swiss francs mentioned appeared to be excessive.

In any case, the question was of the greatest importance, since it was very desirable to enquire into the causes of delays in ratification and the methods of obviating or, at least, reducing those delays in a sphere that was vital to the League.

M. Andersen agreed with M. Rolin's remarks as to the International Labour Organisation.

He would modify his draft resolution as follows :

"The Assembly decides that the First Committee should be asked to discuss the question of methods for accelerating the ratification of international conventions voted *under the auspices of the League of Nations*, including the question whether it is desirable to constitute a mixed Committee appointed by the Assembly and by the Council with instructions to consider the causes of delay in ratifications and the methods of accelerating such ratifications."

As there were so many amendments before the Committee, he suggested that a Drafting Committee should be appointed to frame a text which might subsequently be submitted to the full Committee.

The CHAIRMAN thought such a Sub-Committee would be useful and proposed that it should consist of M. ANDERSEN (Denmark), M. DUZMANS (Latvia), Sir W. Harrison MOORE (Australia), M. ROLIN (Belgium) and Dr. D'AVILA LIMA (Portugal).

The proposal was adopted.

SEVENTH MEETING.

Held on Thursday, September 19th, 1929, at 3 p.m.

Chairman : M. LIMBURG (Netherlands).

13. Draft Amendment to Rule 7, Paragraph 1, of the Rules of Procedure of the Assembly, submitted by the Delegations of Belgium, Chile, Italy, Japan and Peru.

The CHAIRMAN read the following communication made to the Assembly on September 6th, 1929 :

"The undersigned delegations have the honour to request you to submit the following proposal to the Assembly :

"The Rules of Procedure of the Assembly provide, in Article 7, paragraph 1, that ' the officers of the Assembly shall consist of a President and of six Vice-Presidents, together with the Chairmen of the main Committees of the Assembly, who shall be *ex officio* Vice-Presidents of the Assembly '.

"In conformity with this rule, the General Committee of the Assembly, during six ordinary sessions, was composed of thirteen members and, since the seventh session, of fourteen members owing to the addition to the General Committee of the Chairman of the Agenda Committee.

"Since the time when the Rules of Procedure of the Assembly were adopted, however, the number of Members of the League has been increased by thirteen. The composition of the General Committee has thus ceased to correspond to present conditions, and it seems desirable to take steps as from the present session to enable the General Committee to keep in touch with a larger number of delegations.

"In view of these considerations, the undersigned delegations wish to propose an increase in the number of members of the General Committee by the election of eight Vice-Presidents instead of six.

"They accordingly have the honour to request you to lay before the Assembly a draft amendment to Article 7, paragraph 1, of the Rules of Procedure which would have the effect of modifying the present text to read as follows :

" ' The officers of the Assembly shall consist of a President and eight Vice-Presidents, etc.'

(Signed) Vittorio SCIALOJA.
M. H. CORNEJO.
ADATCI.
E. VILLEGAS.
Paul HYMANS."

M. HAMBRO (Norway) regretted that none of the delegations which had moved the resolution had risen to speak in its favour, since he wanted to hear their arguments and ascertain whether there was more in them than would appear from the printed document. The proposal was interesting, because it raised the problem of the whole of Rule 7, which was one of the few of the Rules of Procedure that was rather confused and which made it difficult to define the status of the Assembly.

He would like to know whether the idea was that the proposed alteration should come into force as from next year and not during the present year. That was a question of some importance, because there was a good deal of confusion in many of the documents distributed to delegates and

sent to the Members of the League ; in some the term "Tenth Assembly" was used, and in other "The Assembly at its Tenth Session". The question of which was right should be settled.

According to the Covenant it was clear that the Assembly was as permanent a body as the Council, but in the last seven years there had been a good deal of confusion on the matter in the documents and procedure. If the Assembly was to be considered a permanent institution—"The Assembly at its Tenth Session"—it was constitutionally not very clear why it should be opened by the President of the Council. On the other hand, if each session of the Assembly was regarded as a new body, it seemed clear that the first thing for the President to do at the opening of the session was to propose that the Rules of Procedure adopted at some previous Assembly should be followed.

If an alteration in the Rules for next year were voted, he thought it proved that the Assembly was regarded as a permanent body. That was important.

The amendment suggested the election of eight Vice-Presidents instead of six. The question arose whether, when Vice-Presidents were elected, persons or delegations were appointed. In the case of the President the appointment was personal, and it would be unnatural if, when the President was unavoidably absent, the Chair was taken by another member of his delegation. In the case of the Vice-Presidents, on the other hand, it had been the custom that, when the person elected did not attend the General Committee, another member of his delegation took his place.

M. Hambro supposed it was the idea of the movers of the resolution that Vice-Presidents were persons and not delegations, but the confusion should be cleared up and some principle established. He had been told that when M. van Karnebeek was President he laid down the principle that Vice-Presidents were persons, and did not allow anyone but the delegate elected to sit on the General Committee. Since then, however, the practice had been altered, and when he himself had sat on the General Committee two years ago it had been a body which constantly changed ; the Greek saying "*Panta Rei*" might have been written over the door. One day the men elected would attend, on another day other members of the same delegations, and at other times experts or technical advisers might be present. Something definite must be established.

As regards the practical side, he thought it would be wise sometimes to bear in mind the impression which the Assembly must make on the journalists' gallery, and on the gallery of pilgrims coming to Geneva. It would not be denied that the impression made at the opening of the Assembly was not a very dignified one.

In 1926, a Committee of Three had been set up to try to establish better order and better working conditions in the Assembly. The results of the work of that Committee were certain modifications in the Assembly Hall, and nothing more. The First Committee ought to study that question.

The General Committee now consisted of fourteen members. Sometimes there were as many as fifty-one or fifty-two delegations at the Assembly. More than a quarter of the votes were represented on the General Committee. It would be difficult to find another Assembly directed in the same way. It was now proposed to place practically every third delegation on the General Committee of the Assembly. He saw grave practical difficulties in making this increase in the numbers. The larger the General Committee, the less efficient it would be. Recently, the General Committee had been made to a certain extent an Election Committee, which nominated candidates for the Supervisory Commission and for the Committee on the Revision of the Staff Regulations. It was necessary to establish a small Election Committee or Management Committee.

It ought to be made clear whether the President and the Vice-Presidents were elected personally or on some other principle not mentioned in Rule 7. If they were elected personally, it ought to be laid down as a definite rule that only those elected had the right to sit on the General Committee. It ought also to be made clear whether the Assembly was to be looked upon as a permanent body. If so, the expression "the Tenth Ordinary Session" or "the Tenth Session of the Assembly" ought to be used. Even "the Tenth Ordinary Session" was an expression that was rather doubtful, because it was not laid down in the Covenant what were Ordinary Sessions or Extraordinary Sessions of the Assembly. One did not speak of Ordinary Sessions and Extraordinary Sessions of the Council, they were numbered consecutively; and the Sessions of the Assembly ought to be numbered in the same way.

The matter was not only one of form, but it touched some principles, and after ten years' experience it would not be premature to consider whether Rule 7 embodied the best procedure. The strange mixture of Council and Assembly instituted in that Rule was perfectly intelligible in 1921, but it was not upt oda te in 1929. The best way would be to revise the whole of Rule 7. The point ought to be studied, and a Rule 7 built up on clear constitutional principles ought to be put before the Assembly next year.

The CHAIRMAN asked whether any member of the delegations which had proposed the draft resolution wished to make a statement to the Committee.

No member asked to speak.

The proposed amendment to Article 7, Paragraph 1, of the Rules of Procedure of the Assembly was put to the vote and adopted by ten votes to eight.

M. HAMBRO (Norway) said that, after the illuminating silence of the Committee, he would be obliged to raise the matter again in the Assembly and see if it were possible to make anyone speak.

M. BOTELLA (Spain) *was appointed Rapporteur to the Assembly.*

14. Application of Article 19 of the Covenant of the League regarding the Reconsideration of Treaties which have become inapplicable : Draft Resolution proposed by the Chinese Delegation.

The CHAIRMAN read the following draft resolution :

"The Assembly,

"Considering that Article 19 of the Covenant of the League of Nations which provides that

" 'The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.'

is one of the most essential articles of the Covenant in the cause of international co-operation and peace ;

"Observing that, nevertheless, it has not once been acted upon during the decade of the existence of the League ;

"Believing that such inaction has been due to the fact that the Assembly has not had the necessary assistance and advice ;

"Hereby resolves that there shall be appointed a Committee to consider and report on the best methods to make effective the above-mentioned article."

M. CHAO-CHU WU (China) said his resolution referred to an article of the Covenant which dealt with treaties which had become inapplicable, and with international conditions which might endanger the peace of the world. Int he past, such treaties and conditions had been rectified by war. The world was fortunate now in having the Covenant of the League, and Article 19 thereof, which furnished a pacific means of rectifying such treaties and such conditions. The Covenant had existed for a decade. China had once attempted to invoke it, but without success.

In a debate on another resolution regarding Articles 12 and 15, the British delegate had used a figure of speech about lopping off dead wood. If he might borrow another simile from botany, he was reminded of the story which the ancients told of a certain fruit which, while very fair and luscious to the eye, when touched, became smoke and dust. While the dead wood of the Covenant was being lopped off, he hoped that one of its most essential articles would not become a Dead Sea apple.

Article 19, of course, was of general application. The Chinese declaration envisaged particularly those "unequal" treaties and conventions, with whose general outline the Committee was doubtless familiar, under which China laboured. If it could be said of any treaties that they had become inapplicable, it could be said of those.

A certain amount of concern, amounting almost to apprehension, had been expressed in some quarters that, if China asked for reconsideration of her treaties, certain other treaties, on which the stability and equilibrium of different parts of the world depended, might also be shaken. He did not think the resolution as it stood justified that apprehension. If he might venture to say so, statesmen were perhaps apt to see danger where none existed.

The Committee would observe that the business part of the resolution proposed the appointment of a Committee to consider and report on the best method of making Article 19 effective. Personally, he thought Article 19 a very safe article, because the Assembly had no direct power to deal with any of the treaties, but merely advised the States concerned to reconsider them. But the resolution before the Committee was even safer. It simply asked for the appointment of a committee to study the situation. It did not even specify how that Committee was to be appointed, whether by the Assembly or the Council, or both. Furthermore, the Committee was to be charged only with the duty of considering and reporting. If, therefore, the concern for the political equilibrium in other parts of the world were well founded, the Committee would naturally take it into consideration.

Dr. KOCH-WESER (Germany) said he had been glad to hear the Chinese proposal, the motives and objects of which had been very lucidly explained by the Chinese delegate. He thought it would be most advantageous to subject Article 19 to a close examination by a special Committee which would give an interpretation of it and indicate the procedure to be followed by the Assembly in case an occasion for its application should arise.

Similar discussions had taken place with regard to the meaning, scope and methods of application of a number of articles of the Covenant, notably Articles 10, 11, 12, 15 and 16. Article 19 had never been so examined.

Article 19 was an essential part of the League Covenant for the maintenance of peace. It provided for the possibility of developing existing law by peaceful methods. In his view, the importance of that article had been enhanced by the considerable progress that had been made in the matter of forbidding war—a question which the First Committee had recently discussed in connection with the problem of bringing the Covenant and the Paris Pact into line.

As Dr. Stresemann had said in the Assembly, it was not sufficient to forbid war ; the causes of war must be removed, and progress must be made from a purely conservative pacifism to an active pacifism.

As regards the procedure to be followed in examining Article 19, the method indicated in the Chinese proposal seemed entirely suitable.

M. SÉPAHBODY (Persia) said that the Persian delegation was in sympathy with the Chinese proposal, and the more so because the Persian Government itself had acted in the spirit of Article 19 in annulling treaties which no longer answered to existing conditions.

He would like to say that the attitude of his Government was due not only to its sympathy for the great Chinese nation, but also to its strong desire for the maintenance of peace and harmony between the nations. There could be no doubt that the conclusion of new treaties suitable to present world conditions would contribute greatly to the establishment of peace.

Sir Ewart GREAVES (India) said he was sure that the Committee would have great sympathy with the desire of China to have a thorough examination made of this article with a view to the reconsideration of treaties which had become inapplicable or the consideration of conditions which might endanger peace. He had no direct instructions from his Government, but he was sure he was justified in saying that it would be very sympathetic towards the proposition which was made on behalf of China and that it would welcome the appointment of a Committee to consider the provisions of Article 19 in accordance with the motion of the Chinese delegate.

M. ROLIN (Belgium) said that he had listened with great interest to the Chinese delegation's statement. Belgium had never expressed any objection to the principle of Article 19 ; since, in the course of private negotiations, certain treaties which had become inapplicable had been revised to the satisfaction of both Governments.

He was torn between two feelings in regard to the draft resolution. In his view, Article 19 was certainly highly important—indeed, essential—representing a precaution which did great honour to its authors. It was possible, and in fact it had already happened, that new (he would emphasise that word) and exceptional circumstances might call for a readjustment of old treaties. The authors of the Covenant had realised that, and had put in a clause about it, though it was a very moderate clause. It was not, however, right to say that the reason why Article 19 had never as yet been put into effect was that the Assembly could not call upon the necessary assistance and advice. There were other articles in the Covenant which also had never yet been put into effect, such as Article 16, which some delegations also regarded as essential.

Notwithstanding the different and sometimes incompatible interests, views and desires that had been expressed in the Committee, he thought everyone would agree that the reason why Article 19 had never been applied was that circumstances had never been favourable.

The question that arose was the following: Was it not desirable, now that war had been definitely forbidden and certain countries had accepted the General Act of Arbitration—though the latter could not alter the actual legal system between States—to recognise the existence of Article 19 of the Covenant, which he thought was sometimes overlooked ?

In 1921, something more had been done than merely to set on one side the application of this article. It was not possible to enter into all the details of the negotiations which had taken place and the resolution of the Committee of Jurists—the more so as the States that were then not members of the Assembly had now returned—but it was clear from the discussions of the Committee of Jurists that neither the Committee nor the Assembly had considered Article 19 as a dead article.

The Assembly had singled out, in the first place, the case of the receivability of a request made to it, reserving to itself the right, if this receivability were accepted, to decide whether it was necessary to draw up recommendations.

Would it not be desirable at the present time merely to make a general statement in this sense ? It was clear that the question would not be settled by this means. It was possible to contemplate the preparation of procedure to be followed by the Assembly, to discuss certain rules, in particular, those relating to the vote. Would it be wise, however, to do this now ?

In view of the essentially political character of Article 19, it did not seem wise if it were desired to make it possible to apply that article when necessary, for the Assembly to further the framing of rules which would tie its hands, especially as numerous difficulties would be encountered in the process. If the existence of Article 19 were recognised, its importance, and the possibility, which every State Member of the League possessed, of causing, upon its own responsibility, that article to be applied in any particular case, all that could be done in the existing circumstances would have been done, and, he thought, all the satisfaction which those countries that were particularly anxious about Article 19 could expect would have been given to them.

Having consulted a number of his colleagues, he moved the following draft resolution which, he thought, represented the intentions of the Chinese delegation :

> "Every member of the League has the right to draw the attention of the Assembly to a treaty which it considers inapplicable, and in such case the Assembly, having by the ordinary procedure verified whether the demand made to it is well founded, will pronounce upon the merits of the case after referring it to the competent Committee."

He thought that this resolution made it sufficiently clear that, although Article 19 was designed to deal with somewhat exceptional cases, it could be quite easily brought into operation.

The CHAIRMAN, after again reading M. Rolin's proposal, observed that it was designed to replace the last three paragraphs of the Chinese proposal.

Professor BAKER (British Empire) said that the British delegation welcomed the Chinese proposal, the principles of which commended its support.

He agreed with M. Rolin that Article 19 existed, and that the rights it created were enjoyed by every Member of the League. It corresponded to the necessities of an international society and, therefore, like so much of the rest of the Covenant, it was really alive. The authors of the Covenant had had the wisdom to foresee a necessity which was certain to arise at some time or other, and he agreed with M. Rolin and the German delegate, who had said that the further organisation of peace

which had taken place during the last ten years, and notably the coming into force of the Paris Pact, made more necessary a complete development of the whole machinery and organisation of the society of States.

Everyone knew that part of that machinery was a means for effecting a pacific change in the existing state of things when it became inapplicable or out of date. He agreed with the Chinese delegate that the machinery of Article 19 was very prudent. If the authors of the Covenant had had to put into it something real, they could hardly have put less ; but his Government believed that what they had put was enough to prove effective when the case arose.

It was really not surprising that it had not yet been used, and his Government was glad it had not been used. It was very far, for that reason, from having become a "Dead Sea apple". By its nature it must be one of the long-period developments of the institutions of the League which had to control the relations between States. It might have been used in the last ten years. The Chinese delegate had mentioned the unequal treaties between his country and certain foreign Powers. Many people in Great Britain believed that the machinery of Article 19 might have been used for the revision of those treaties. Happily, negotiations were proceeding on that subject between the Chinese and other Governments, and there was good reason to hope that they would lead to a satisfactory result. With the spirit and principle of what was proposed, the British delegation, and, he believed, the whole Committee, were in agreement.

Turning to the actual terms of the Chinese proposal and the amendment suggested by M. Rolin, Professor Baker said that, if the First Committee desired to create such a Committee as was proposed, the British delegation would not object. His Government believed that it might be useful to consider all parts of the Covenant on the basis of general principles, where no actual cases had arisen. On the other hand, the British Government was not certain that the actual proposal was urgent, or even highly desirable, at the present time. It would therefore accept the proposal made by M. Rolin, which asserted that every Member of the League had the right to call on the Assembly to advise or to recommend the reconsideration by the Members of the League of treaties which had become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world. When that right was exercised, the machinery foreseen by Article 19 would operate and, broadly speaking, subject to detailed arrangements, the machinery which would operate was that which M. Rolin's motion adequately expressed.

While, therefore, the British delegation welcomed the discussion initiated by the Chinese delegation and thought it desirable, in the interests of the League, that such a proposal should be discussed, it would accept the alternative motion proposed by M. Rolin.

Possibly, the time had arrived when a Sub-Committee might be appointed, and, if that idea commended itself to the Chairman, the British delegation would accept it. That Sub-Committee might consider the Chinese proposal, that of M. Rolin, and any others the Committee might desire to put forward.

M. DOMINIQUE (Haiti) accepted the terms of M. Rolin's resolution, which was on the whole very well expressed ; but he thought that, in order to give satisfaction to the Chinese delegation, it would be necessary to add to the Belgian proposal the words "especially in regard to Article 19, which is not a dead letter".

General TANCZOS (Hungary) congratulated the Chinese delegation on its excellent proposal.

There was no doubt that Article 19 of the Covenant, which was designed to take account of the development of civilisation and the supreme importance of bringing certain situations into harmony with the essential needs of life so as to ensure peace while safeguarding justice, was one of the corner-stones of the League edifice. The world did not stand still ; it evolved. Some situations ceased to be just ; some never had been just. If the League proposed to perpetuate such situations, it was opposing the laws of nature. It would no longer be serving the ideal of peace and justice which it had blazoned upon its banner, and, what was more, it would itself be in danger of being swept away by the irresistible forces of natural evolution.

In the course of history the League had had forerunners, perhaps more numerous than was generally realised. Many admirable ideas were to be found in embryo in the institutions projected by those forerunners. None of them, however, had recognised the great law of evolution ; they had all desired to crystallise for eternity those situations which they regarded as the best. It was in the constitution of the League, in the Covenant and, above all, in Article 19 of the Covenant, that proper respect had first been paid to the law of evolution and, in addition to the other guarantees created by the Covenant, that article provided one more guarantee for the maintenance of justice and peace.

One day Article 19 might be found to be the safety-valve of peace—a more effectual preventive of war than any system of penalties. If the time should come for that article to be put into effect, the League must not be caught unprepared.

In his view, the First Committee would worthily celebrate the tenth anniversary of the League by adopting the Chinese proposal and setting up a Committee which could be relied upon to make a thorough and impartial study of that important part of the Covenant.

It was Article 19 of the Covenant that had afforded Hungary a moral basis for entering the League. Article 19 was the complement and the indispensable corrective of Article 10. Article 10 forbade the making of any change by means of external aggression, and Article 19 showed how untenable international situations could be remedied without any violation of the spirit of the League.

The Committee had now before it a new proposal—the Belgian proposal. He thought it difficult to give any opinion at first sight upon this proposal, which appeared to embody an interpre-

tation of Article 19. He therefore suggested that the Belgian proposal should be referred to the Sub-Committee which the British delegate had suggested should be set up.

The CHAIRMAN asked the Chinese delegate whether he could accept M. Rolin's proposal.

M. CHAO-CHU WU (China) said he had not had an opportunity of examining the Belgian proposal, and could not express an opinion at the moment. He agreed that a Sub-Committee should be set up, provided that that Sub-Committee should have power to examine not only the proposals already before the Committee, but any others which it might be able to find or which might be suggested to it.

The CHAIRMAN observed that any Sub-Committee to which several proposals had been referred could itself submit a draft resolution representing, so to speak, the resultant of those various proposals.

He suggested that the Chinese and Belgian proposals be referred to a Sub-Committee.

This proposal was adopted.

The CHAIRMAN proposed that it should be left to the Bureau to select the members of the Sub-Committee.

Lidj ANDARGUÉ MASSAÏ (Abyssinia) said he welcomed the Chinese delegation's proposal because unequal treaties imperilled the peace of the world, since they threatened the very existence of certain States.

There was an Abyssinian proverb which said : "World peace will come when we are no longer called Abyssinians".

The Abyssinian delegation would accordingly have something to say in the Sub-Committee, if the Committee would allow it to be represented.

The CHAIRMAN appointed as members of the Sub-Committee : Count APPONYI, Professor BAKER, M. COT, M. KOCH-WESER, M. PILOTTI, M. ROLIN, M. VILLEGAS and M. CHAO-CHU WU.

At the close of the meeting the Chairman invited the following persons to serve on the Sub-Committee : M. ADATCI (replaced by M. ITO), M. BENEŠ (who was unable, however, to take part in the work) and M. COSTA DU RELS.

15. **Proposal of the Government of Finland to confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal in respect of Arbitral Tribunals established by States** (continuation).

The CHAIRMAN read the following draft resolution proposed by the Finnish delegation :

"The Assembly invites the Council to submit to examination by a Committee of Jurists the question whether the Permanent Court of International Justice should be given jurisdiction as a tribunal of appeal from international arbitral tribunals in all cases where it is contended that the arbitral tribunal was entirely without jurisdiction or exceeded its jurisdiction.

"The Assembly requests the Secretary-General to communicate the results of the work of the Committee of Jurists to the Governments of States which are Members of the League of Nations or signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, with a view to discussion at a later session of the Assembly."

M. ERICH (Finland) stated that the Finnish delegation had amended its proposal to take account of certain views expressed by various members of the Committee. It had not, however, seen its way to abandon the essential point of its original proposal, namely, that a Committee of Experts should be appointed to examine the question in all its bearings, having regard to all the considerations that had been advanced in the Committee, or might subsequently be advanced.

It would be more useful to consult the Governments when a Committee of Experts had already determined the essential points to be considered. A study must be made, and an interpretation given, of certain provisions now in force.

Although the First Committee had not desired to anticipate the study of these questions, differences of opinion had already come to light on several essential points. That showed how valuable the enquiry proposed by the Finnish delegation would be. He thanked M. Raestad for overcoming his initial hesitation in regard to the Finnish proposal.

The conclusion of the Norwegian proposal suggested that it was primarily a question of procedure. The Finnish delegation, on the other hand, thought that it was primarily a question of jurisdiction. He did not think the word "procedure" was quite happily chosen. Those who had spoken before him seemed to think that they were not at present called upon to express an opinion on the point which the Norwegian delegation had raised.

In conclusion, he said that he would not oppose the Norwegian proposal, but he would urge the adoption of the Finnish proposals as formulated by the Finnish delegation.

The discussion was adjourned to a later meeting.

EIGHTH MEETING.

Held on Friday, September 20th, 1929, at 3.30 p.m.

Chairman : M. LIMBURG (Netherlands).

16. **Proposal of the Government of Finland to confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal in respect of Arbitral Tribunals established by States** (continuation).

The CHAIRMAN read the following amendment, proposed by the Norwegian delegation, to the draft resolution submitted by the Finnish delegation at the last meeting :

"The first paragraph is amended to read as follows :

" 'The Assembly invites the Council to submit to examination by a Committee of Jurists the question : What would be the most appropriate procedure to be followed by States desiring to enable the Permanent Court of International Justice to assume—in a general manner, as between them—the functions of a tribunal of appeal from international arbitral tribunals in all cases where it is contended that the arbitral tribunal was entirely without jurisdiction or exceeded its jurisdiction ?'

"The second paragraph (unchanged) reads as follows :

" 'The Assembly requests the Secretary-General to communicate the results of the work of the Committee of Jurists to the Governments of States which are Members of the League of Nations or signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, with a view to discussion at a later session of the Assembly.' "

The Chairman invited the Norwegian delegate to explain his reasons for proposing the amendment.

M. RAESTAD (Norway) thanked the Finnish delegate for having agreed to accept the Norwegian amendment notwithstanding his preference for his own draft. If it were once agreed to have merely a committee of enquiry, differences in drafting were less important. Delicate questions, however, were involved in the Finnish proposal, and it was desirable to avoid as far as possible any misunderstanding regarding the effect of the resolution to be voted by the Assembly.

He thought that the Norwegian text represented better than the Finnish the intentions of the Finnish Government. In the Finnish draft, it was proposed that specific jurisdiction "should be given" to the Court. This implied that the jurisdiction in question would be something new, which the Court had not previously possessed. In the case, however, of States which were bound by Article 36 of the Statute, such jurisdiction was already vested in the Court, although in certain cases there were other treaty provisions which prevented its being exercised as between the parties. The expression "the court . . . should be given jurisdiction" should be replaced by the words "to enable the Court . . . to assume . . . the functions of a tribunal of appeal".

Further, the proposal of Finland would imply that it was the League of Nations which authorised the Court to assume those functions ; that was quite clearly not the view of theFinnish Government, which had in mind rather agreements between States, special or general, but freely concluded. This point should be made quite clear, and it was for this reason that the Norwegian draft contained the words "States desiring".

Following the lines of the Finnish Government's idea of the conclusion of general arrangements, the Norwegian amendment stated that the Court should be allowed to assume "in a general manner" the functions in question.

He agreed with the Finnish delegate that the proposal did not raise a question of procedure but of substance, and that that question concerned not the League but the individual States. The League could not decide whether each of the States which were parties to an arbitration should be permitted to submit the award to the Permanent Court on the plea that the tribunal was without competence or had acted *ultra vires*. The League's only preoccupation would be to produce a suitable procedure for States which wished to make use of it.

He therefore urged the Committee to adopt the amended draft.

M. POLITIS (Greece) thought that the question required serious examination, and therefore supported, with certain reservations, the Finnish proposal. He was rather inclined to share M. Raestad's view that it would be preferable not to use the expression "the Court should be given jurisdiction". To his mind the Court already possessed such jurisdiction under Article 36 of the Statute and Article 41 of the General Act.

It was necessary to ascertain whether this view was general and what would be the correct procedure to ensure appeal to the Court in the case of an arbitral tribunal having no competence or having acted *ultra vires*.

Notwithstanding his conviction that the question deserved examination, he was less confident that the Committee should suggest to the Council to what body such an enquiry should be entrusted. On this point there were certain objections : a Committee of Jurists would involve considerable expense, and it must be remembered that all proposals involving credits should have been submitted to the Fourth Committee by September 18th, which date had now passed. It would be better, therefore, to delete the words "by a Committee of Jurists", and to say "the Assembly invites the Council to submit to examination the question whether", and then add the text as amended by the Norwegian delegation.

M. ERICH (Finland) said that he must press for the appointment of a special committee.

M. DUZMANS (Latvia) declared that the scope of the debate had been limited and only the case considered where the tribunal had no competence *at all* or had acted *ultra vires*. The restraint shown did honour, he thought, to the League, but he felt, nevertheless, a certain regret. It had been an intellectual pleasure for him to hear M. Raestad explain the very clear legal argument in the Norwegian amendment. He accepted the amendment, though he really did not see the contradiction between the first draft and the text now proposed by the Norwegian Government on the same subject.

M. BURDEKIN (New Zealand) did not agree with the Finnish proposal, which he thought unnecessary. When arranging for arbitration, the parties to the dispute could provide for an appeal to the Permanent Court, and they could always agree, after the award had been made, to refer the matter to the Court.

He therefore supported M. Limburg's suggestion that the attention of Governments should be called to the existing possibilities of appeal. He thought there was no justification for the expense involved in setting up a Committee of Jurists.

M. RUNDSTEIN (Poland) submitted a purely technical amendment to the Finnish and Norwegian proposals.

At the close of the first paragraph it might be better to insert, instead of the words "where it is contended that the arbitral tribunal was entirely without jurisdiction or exceeded its jurisdiction" the following text: "In regard to any dispute concerning jurisdiction" and then add, in parentheses, the words "cases where the arbitral tribunal had no jurisdiction at all, or had exceeded its jurisdiction, etc."

In this way cases of negative conflict, in which the tribunal declared that it had no jurisdiction, would be covered. He submitted an amendment to this effect.

M. ERICH (Finland) said that Governments would have a more solid basis to work upon if a Committee had elucidated and prepared the question beforehand. He did not see how Governments could give a confident decision on such difficult questions without the guidance of recognised experts. The discussion had disclosed differences of opinion. There was the problem whether the Optional Clause of Article 36 was sufficient, and whether Article 83 of the Hague Convention of 1907, to the effect that the tribunal would itself decide whether it had jurisdiction and that there was no appeal against an award unless the parties had provided for such appeal, was not an impassable barrier.

Similarly, there were differences of opinion as to the interpretation of Article 41 of the General Act. Those were difficult questions which had to be investigated, and which fully justified the institution of a preliminary enquiry by a Committee of Experts.

Although he did not see the point of the distinction made by M. Rundstein, he would agree to his amendment.

Sir Harrison MOORE (Australia) thought that there was not an article in the Covenant, nor in the Statute of the Court, which did not raise interesting problems. It would be overburdening the League if the number of Committees of Enquiry were to be increased out of all proportion. Questions like this were better examined by reviews and newspapers.

Three requests had already been made for the constitution of a Committee of Jurists, but he wondered how the Fourth Committee would welcome such requests. Before passing a proposal involving expenditure, the Committee ought to be sure that such expenditure was quite essential.

In view of the fact that the date for requests for credits by the First Committee had expired, the CHAIRMAN said that the precaution had been taken of writing a letter to the Chairman of the Fourth Committee intimating that a proposal involving the setting-up of a Committee of Jurists might be adopted.

M. URRUTIA (Colombia) feared that, if the number of Committees of Jurists were increased, it would become difficult to find sufficient competent persons for the purpose. Several questions might perhaps be entrusted to a single Committee.

Professor BAKER (British Empire) thought that this matter should be left to the discretion of the Council.

M. DOMINIQUE (Haiti) proposed that the question should be submitted to the Committee on Arbitration, which would not involve any new expenditure.

M. RUNDSTEIN (Poland) did not press his amendment.

The CHAIRMAN said that a vote would be taken on M. Politis' amendment, proposing to delete the words "by a Committee of Jurists".

M. DUZMANS (Latvia) said that the retention of these words in the resolution did not mean that the Council would have to appoint a special Committee.

The CHAIRMAN replied that it was certainly the intention of the Finnish delegation that a special Committee of Jurists should be appointed.

M. Politis' proposal to delete the words "by a Committee of Jurists" was carried by 19 *votes to* 12.

The CHAIRMAN said that the discussion on the Norwegian amendment was now open. He added that he preferred the Norwegian wording. If States desired to make certain that the Court would act as a tribunal of appeal, they had only to say so, either in the special agreement or in an arbitration agreement.

The Norwegian text had the further advantage of leaving open the question whether the jurisdiction of the Court was already established by the Optional Clause. Article 36 of the Statute did not confer this jurisdiction on the Court, because it was a question of *res judicata*. Some authorities took a different view ; the question whether the tribunal was without jurisdiction or had exceeded its jurisdiction was regarded by them as a legal question which could in every case be settled by the Court. Personally, he preferred the Norwegian text because the word "given" was omitted.

M. ROLIN (Belgium) was in favour of the Norwegian proposal. In the first place, it was not for the Council, as would appear to be the case from the Finnish text, to give jurisdiction of any kind to the Court. Moreover, in the Norwegian text, all the possibilities were reserved without prejudging the substance of the question.

M. TITULESCO (Roumania) said that he also preferred the Norwegian text ; nevertheless, he stated that, in the last line but one of paragraph 1, the word "entirely" should be deleted, because in international law it was not possible to discuss incompetence *ratione materiæ* or *ratione personæ*. Moreover, appeal should be allowed in all cases of alleged absence of jurisdiction.

The CHAIRMAN asked M. Titulesco whether he would agree to the addition, after "was without jurisdiction", of the words "*ratione materiæ*".

M. TITULESCO (Roumania) said that he would merely ask for the word "entirely" to be deleted.

M. ERICH (Finland) said that he was not altogether convinced by M. Rolin's arguments. In France, for instance, it was said that the Chambers decided whether the Constitution was to be revised, but, in law, amendments were not adopted by the Chambers but by the National Assembly. Similarly, the reference in the Finnish delegation's text to the question whether certain jurisdiction were to be given to the Court did not mean that this jurisdiction should be conferred by the Council.

The CHAIRMAN said that he agreed with the Finnish representative.

M. POLITIS (Greece) supported M. Titulesco's proposal for the deletion of the word "entirely".

M. SCIALOJA (Italy) said that he was not satisfied with the terms used in the Finnish proposal or in the Norwegian proposal. It was not a question of giving jurisdiction to the Court, but merely of instructing States how they should have recourse to the Court.

The questions of tribunals being without jurisdiction or exceeding their jurisdiction were already covered by Article 36 of the Statute : consequently the Court was competent. The point was, however, to decide in what way a State could oblige another to appear before the Court when it considered that the tribunal had been without jurisdiction or had exceeded its jurisdiction, if the first State only were bound by Article 36.

In these circumstances, it would be better to agree upon a simpler text which would make this quite clear.

As a member of the Council, he added that the question might be referred by the Council to a Committee of Jurists—but to a Committee already in existence. That would not involve any heavy additional expenditure.

In conclusion, he said that the problem to be solved was how one country could compel another to appear before the Court, even without the consent of the party. No difficulty would arise if both countries agreed in advance to be bound; their intention might perhaps be signified in a general treaty.

The CHAIRMAN put the Norwegian amendment to the vote and pointed out that the question of the word "entirely" was reserved.

M. BOTELLA (Spain) said that he interpreted the Norwegian amendment in the same way as M. Scialoja.

M. ROLIN (Belgium) thought that M. Botella might give his vote in that sense.

The CHAIRMAN said that he did not desire to enter into a discussion on the effect of the observations made in regard to the text of the amendments.

The Norwegian amendment was adopted by a majority.

M. Titulesco's proposal was unanimously adopted.

The second paragraph was adopted with the following wording :

"The Assembly requests the Secretary-General to communicate the results of the above-mentioned examination to the Government . . . [1]"

17. Progressive Codification of International Law : Draft Resolutions proposed by M. Rolin.

M. ROLIN (Belgium) asked that the three parts of the text should be examined separately (Annex 12).

1. *First Codification Conference.*

M. SCIALOJA (Italy) asked that at the end of the first part the words "to repair this omission", which he thought were too strong, should be replaced by others.

[1] The text of the draft resolution proposed by the First Committee for adoption by the Assembly is reproduced in Annex 11.

M. POLITIS (Greece) proposed an amendment to the second paragraph, *which was adopted.* This was to place the words "to be so good as to do so" at the end of the draft resolution.

The following text was adopted :

"The Assembly,

"Conscious of the wide scope of the preparatory work undertaken for the First Codification Conference ;

"Requests the Council to call the attention of all the Governments invited to the Conference to the desirability of appointing without delay their representatives at the Conference, whether plenipotentiary delegates, substitute delegates or technical delegates, in order that the members of the Conference may be able to make a thorough study of the documentation already assembled ;

"Recommends that, on the same occasion, the States which have not replied to the Preparatory Committee's questionnaire be invited to be so good as to do so."

2. *Committee of Experts for the Progressive Codification of International Law.*

M. URRUTIA (Colombia) mentioned that his delegation had made a proposal which the Assembly had referred to the Committee. The draft in question was based on that proposal. He therefore asked that the words "Proposal of the Colombian delegation" should be added after the title, in brackets.

M. ROLIN (Belgium) approved the suggestion and apologised for the omission.

The second draft resolution was adopted.

3. *Work of the Committee of Three Jurists.*

M. ROLIN (Belgium), Rapporteur, proposed various amendments of form.

In order to avoid confusion with private associations, he asked that the words "international bureaux" should be used.

The first three paragraphs of the draft resolution were adopted without alteration.

Paragraphs 4 and 5 were adopted in the following form :

"Is of opinion, in particular, that it would be necessary first to proceed to codify the various successive Conventions which deal with certain particular subjects, so as to determine what precisely are the texts in force and the States which are parties thereto ;

"Requests the Council to call the attention of the technical organisations of the League to the possibility that it might be desirable to make an effort in this direction, with the assistance of the Secretariat, and in collaboration, where desirable, with the international bureaux with a view to having the results of their work eventually brought into force by appropriate international conferences."

18. **Appointment of Rapporteurs.**

A. *Finnish Proposal.*

M. ERICH (Finland), who had been approached on the subject by the Chairman, asked to be excused from acting as Rapporteur, as one of the essential points—if not the essential point—of his proposal had not been adopted.

M. RAESTAD (Norway) *was appointed Rapporteur.*

B. *Codification of International Law.*

M. ROLIN (Belgium) *was appointed Rapporteur.*

19. **Ratification of International Conventions concluded under the Auspices of the League of Nations : Draft Resolution submitted by the Drafting Committee** (Annex 13).

M. ROLIN (Belgium) said that the Sub-Committee had thoroughly examined the draft resolution and had finally adopted it unanimously. It had been decided to propose the appointment of a Committee with rather limited terms of reference.

He indicated the general conclusions reached by the Drafting Committee. The idea that Governments should be consulted by the proposed Committee would have to be abandoned. The adoption of such a procedure would mean making application to the Ministries for Foreign Affairs, which would in their turn have to consult departments of various kinds, as every country had different bodies to which conventions of a technical nature, concluded under the auspices of the League of Nations, were submitted for their opinion as to accession. That would involve too much work. The Drafting Committee had thought it would be preferable to call on technical organisations to inform the Committee as to the possibilities of ratifications being increased and accelerated. Some Sections of the Secretariat had rather definite ideas on these subjects, which might possibly interest the Committee.

Secondly, the Committee should not concern itself solely with increasing the number of ratifications ; it should also try to obtain an increase in the number of signatures and accessions.

Thirdly, in view of the marked failure as regards certain conventions, it was necessary to consider whether it would not be advisable to call a meeting of signatory States to investigate the reasons for the abstention of certain countries, and to see whether the conventions might not be suitably and usefully amended.

The Committee, it was suggested, should consist of seven members, though some thought this number excessive. Members of the Committee should have, apart from theoretical knowledge, practical experience either of parliamentary or international affairs. It was recommended that double-column tables should be published. It would be sufficient if these tables were published annually, thus affording delegates to the Assembly, whose time was so limited, speedy and easy means of reference.

M. ANDERSEN (Denmark) thanked the Rapporteur, and was glad to note that the Drafting Committee had agreed on a draft resolution, which fully represented his Government's recommendations. He warmly thanked his colleagues on the Drafting Committee, more especially M. Rolin and Professor Baker.

Professor BAKER (British Empire) said that the British Government considered the question to be one of great importance. He supported the draft resolution.

The draft resolution was adopted.

M. ANDERSEN (Denmark) *was appointed Rapporteur.*

M. POLITIS (Greece) pointed out that, as the resolution involved expenditure, it would have to be sent to the Fourth Committee.

This procedure was adopted.

20. **Amendment of the Covenant of the League of Nations as a Result of the General Adhesion of the Members of the League to the Pact of Paris for the Renunciation of War: Examination of the Draft Resolution proposed by the Sub-Committee** (Annex 14).

The CHAIRMAN submitted the following draft resolution proposed by the Sub-Committee:

"The Assembly:

"Having taken note of the resolution submitted to it on September 6th on behalf of various delegations that, in view of the large measure of acceptance obtained by the Pact signed at Paris on August 27th, 1928, whereby the parties renounced war as an instrument of national policy in their relations with one another, it is desirable that Articles 12 and 15 of the Covenant of the League of Nations should be re-examined in order to determine whether it is necessary to make any modifications therein; and

"Having also taken note of the resolution proposed by the Peruvian delegation on September 10th recommending that a report should be obtained as to the alterations which were necessary in the Covenant of the League in order to give effect to the prohibitions contained in the Pact of Paris:

"Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above;

"Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government, together with such further papers as may be necessary;

"Invites the Council to appoint a Committee of eleven persons to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris. This Committee should meet in the first three months of 1930 and in the course of its labours should take into account any replies or observations which have been received from the Members of the League by that date. The report of the Committee will be submitted to the Members of the League in order that such action as may be deemed appropriate may be taken during the meeting of the eleventh ordinary session of the Assembly in 1930."

M. COT (France), Rapporteur, said that the Committee's discussions showed the extreme importance of bringing the Covenant of the League of Nations into harmony with the General Pact for the Renunciation of War.

It had been thought that, from the judicial standpoint, this was not perhaps necessary. Accordingly, the draft resolution merely suggested the desirability of bringing the provisions of the Covenant of the League of Nations into harmony with the provisions of the Paris Pact.

But while there was no need, juridically, to bring the two instruments into harmony, such a step would, as M. Politis had pointed out, be of great political value. Further, the concordance in question between the two instruments should be clear, not merely to jurists, but to the man in the street as well.

The Sub-Committee had accordingly framed a draft resolution stating, in the first place, that it was necessary that the provisions of the Covenant of the League should no longer leave to Members of the League the right to resort to war when the Paris Pact had taken this right away from States.

There remained the question of procedure. At its first meeting, the Committee had examined Sir Cecil Hurst's draft, and had begun with the first amendment to Article 12. It soon discovered that, although there might be unanimity on the object in view, there were certain difficulties regarding the methods by which that object could be achieved.

Moreover, certain delegates entertained apprehensions which could readily be understood. It was an important and delicate question to bring the Covenant and the Pact into harmony, and the Governments had not had time to study the question, the British delegation's resolution having only been submitted during the present session. They had thought, therefore, that time had

better be given for reflection and for studying the problem in all its aspects and, accordingly, after the first meeting, they had abandoned the idea of submitting during the present year the necessary amendments for bringing the provisions of the Covenant and the Pact into harmony.

It was then proposed to set up some organisation to prepare the work. As time was of importance, the various Governments had not been consulted beforehand. It had been thought that, if the opinions of Governments were taken before laying the question before the preparatory body, it would be impossible to have the amendments in hand by 1930, so that the Committee could examine them afresh and the Assembly adopt them.

Mindful, however, of the desirability of consulting the Governments, the Sub-Committee had decided upon the following procedure : the Secretariat would communicate to all Members of the League the text of the amendments to the Covenant proposed by the British Government, together with all other relative documents — in particular, the Minutes of the Committee. The Council would, for its part, appoint a Committee to meet in about six months' time. The various Governments could, if they so desired, state their views on the question. There could be no doubt that, when it met, the Committee would already be in possession of a number of suggestions from the various countries.

They would thus avoid the delay which would have been inevitable if they had previously consulted the various States Members and waited until all replies were to hand.

It seemed advisable to appoint rather a large Committee. After discussion, the number of members had been fixed at eleven, to be appointed by the Council. It was decided that the Committee's task should be to submit a report on the amendments of the Covenant which it held to be necessary in order to bring the Covenant into line with the Paris Pact.

He hoped that by this means all aspects of the problem would be rapidly examined and that the Assembly, at its next session, might adopt a solution the desirability and importance of which were obvious to all the members of the Sub-Committee.

M. DANDURAND (Canada) said he was doubtless not alone in thinking that the tenth Assembly might adopt the amendments submitted by the British delegation, but, in view of the reception which had been accorded to M. Cot's report, he agreed with its conclusions and accepted the procedure suggested.

M. COT (France), Rapporteur, proposed two slight modifications in the text of the draft resolution. Instead of "The Assembly, having taken note of the resolution", etc., he proposed, "The Assembly, taking note . . . ", etc.

And in the second paragraph: "Taking note also . . . " instead of "Having also taken note . . . ", etc.

These modifications were adopted.

The draft resolution thus amended was adopted.

M. YOSHIDA (Japan) said he supposed it would be desirable that at least one of the members of the Committee referred to in the draft resolution should be a national of a distant country. He therefore suggested that the last paragraph should read : "This Committee should meet during the earlier part of 1930" instead of "in the first three months of 1930".

The CHAIRMAN said he did not see any great difference between the two expressions. The text as proposed had, moreover, been accepted by the Sub-Committee, at which M. Adatci was present. They must not allow the Committee of Jurists to overlap with the Conference for the Codification of International Law, which would, it was hoped, meet on March 13th, 1930.

M. YOSHIDA (Japan) said he did not insist.

M. DUZMANS (Latvia) asked whether it was understood that the report which accompanied the draft resolution would contain the actual text of Sir Cecil Hurst's proposals.

M. COT (France), Rapporteur, replied that the proposed resolution was quite categorical on this point, as it was laid down in paragraph 4 :

> "Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government, together with such further papers as may be necessary".

M. DUZMANS (Latvia) insisted that these texts ought also to be included in the report which, together with the resolution adopted by the Assembly, would be much more widely read than the other documents on the question.

M. COT (France), Rapporteur, proposed that they should be published in the annex to the report.

This proposal was adopted.

The CHAIRMAN proposed that the resolution should be referred to the Fourth Committee.

This proposal was adopted.

The CHAIRMAN then proposed that M. COT, Rapporteur to the Sub-Committee, should be appointed Rapporteur for the Assembly.

This proposal was adopted.

NINTH MEETING.

Held on Tuesday, September 24th, 1929, at 3 p.m.

Chairman : M. SCIALOJA (Italy).

21. Application of Article 19 of the Covenant of the League regarding the Reconsideration of Treaties which have become inapplicable : Draft Resolution proposed by the Sub-Committee (Annex 15).

M. PILOTTI (Italy), Chairman of the Sub-Committee appointed to study the Chinese and Belgian proposals, said that the Sub-Committee had had to do without M. Beneš, who had been unable to attend because he was required by the Third Committee. On the other hand, the Chairman of the First Committee had added a representative of the Bolivian delegation to the Sub-Committee.

He then read the draft resolution (Annex 15) which embodied the Sub-Committee's conclusions. He wished to state that, notwithstanding certain rumours which he deplored, the Sub-Committee had worked in an atmosphere of tranquillity and mutual confidence throughout.

The Sub-Committee had not thought it desirable to propose the appointment of a Committee of Enquiry as suggested in the Chinese proposal. It had not wished to give the impression that Article 19 of the Covenant was a dead letter which it was trying to revive or make more effective. The Sub-Committee had accordingly taken M. Rolin's proposal as its basis. He wished to express his appreciation of the conciliatory spirit in which the Chinese delegate had accepted his view.

He then called the Committee's attention to the following clause in the proposed resolution :

"Noting that the question of the application of Article 19 has previously been studied . . . "

The Sub-Committee had thought that it was a good thing to make some reference to the previous enquiries in order to obviate any misunderstanding. It had wished to state clearly what should be the object of any request that might be made for the application of Article 19, and what might be the object of any resolution the Assembly might pass in consideration of such a request.

The object of the request might be merely that the Assembly should advise the Members of the League to consider a treaty alleged to have become inapplicable or to consider international conditions the continuance of which, it was alleged, might endanger the peace of the world. As regards the object of the Assembly's resolution, it should be merely to give that advice.

The Sub-Committee hoped that the text upon which it had agreed would be accepted by the First Committee.

Lidj ANDARGUÉ MASSAÏ (Abyssinia) reminded the Committee that, when he had supported the Chinese delegation's proposal, he had said that Abyssinia's position was much the same as the international situation of China. He would willingly accept the text proposed by the Sub-Committee but only on condition that the Abyssinian delegation's statement should be embodied in it as follows :

" . . . Appreciating the importance of the points as to which the Chinese delegation feels concern, this concern being shared by the Abyssinian delegation, which is of opinion that Abyssinia is in an international position very similar to that of China."

Abyssinia had in the past concluded treaties the application of which had now become manifestly unjust. By joining the League of Nations, Abyssinia had entered into certain undertakings and assumed certain obligations that she might find herself unable to fulfil owing to the existence of the treaties to which he had just referred. In Abyssinia's view, the responsibility for that situation was not hers. It was those unequal treaties that might prevent her from discharging the obligations she had assumed towards the League of Nations ; that was to say, towards the entire world.

M. YOSHIDA (Japan) said that the first and second paragraphs of the preamble in the proposed resolution as adopted by the Sub-Committee referred to China only, but Article 19 of the Covenant was general and universal in its application and could not be limited to China ; on the other hand, the Chinese contention had been sympathetically and fully considered, and the Chinese proposal would be annexed to the proposed resolution. It seemed, therefore, that those two paragraphs were superfluous : he would therefore propose the deletion of those paragraphs and that the gist of them should be included in the report of the Committee to the Assembly.

M. ROSTWOROWSKI (Poland) stated, on behalf of the Polish delegation, that the latter was prepared to accept and support the text of the resolution as proposed by the Sub-Committee, partly because it embodied as much as was possible of the Chinese delegation's proposal, and partly because it did not enlarge the scope of Article 19 of the Covenant.

M. ANTONIADE (Roumania) made the following statement on behalf of the Roumanian delegation :

"Whereas Article 19 does not in any way interfere with the constant and faithful application of Article 10 of the Covenant ;

"Whereas there are differences between the Chinese delegation's draft resolution and the draft resolution prepared by the Sub-Committee and submitted to the First Committee ;

"Whereas, in its present form, this draft resolution does not exceed the scope of Article 19, but merely repeats its terms ;

"Subject to these declarations ;

"The Roumanian delegation does not oppose the resolution drawn up by the Sub-Committee."

M. FOTITCH (Kingdom of Yugoslavia) made the following statement on behalf of his delegation :

"Since the Chinese delegation's draft resolution involve no amendment to Article 19 and does not refer to any actual case to which the provisions of that article might be applied, the Yugoslav delegation holds that the Assembly can take no decision on the proposal. As, however, the draft resolution prepared by the Sub-Committee does not exceed the scope of Article 19, we see no objection to accepting and voting for it."

M. HEIDRICH (Czechoslovakia) said that, as the draft resolution submitted to the First Committee added nothing to Article 19 of the Covenant and gave no interpretation of that article, the Czechoslovak delegation saw no reason for opposing it.

Count APPONYI (Hungary) said he was entirely in agreement with the Roumanian delegate. Article 19 of the Covenant did not weaken Article 10 ; it strengthened and supplemented it. That being so, and as the *status quo* was completely maintained in the Sub-Committee's report, the Hungarian delegation accepted the Sub-Committee's conclusions.

M. VILLEGAS (Chile) said that the Chilian delegation accepted the draft resolution submitted to the Committee because it asserted the fundamental doctrine which that delegation had always upheld.

The terms of Article 19, which were extremely clear, had been made still clearer by discussions in the Assembly, to which it was needless to refer because mention was made of them in the draft itself.

The draft resolution showed that the Assembly could not itself proceed to reconsider a treaty which was alleged to have become inapplicable, but could merely take a decision in accordance with Article 5 of the Covenant, for the sole purpose of giving the States directly concerned the advice referred to in Article 19, which might be either accepted or declined by the Governments of those States.

It seemed obvious that that action—the only action possible under Article 19—could only be taken "from time to time", as it was categorically put in that article, and when exceptional circumstances had profoundly changed the situation that had existed when a treaty was concluded, thus making its application materially impossible.

These conclusions were entirely in consonance with the Chilian Government's view, and for that reason he accepted the draft.

M. LIMBURG (Netherlands) wished to be quite sure of the meaning of the draft for which he was asked to vote. He therefore asked the Rapporteur to explain the penultimate paragraph, which was as follows :

"Declares that, for an application of this kind to be entertained by the Assembly, it must be drawn up in appropriate terms ; that is to say, in terms which are in conformity with Article 19."

M. GUANI (Uruguay) asked the Rapporteur why it had been said that a Member of the League might "*on its own responsibility* . . . place on the agenda of the Assembly the question whether the Assembly should give advice as contemplated by Article 19 . . . " His impression was that, every time the Members of the Assembly took any definite step, they took it on their own responsibility, and there was therefore no need for that remark.

M. PILOTTI (Italy) first answered the Japanese delegation, which had asked for the first two paragraphs of the resolution to be deleted. The Sub-Committee thought that the first two paragraphs were of some importance in view of the general structure of the resolution. That was why it had placed them first ; a reference in the report would not have the same effect. The examination of Article 19 had, in fact, been undertaken at the instance of the Chinese delegation. The First Committee had had submitted to it not only the Chinese proposal but likewise the explanations given in the form of a declaration by that delegation. That fact must be mentioned in the actual text of the resolution. He therefore urged that the first two paragraphs should be retained.

The Abyssinian delegation was desirous that mention should be made of its declarations in support of the Chinese proposal. There was no reference in the text of the resolution to any declarations made by delegations other than the Chinese. It was not possible to mention Abyssinia unless she had herself made a proposal. However, in order to satisfy her representative, it might be stated in the report that similar declarations to those made by the Chinese delegation had been made by the Abyssinian delegation, but the general structure of the draft resolution should not be interfered with in any way.

In reply to M. Limburg, he said that the last words of the penultimate paragraph, "in conformity with Article 19", meant that the object of the application should be to request the Assembly to advise certain Members of the League to reconsider a treaty which was considered to have become inapplicable. In other words, the request to the Assembly for the application of Article 19 would not be in order unless it were alleged that a treaty had become inapplicable, the reasons being

given ; the only thing the Assembly could be asked to do was to give the advice provided for in that article. The terms of the article in question must not be exceeded, and that was why the words : "in appropriate terms ; that is to say, in terms which are in conformity with Article 19" had been used.

M. Pilotti then referred to the observation submitted by the delegate for Uruguay, who thought that the words "on its own responsibility" were unnecessary. It was obvious that any action taken by a Member of the League in respect of the organs of the League must be regarded as taken on its own responsibility. Consequently, there was no objection to deleting those words. The Sub-Committee had inserted them in the desire to emphasise that a Member making an application in virtue of Article 19 should give due consideration to the weight of the terms of that article, and should realise the importance of the act which it was asking the Assembly to perform.

M. CORNEJO (Peru) said that, as he had been the first to demand, in 1920, the application of Article 19, he had been able to put the Rapporteur's advice into practice. He had given careful consideration to this provision of the Covenant, and could not understand the apprehensions to which it had given rise. Article 19 had no other meaning than that attributed to it in the draft resolution.

He took the opportunity to express the profound sympathy of Peru with the Chinese people, which was one of the most highly civilised in history.

He was happy to note that, after the great war, all the Powers, more especially the United States of America, had considered the means of establishing relations with China on an equitable basis consonant with modern conditions.

He also pointed out that the Paris Pact had had a certain influence on Article 19. If treaties which had become inapplicable were recognised to be so by both parties, no difficulty would arise —the treaties would be abrogated. If, however, one of the parties claimed that the treaty should remain in operation against the will of the other party, there would be a threat of war. The Kellogg Pact prohibited war, and the dispute, which would have to be settled by pacific means, would come under Articles 12, 13 and 15 of the Covenant.

In conclusion, he expressed the hope that, after the resolution had been approved by the Assembly, China and the Powers would arrive at a solution in harmony with the spirit of the League.

Lidj ANDARGUÉ MASSAÏ (Abyssinia) thanked the Rapporteur for his explanations, and said that he had not intended to ask for the draft resolution to be amended. He had merely asked that mention should be made of his declaration, and he accepted the Rapporteur's view.

M. COSTA DU RELS (Bolivia) said that he had had the honour of participating in the Sub-Committee's work, and this work showed that the vitality of Article 19 was greater than ever. That was a cause of great satisfaction to Bolivia, which was glad to support the Sub-Committee's draft. He added, however, that in the present as in the past, and even more in the future, Bolivia would maintain with regard to Article 19 views which were closely connected with problems she regarded as vital.

M. ROLIN (Belgium) said that he gathered from M. Cornejo's argument that, should disputes arise in cases covered by Article 19, there might be an obligation to resort to arbitration. That would be a material error. Where no legal provision was referred to, it was usual for an arbitrator to decide the matter in equity ; but the First Committee had always thought that, unless the parties agreed to employ it for that purpose in special circumstances, arbitration could not be resorted to for the revision of existing positive law.

M. CORNEJO (Peru) said he had not meant to imply that arbitration should be applicable to the cases covered by Article 19. He had not even employed the word "arbitration". He had merely said that, if a dispute arose, that dispute would come under Articles 12, 13 and 15 of the Covenant, because war was no longer permissible ; he fully agreed, however, with M. Rolin that it was not the arbitrators' duty to revise treaties and that, above all, the treaties, of peace, being final, could not be revised.

M. YOSHIDA (Japan) said that, if it was the general desire of the Committee, and if it was agreeable to the delegate of China, he would not put any difficulty in the way of the adoption of the proposed resolution by the Committee.

The draft resolution was put to the vote and adopted.

The CHAIRMAN thanked the Committee for the methodical and systematic way in which it had carried out its work, which had made it possible for a satisfactory resolution to be adopted.

M. CHAO-CHU WU (China) said that the resolution had made a long and arduous journey, passing through the Agenda Committee, the Sub-Committee, the Drafting Committee, and the Plenary Committee, and he hoped that it would safely complete its journey the next day in the Assembly. The resolution was not entirely satisfactory to everybody, but he hoped that all would find some cause for satisfaction in it. It was in that that the Geneva spirit might be said to consist.

The Chinese delegation had done its utmost to meet the wishes of the other delegations. That was the spirit in which it had always participated in the Assembly's work.

He hoped that his colleagues would agree that, in adopting this resolution, they had made some contribution and come a step nearer to the study of Article 19.

On behalf of the Chinese delegation, he thanked the members of the Committee for the tributes they had paid to his country. He thanked also the members of the Plenary Committee, the Drafting Committee and the Sub-Committee for their zealous co-operation, and expressed his gratitude to the impartial and learned Chairman of the Committee.

M. PILOTTI (Italy) *was appointed Rapporteur to the Assembly.*

The CHAIRMAN pronounced the meetings of the First Committee closed.

A.I/1.1929.

ANNEX 1.

PROPOSALS BY THE CHAIRMAN IN REGARD TO THE AGENDA OF THE COMMITTEE.

I think the Committee might take advantage of the present meeting to consider certain questions regarding its agenda. I venture to call attention to the following points :

1. Question of the Revision of the Statute of the Permanent Court.

The Jurists' report which has been referred to the Committee (see Annex 5) contains certain financial proposals in Section 14, pages 76 and 77 (see also the text of these proposals on pages 81 and 82).

On the suggestion of the Jurists, the Council asked the Supervisory Commission to examine this part of their report. The Supervisory Commission's conclusions, which are in conformity with the Jurists' suggestions, are contained in its general report, which is referred to the Fourth Committee. In referring the Jurists' report to us, the President of the Assembly contemplated that we would leave the Fourth Committee to deal with the financial questions involved.

I propose that we should agree to this course, it being understood that our secretariat will keep the Fourth Committee informed of the progress of our work, so as to ensure that the financial recommendations which that Commission makes to the Assembly take into consideration the decisions at which we may arrive.

There remains for us to consider the amendments proposed in the Statute of the Court and a draft vote proposed for adoption by the Assembly regarding the obtaining of nominations of candidates for election to the Court, the text of which appears in Annex 5 (page 71).

The amendments are on the agenda of the Conference which is meeting to-morrow, at which all the Governments represented on this Committee are also entitled to be represented, together with the Government of Brazil in its capacity of a party to the Court's Statute. I propose as the most convenient course, therefore, that we should not take up this part of our work until the Conference has examined the proposed amendments to the Statute. We would invite the Conference, through our secretariat, to proceed as rapidly as possible and inform us of the result of its labours, in order that we may then consider the question from the points of view which specially interest the Assembly. This procedure will, I hope, avoid any duplication of discussion, while entirely safeguarding the position of the Assembly in the matter.

2. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court.

My colleagues will have seen from the note circulated by the Secretary-General to the Assembly that the Council, by a resolution adopted on August 31st, 1929, has invited the Conference to which I have already referred to consider also the recommendations and draft Protocol drawn up by the Committee of Jurists on this subject, if they meet with the approval of the Assembly.

This procedure, which I had the honour to propose to the Council, has for its object to secure the opening of the necessary Protocol for signature before the close of the Assembly if the Jurists' recommendations, which have already been approved by the Council, are also approved by the Assembly and by all the interested Governments represented at the Conference. I suggest that the First Committee should take up this question at its next meeting and should consider it from the point of view whether the Jurists' recommendations are satisfactory to the League. The principal point is evidently whether those recommendations furnish a solution for the difficulty which has arisen with regard to advisory opinions.

3. Progressive Codification of International Law.

This subject comprises three items.

The first two—preparatory work for the Codification Conference, and the question of convening the Committee of Experts next year—hardly raise any question of principle. The Committee might perhaps, at its next meeting, consider appointing a Rapporteur who would study these questions and call the Committee's attention to any points which it may have to decide (Annex 8).

As regards the third item—work of the Committee of Three Jurists (Annex 9)—I think an exchange of views within the Committee may be desirable before we appoint a Rapporteur.

4. Proposal of the Government of Finland to confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal.

This is an important question, in regard to which I think the Committee should proceed to an exchange of views before appointing a Rapporteur.

5. Financial Questions.

The last two items of our agenda which I have mentioned involve financial questions.

The original budget circulated to the Members of the League contains a merely nominal credit for a meeting of the Committee of Experts for the Progressive Codification of International Law. According to the decision which we take, the Fourth Committee must be asked either to suppress this credit or to raise it to a sufficient figure.

The supplementary budget contains a credit of 20,000 francs for the purpose of publishing general conventions in the form of a code on the lines laid down in the report of three jurists. It also contains a credit of 40,000 francs to enable the Council to appoint a Committee of Jurists to examine the questions raised in the Finnish Government's proposal, if the Assembly should decide to refer the subject to the Council as proposed by that Government. These credits are inserted in the supplementary budget in virtue of the new articles inserted last year by the Assembly in the Financial Regulations (Articles 16*a* to 16*e*). The First Committee is required by those articles to consider these two items of the supplementary budget and to adapt them to any proposals which it actually makes to the Assembly. If our recommendations involve the adoption of credits, they will be referred to the Fourth Committee, after examination of the proposed credits by the Supervisory Commission. It is provided that the Supervisory Commission must in such case receive our proposals within fifteen days from the opening of the Assembly ; if not, those proposals are to be automatically adjourned to the Assembly's next session.

It is therefore necessary that we should make every effort to deal with the above-mentioned subjects, or at least with the last two of them, as rapidly as may be possible.

A. I/3. 1929.

ANNEX 2.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

LETTER DATED SEPTEMBER 5TH, 1929, FROM THE PRESIDENT OF THE CONFERENCE FOR THE REVISION OF THE STATUTE OF THE COURT TO THE CHAIRMAN OF THE FIRST COMMITTEE OF THE ASSEMBLY.

[*Translation.*]

The Conference, which has been invited to deal, among other questions, with the question of the accession of the United States of America to the Statute of the Permanent Court of International Justice, has accepted unanimously and without alteration the draft Protocol on this matter drawn up by the Committee of Jurists which met last March (see Annex 3, Appendix III).

I have the honour to inform you that the Conference has decided to refer the said Protocol to the First Committee of the Assembly in order that the latter may be in a position to take the concurrent action of itself finally adopting this instrument.

(Signed) VAN EYSINGA,
President of the Conference.

Official N° : A. II. 1929. V *(Extract)*

ANNEX 3.

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

Rapporteur : Sir Cecil HURST (British Empire).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It should also be communicated to the Assembly, in which the proposal for the appointment of this Committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action taken by the Assembly should be communicated to the signatory States which are called upon to determine whether or not to sign the new Protocol now proposed.

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

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

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

Appendix I.

LETTER FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE SECRETARY-GENERAL OF THE LEAGUE.

Washington, February 19th, 1929.

I have the honour to refer to the communication of this Department dated March 2nd, 1926, informing you of the resolution of the Senate of the United States setting forth the conditions and understandings on which this Government might become a signatory to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and to inform you that I am to-day transmitting to each of the signatories of the Protocol a communication which, after referring to my previous communication on the subject, reads as follows :

"Five Governments unconditionally accepted the Senate reservations and understandings; three indicated that they would accept but have not formally notified my Government of their acceptance ; fifteen simply acknowledged the receipt of my Government's note of February 12th, 1926 ; while twenty-four have communicated to my Government replies as hereinafter indicated.

"At a Conference held in Geneva in September 1926 by a large number of the States signatories to the Protocol of Signature of the Statute of the Permanent Court of International Justice, a Final Act was adopted in which were set forth certain conclusions and recommendations regarding the proposal of the United States, together with a preliminary draft of a Protocol regarding the adherence of the United States, which the Conference recommended that all the signatories of the Protocol of Signature of December 16th, 1920, should adopt in replying to the proposal of the United States. Twenty-four of the Governments adopted the recommendations of the Conference of 1926 and communicated to the Government of the United States in the manner suggested by the Conference. By these replies and the proposed Protocol attached thereto, the first four reservations adopted by the Senate of the United States were accepted. The fifth reservation was not accepted in full, but so much of the first part thereof as required the Court to render advisory opinions in public session was accepted, and the attention of my Government was called to the amended Rules of the Court requiring notice and an opportunity to be heard.

"The second part of the fifth reservation therefore raised the only question on which there is any substantial difference of opinion. That part of the reservation reads as follows :

> " . . . Nor shall it (the Court), without the consent of the United States, entertain and request for any advisory opinion touching any dispute or question in which the United States has or claims an interest."

"It was observed in the Final Act of the Conference that, as regards disputes to which the United States is a party, the Court had already pronounced upon the matter of disputes between a Member of the League of Nations and a State not a Member, and reference was made to Advisory Opinion No. 5 in the Eastern Karelia case in which the Court held that it would not pass on such a dispute without the consent of the non-Member of the League. The view was expressed that this would meet the desire of the United States.

"As regards disputes to which the United States is not a party but in which it claims an interest, the view was expressed in the Final Act that this part of the fifth reservation rests upon the presumption that the adoption of a request for an advisory opinion by the Council or the Assembly requires a unanimous vote. It was stated that, since this has not been decided to be the case, it cannot be said with certainty whether in some or all cases a decision by a majority may not be sufficient but that, in any case where a State represented on the Council or in the Assembly would have a right to prevent by opposition in either of these bodies the adoption of a proposal to request an advisory opinion from the Court, the United States should enjoy an equal right. Article 4 of the draft Protocol states that, 'should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council,' and that 'the manner in which the consent provided for in the second part of the fifth reservation is to be given' should be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

"The Government of the United States desires to avoid, in so far as may be possible, any proposal which would interfere with or embarrass the work of the Council of the League of Nations, doubtless often perplexing and difficult, and it would be glad if it could dispose of the subject by a simple acceptance of the suggestions embodied in the Final Act and draft Protocol adopted at Geneva on September 23rd, 1926. There are, however, some elements of uncertainty in the bases of these suggestions which seem to require further discussion. The powers of the Council and its modes of procedure depend upon the Covenant of the League of Nations, which may be amended at any time. The ruling of the Court in the Eastern Karelia case and the Rules of the Court are also subject to change at any time. For these

reasons, without further enquiry into the practicability of the suggestions, it appears that the Protocol submitted by the twenty-four Governments in relation to the fifth reservation of the United States Senate would not furnish adequate protection to the United States. It is gratifying to learn from the proceedings of the Conference at Geneva that the considerations inducing the adoption of that part of Reservation 5 giving rise to differences of opinion are appreciated by the Powers participating in that Conference. Possibly the interest of the United States thus attempted to be safeguarded may be fully protected in some other way or by some other formula. The Government of the United States feels that such an informal exchange of views as is contemplated by the twenty-four Governments should, as herein suggested, lead to agreement upon some provision which, in unobjectionable form, would protect the rights and interests of the United States as an adherent to the Court Statute, and this expectation is strongly supported by the fact that there seems to be but little difference regarding the substance of these rights and interests."

(Signed) Frank B. KELLOGG.

Appendix II.

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

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

Therefore be it

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

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

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

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

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

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

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

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

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

Official No : A. 49 (Annex) 1929. V.

Appendix III.

DRAFT PROTOCOL.

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

Article 1.

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

Article 2.

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

Article 3.

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

Article 4.

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

Article 5.

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

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

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

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

Article 6.

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

Article 7.

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

The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

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

Article 8.

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

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

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

DONE at Geneva, the day of September, nineteen hundred and twenty-nine, in a single copy, of which the French and English texts shall both be authoritative.

A. I/6. 1929.

ANNEX 4.

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

LETTER FROM THE PRESIDENT OF THE CONFERENCE FOR THE REVISION OF THE STATUTE OF THE COURT TO THE CHAIRMAN OF THE FIRST COMMITTEE.

Geneva, September 12th, 1929.

I have the honour to inform you that the Conference convened in accordance with the Council's resolution of June 12th, 1929, has examined the report of the Jurists regarding the revision of the Statute of the Permanent Court of International Justice. It has also taken into consideration a suggestion made by the delegate of Brazil, in the letter of which a copy is enclosed, that it should be made possible for any State which has accepted the Statute of the Court, but is not a Member of the League, to participate in the election of the members of the Court.

As a result of this examination, the Conference has adopted, with the modifications indicated below, the proposals of the Jurists for amending the Court's Statute, as set out on page 11 of document A.9. 1929. V.

The new text of *Articles* 3 *and* 8 has been adopted as proposed by the Committee of Jurists.

New text of *Article* 13. The last line is to read: "This *last* notification makes the place vacant."

The new text of *Articles* 14 *and* 15 has been adopted as proposed by the Committee of Jurists.

New text of *Article* 16. Adopted as proposed by the Jurists, on the understanding that the words "occupation of a professional nature" are to be interpreted in the widest sense, *i.e.*, cover, for example, such an activity as being director of a company.

New text of *Article* 17. Adopted as proposed by the Jurists, with the omission in the first paragraph of the words "of an international nature".

New text of *Article* 23. Adopted as proposed by the Jurists with the following changes :

The words "at the end of each year for the following year" at the end of the first paragraph are omitted.

In the second paragraph, the words "not including the time spent in travelling" are added at the end of a paragraph.

The new text of *Articles* 25, 26, 27, 29, 31, 32, the change in the French text of *Article* 38, the new text of *Articles* 39 *and* 40, and the change in the English text of *Article* 45 are adopted as proposed by the Jurists.

The new Chapter IV of the Statute—Advisory Opinions—new Articles 65 to 68, has been adopted in the following form :

"*New Article* 65.

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

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

"*New Article* 66.

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

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

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

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

"*New Article* 67.

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

"*New Article* 68.

"In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases, to the extent to which it recognises them to be applicable".

The Conference associated itself with the following observations formulated in the course of its discussion with reference to the new Article 68 :

"In contentious cases, where a decision has to be given, the procedure naturally involves hearing both parties ; the two parties set out their arguments and observations, and the Judges are thus provided with all the material necessary for reaching a conclusion. It must be the same in the case of advisory opinions.

"When an advisory opinion is asked, it is really indispensable, if the opinion is to carry any weight, if it is to be truly useful, that in the same manner as in a contentious case all the material necessary for reaching a conclusion should be placed before the person consulted ; he requires to know the arguments of both parties.

"This is the reason for providing that the procedure with regard to advisory opinions shall be the same as in contentious cases."

As the result of the suggestion of the Brazilian delegate, the Conference has adopted amendments to Articles 4 and 35 of the Statute of the Court, as the result of which these articles will assume the following form :

"*New text of Article* 4.

"The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

"In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

"The conditions under which a State which has accepted the Statute of the Court, but is not a Member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

"*New text of Article* 35.

"The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

"The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

"When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court."

In addition to the amendments proposed by the Jurists, the Conference considered their proposal for the adoption of a recommendation regarding the nomination of candidates by the national groups. On this subject it adopted the following resolution :

"The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that, to the nominations, there should be attached a statement of the careers of the candidates justifying their candidature.

"The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups."

For the purpose of bringing the amendments into force, the Conference has adopted the enclosed draft Protocol, which will be completed by an Annex setting out the text of the amendments in the manner shown in the skeleton Annex attached to the draft.[1]

The Conference associates itself with the following observations made by its Drafting Committee upon the Draft Protocol :

"As regards the special position of the United States, it may perhaps prevent misunderstanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that Power, namely :

"The Protocol of Signature of 1920 ;

"The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court ; and

"The new Protocol relating to the amendment of the Statute.

"There could, of course, be no question of the United States being a party to the unamended Statute while the other States concerned were parties to the Statute in its amended form, but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments (see paragraph 7 of the Protocol), and while it is of course not within the province of the Drafting Committee, or the Conference, to anticipate what procedure the United States may follow, it may be hoped that the United States will, in due course, sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States, at the moment when it signs the Protocol dealing with its reservations, to sign also the Protocol of Signature of 1920 and that relating to the amendments, subject to the eventual entry into force of the first-mentioned agreement."

While recognising that it is not formally within its province to make any proposals as to the action to be taken by the Assembly, the Conference has necessarily been obliged to ask itself what form the Assembly's action will take.

It has found it convenient to give a precise shape to its ideas on this subject by drawing up a draft resolution in conformity with the terms of the draft Protocol which it has adopted. It has requested me to transmit this text also to you in the hope that it may serve to facilitate the consideration of the question by the Assembly.

The Conference anticipates that the Assembly, if it is in agreement with the results of the work of the Conference, will, by a suitable resolution, adopt, for its part, the amendments to the Statute of the Court and the draft Protocol relating thereto.

In this event, there will be no obstacle to the opening of the Protocol for signature so soon as it can be prepared in the proper form.

The same will be the case with regard to the Protocol relating to the accession of the United States of America to the Statute of the Court, if that Protocol is adopted by the Assembly.

The Conference has closed its session, subject to its being possible for it to be convened again by its President, if need arises. It is understood that, if the draft Protocols are adopted by the Assembly in the form given to them by the Conference, the Secretary-General will proceed without delay to present them to the delegates for their signature.

I am addressing an identical letter to the President of the Assembly.

(*Signed*) W. J. M. VAN EYSINGA,
President of the Conference.

Appendix I.

LETTER OF SEPTEMBER 10TH, 1929, FROM M. M. DE PIMENTEL BRANDÃO, DELEGATE OF BRAZIL, TO THE PRESIDENT OF THE CONFERENCE.

My Government, which is taking part in the Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, would be glad that this opportunity should be taken to regularise, in a clear and precise manner, the situation of Brazil in regard to the Permanent Court of International Justice.

I have already informed the Secretary-General of the League of Nations of my Government's

[1] In this volume, the text of the Annex to the Protocol is reproduced in its final form.

desire to contribute to the expenses of the Court in a proportion to be agreed. On the other hand, however, important elections are due to take place next year and it seems equitable that Brazil should be able to participate in them on a footing of equality with the other signatory States, whether Members of the League or non-Members.

The existing text of the Statute seems, however, not to contemplate such participation. I would be grateful if you would be so good as to ask the Conference whether it would not be appropriate to elucidate the Statute in such manner as to remedy this situation.

(*Signed*) MARIO DE PIMENTEL BRANDÃO,
Delegate of Brazil.

Appendix II.

DRAFT PROTOCOL RELATING TO THE AMENDMENTS TO BE MADE IN THE STATUTE OF THE PERMANENT COURT.

1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September. . . 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

DONE at Geneva, the . . . day of September nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

Annex to the Protocol of September 1929.

AMENDMENTS TO THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New text of Article 3.

The Court shall consist of fifteen members.

New text of Article 4.

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

The conditions under which a State which has accepted the Statute of the Court but is not a member of the League of Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

New text of Article 8.

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

New text of Article 13.

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

They may be re-elected.

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

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

This last notification makes the place vacant.

New text of Article 14.

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

New text of Article 15.

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

New text of Article 16.

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

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

New text of Article 17.

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

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

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

New text of Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling.

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

New text of Article 25.

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

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

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

New text of Article 26.

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

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

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

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

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

New text of Article 27.

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

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

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

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

New text of Article 29.

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

New text of Article 31.

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

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

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

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

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

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

New text of Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

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

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

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

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

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

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

New text of Article 35.

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

The French text of Article 38, No. 4, is replaced by the following provision :

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

[There is no change in the English text.]

Articles 39 and 40 are replaced by the following provisions :

New text of Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case

shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

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

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

New text of Article 40.

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

The Registrar shall forthwith communicate the application to all concerned.

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

The English text of Article 45 is replaced by the following provision :

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

[There is no change in the French text.]

The following new chapter is added to the Statute of the Court :

CHAPTER IV. — ADVISORY OPINIONS.

New Article 65.

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

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

New Article 66.

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

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

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

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

New Article 67.

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

New Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognises them to be applicable.

Appendix III

DRAFT RESOLUTION.

1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly

in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court.

2. The Assembly takes note of the following recommendation adopted by the Conference :

"The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature."

Official No : A. 9. 1929. V. [C. A. S. C. I.]

ANNEX 5.

REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

REPORT ADOPTED BY THE COMMITTEE OF JURISTS.

Rapporteurs : M. FROMAGEOT (France) and M. POLITIS (Greece).

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

"The Assembly,

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

"Deeming it advisable that, before the renewal of the term of office of the members of the Court in 1930, the present provisions of the Statute of the Court should be examined with a view to the introduction of any amendments which experience may show to be necessary ;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Composition of the Court.

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

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

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

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

"*The Court shall consist of fifteen members.*"

2. Election of Judges.

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

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

3. Resignation of a Judge.

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

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

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

"*They may be re-elected.*

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

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

"*This notification makes the place vacant.*"

4. Filling of Occasional Vacancies.

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

juridical systems—while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

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

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

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

5. New Article 15.

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

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

6. Functions and Occupations incompatible with Membership of the Court.

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

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

Article 16 would thus read as follows :

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

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

7. Article 17.

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

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

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

Article 17 would therefore read as follows :

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

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

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

8. Permanent Functioning of the Court.

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

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally encountered

serious practical difficulties. The repeated holding of extraordinary sessions has, in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

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

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

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

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

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

Article 23 would accordingly be redrafted as follows :

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

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

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

9. Manner of forming the Court.

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

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

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

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

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

The new Article 25 would be worded as follows :

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

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

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

10. Special Chamber for Labour Cases.

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

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

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

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

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

Article 26 would accordingly be drafted as follows :

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

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

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

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

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

11. Special Chamber for Transit and Communications Cases.

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

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

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

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

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

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

12. Chamber for Summary Procedure.

As indicated below in connection with Article 31, the Committee considered that, as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well as to any other form of the Court. It will therefore be necessary to bring Article 29 into harmony with the new draft of Article 31 and for this purpose to make the Chamber for Summary Procedure consist of five judges instead of three. Provision must also be made, as in the case of the other special Chambers (Articles 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit. Article 29 would therefore read as follows :

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

13. National Judges.

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

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

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

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

The new Article 31 would read as follows :

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

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

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

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

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

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

14. Salaries of Judges.

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

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

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

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

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

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

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

"*The members of the Court shall receive an annual salary.*

"*The President shall receive a special annual allowance.*

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

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

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

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

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

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

Draft Resolution concerning Salaries.

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

"*President :*	Dutch florins
Annual salary.	45,000
Special indemnity.	15,000

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

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

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

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

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

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

16. AMENDMENT TO NO. 4 OF ARTICLE 38.

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

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

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

17. PROCEDURE.

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

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

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

18. COMMUNICATION OF APPLICATIONS.

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

Article 40, paragraph 3, would then read as follows :

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

19. DIRECTION OF THE HEARING.

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

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

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

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

20. ADVISORY OPINIONS.

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

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

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

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

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

"CHAPTER IV. — ADVISORY OPINIONS.

"Article 65.

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

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

"Article 66.

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

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

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

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

"Article 67.

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

"Article 68.

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

* * *

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

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

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

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

If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the States mentioned in the Annex to the Covenant and to transmit them to the Assembly ; it would be desirable that, if the

amendments secure general approval, the Protocol accepting them which must be concluded between the parties which have ratified the 1920 Statute should be made in the course of next Assembly.

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

Appendix.

TEXTS PROPOSED BY THE COMMITTEE.

A. Provisions of the Statute of the Court.

New Article 3.

The Court shall consist of fifteen members.

New Article 8.

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

New Article 13.

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

They may be re-elected.

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

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

This notification makes the place vacant.

New Article 14.

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

New Article 15.

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

New Article 16.

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

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

New Article 17.

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

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

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

New Article 23.

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

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

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

New Article 25.

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

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

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

New Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and

the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

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

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

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

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

New Article 27.

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

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

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

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

New Article 29.

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

New Article 31.

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

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

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

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

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

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

New Article 32.

The Members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

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

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

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

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

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

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

New Article 38, No. 4.

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

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

New Article 39.

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

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

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

New Article 40.

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

The Registrar shall forthwith communicate the application to all concerned.

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

New Article 45.

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

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

Chapter IV. — Advisory Opinions. [1]

New Article 65.

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

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

New Article 66.

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

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

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

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

New Article 67.

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

New Article 68.

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

B. Recommendations and Draft Resolutions.

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

The Secretary-General, in issuing the invitations provided for in Article 5 *of the Statute, will*

[1] This subdivision (Chapter IV) is entirely new.

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

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

Draft Resolution concerning Salaries.

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

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

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

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

Official No : A 21. 1929. V.

ANNEX 6.

PROPOSAL OF THE GOVERNMENT OF FINLAND TO CONFER ON THE PERMANENT COURT OF INTERNATIONAL JUSTICE JURISDICTION AS A TRIBUNAL OF APPEAL IN RESPECT OF ARBITRAL TRIBUNALS ESTABLISHED BY STATES.

[*Translation.*]

Since the date at which the organisation of international jurisdiction in accordance with generally recognised principles was begun, consideration has been given to the need of being able to proceed in proper cases to the review of an award. The necessity for review of a wrong decision by fresh proceedings is so inherent in the law of procedure that one is not willing entirely to renounce the application of this principle in the case of an international dispute. Even the period preceding the Peace Conferences furnishes some examples of rules establishing a tribunal of revision. Thus the draft Arbitration Treaty between Great Britain and the United States of America which was signed on January 11th, 1897, but remained unratified, provides for claims exceeding £100,000 a tribunal of review, or rather of appeal, by stipulating that, if the members of the tribunal should not be unanimous, either contracting party could require the establishment of a new arbitral tribunal subject to the rules laid down in the Treaty (Article 5 of the Treaty : "... if not unanimous, either of the High Contracting Parties may, within six months from the date of the Award, demand a review thereof. In such a case, the matter in controversy shall be submitted to an Arbitral Tribunal, consisting of five jurists of repute, no one of whom shall have been a member of the Tribunal whose Award is to be reviewed . . .") (— De Martens, *Nouveau Recueil Général des Traités*, 2me série, XXVIII).

It will be remembered that, at the first Peace Conference, particular consideration was given to the question whether it would be possible to find an authority which could have jurisdiction to annul a wrong award. Neither the first nor the second Peace Conference, however, felt able to set up a superior court with jurisdiction over cases in which its competence has been exceeded or other mistakes have been made by an arbitral tribunal. The Convention for the Pacific Settlement of International Disputes stipulates (Article 73) that the tribunal is authorised to declare its competence in interpreting the *compromis* as well as the other papers and documents which may be involved in the case. It further stipulates (Article 81) that the arbitral award duly pronounced and notified to the agents of the parties settles the dispute definitively and without appeal. The Convention confines itself (Article 83) to allowing revision of the award by the tribunal, which gave it, in the event of discovery of some new fact of a decisive character. This right, moreover, must have been specially reserved in the *compromis*.

The establishment of the Permanent Court of International Justice for the purpose of creating a universal court has provided, so to speak, the institution necessary for the creation of a supreme jurisdiction, *i. e.*, a court of superior jurisdiction over international arbitral tribunals. The

fundamental rules governing the Court do not, however, at present give it this character. The Covenant has been careful to establish strict co-ordination between "arbitral settlement" and "judicial settlement" of international disputes. Only in exceptional cases is the Court called upon to act as a superior tribunal. One may quote in this connection the provisions of Articles 414 to 418 of the Treaty of Versailles (Part XIII, Labour); in a sense, the Court, through its jurisdiction to confirm, amend or annul the "recommendations" of the Commission of Enquiry, has under these provisions to perform the functions of a real appeal tribunal.

There is, indeed, nothing to prevent States from binding themselves by a convention to make the Court a tribunal of appeal, or review, in respect of any arbitral tribunal provided for in their arbitration treaties. It is thus always possible that States may find it expedient to give the Court the functions of a superior tribunal. It seems, however, desirable to make a special examination of the question whether it would be well to give such jurisdiction to the Court in a general fashion and subject to a right of all parties to agree otherwise in the particular conventions which they conclude with one another.

Is there, then, a real need for a special tribunal to review arbitral awards ? It is mentioned above that, under Article 83 of the Convention for the Pacific Settlement of International Disputes, parties may reserve the right to require revision of an award. In this case, the request for revision must, in the absence of a stipulation to the contrary, be addressed to the tribunal which gave the award, and the request may only be founded on the discovery of a new fact. In like manner, Article 61 of the Court's Statute contemplates revision of a judgment by the Court itself.

Taking account, on the one hand, of this existing possibility of revision of an arbitral sentence or a judgment by the tribunal which gave it, and, on the other hand, of the difficulty of repeating the evidence before another tribunal, it would not seem that there could be any question of establishing an appeal tribunal in the proper sense of the term. There is a special circumstance which points in the same direction. It is true that the Court's competence comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force (Article 36, paragraph I, of the Statute), and that accordingly even disputes which are of a "political" rather than a juridical character can be referred to the Court. It is equally true that some conventions for the pacific settlement of international disputes expressly prescribe that all disputes of whatever character they may be shall be submitted to the Court. Nevertheless, it cannot be contested that the Court's real duty is to settle disputes of a juridical character and that to examine and decide cases *ex æquo et bono* is only a secondary function of the Court. It would not, therefore, be very desirable to give the Court the function of re-examining a case in its entirety, which is the function of a court of appeal.

What is material is that any dispute which may be raised in regard to an arbitral award duly rendered, on the ground of the tribunal having been entirely without jurisdiction or having exceeded its powers, should be capable of being investigated by an authority recognised to have superior jurisdiction. Whether a further step should be taken and the Court, in the capacity of a tribunal of review, should be called upon to examine whether the tribunal whose award was brought before it had correctly applied the rules of law or the principles of justice and equity is a question which might be reserved for later consideration after more experience in the field of international jurisdiction has been acquired.

To confer upon the Court functions in accordance with the principles above indicated would be entirely in harmony with the general character of the Court. The obligation to submit a dispute to arbitration is always in final resort based on a treaty. Accordingly, the question whether a tribunal may have exceeded its powers, or even have been entirely without jurisdiction, always raises a question of interpretation of a treaty. It is at the same time a question of international law. The purely judicial function of a tribunal of review would, therefore, be entirely compatible with the essential attributions of the Court.

The undertaking to recognise the Court as a tribunal of review in respect of arbitral tribunals established by the States concerned could be assumed by signing a special protocol. The optional provision to be contained therein would import recognition of this jurisdiction of the Court, either merely as regards subsequent arbitration agreements or perhaps as regards agreements already concluded unless the contrary should be expressly stipulated.

* * *

In view of the above considerations, I beg that you will be so good as to place on the agenda of the next Assembly the following draft resolution :

"The Assembly,

"Desirous of developing and fortifying the existing system of pacific settlement of international disputes ;

"Recognising the special authority of judgments of the Permanent Court of International Justice :

"Requests the Council to examine the question whether, and to what extent, there might be conferred upon the Permanent Court of International Justice jurisdiction as a court of review in respect of arbitral tribunals established by States, and to submit to the Assembly at a later session such proposals as it may desire to make."

(*Signed*) H. J. PROCOPÉ,
Finnish Minister for Foreign Affairs.

May 13th, 1929.

ANNEX 7.

APPEAL TO THE PERMANENT COURT OF INTERNATIONAL JUSTICE FROM DECISIONS OF OTHER INTERNATIONAL TRIBUNALS

MEMORANDUM PRESENTED BY M. RUNDSTEIN TO THE COMMITTEE OF JURISTS ON THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Note by the Secretariat.

The proposal of the Government of Finland, which has been placed before the Assembly in the document A.21.1929.V. and referred to the First Committee, deals with a question which was also discussed in a memorandum presented by M. Rundstein to the Committee of Jurists on the Statute of the Court of which he was a member. This memorandum was brought by the Committee to the attention of the Council, which, at its last session, instructed the Secretary-General to study the question. It was also communicated to the Members of the League at the same time as the reports adopted by the Committee.

It may be convenient that the memorandum in question should be available to the First Committee for reference. Accordingly, the Secretariat ventures to circulate the text herewith, together with certain observations which were handed to the Secretary-General by the representative of Poland on the Council, M. Zaleski.

MEMORANDUM SUBMITTED TO THE COMMITTEE OF JURISTS BY M. RUNDSTEIN, MEMBER OF THE COMMITTEE.

[*Tranlation.*]

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

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

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

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

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

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

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

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

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

3. The appeal will lie as regards :
   (*a*) Violation of a rule of international law ;
   (*b*) Exceeding of its competence by the tribunal.

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

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

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

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

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

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

OBSERVATIONS ON M. RUNDSTEIN'S PROPOSAL COMMUNICATED TO THE SECRETARY-GENERAL BY M. ZALESKI, REPRESENTATIVE OF POLAND ON THE COUNCIL, ON JUNE 13TH, 1929.

[*Translation.*]

The note presented to the Committee of Jurists by M. Rundstein (see reports adopted by the Committee of Jurists on the Statute of the Permanent Court of International Justice at its session held at Geneva from March 11th-19th, 1929) calls for the following observations :

It is undeniable that, when submitting to arbitration or judicial settlement of disputes, States are free to have recourse to a special tribunal if they are not bound by general provisions conferring exclusive jurisdiction upon the Permanent Court of International Justice. Moreover, as that Court has no jurisdiction in the case of disputes of an international character in which private persons have direct access to international jurisdiction, it is plain that such special disputes can only be brought before judicial organs lying outside the jurisdiction of the Permanent Court. Experience shows that bilateral conventions dealing with arbitral or judicial settlement of international disputes very frequently pronounce for selection of some special jurisdiction or *ad hoc* tribunal. In like manner, the General Act drawn up by the ninth Assembly contemplates the possibility of an agreement of the parties for selection of an arbitral tribunal without possibility of bringing the case to the Permanent Court.

This free choice of States can clearly not exist unless they are not bound by express provisions as to jurisdiction of the Permanent Court, either in virtue of the Optional Clause or in virtue of relevant provisions in conventions to which they are parties.

If in the above-mentioned cases one of the parties contests the award given by the special tribunal, alleging either a violation of international law or that the tribunal has gone beyond its powers, the question of execution of the award may lead to unfortunate disputes. Purely legal questions may come to be transformed into questions of a political nature and affect both international relations and good understanding between nations.

To avoid such consequences, which are often very injurious to the normal and pacific development of relations between States, it would be desirable to provide an effective remedy so as to eliminate the eventuality which leads to legal disputes provoking political conflicts.

It is evident that a dispute in regard to the execution of an award, which in the opinion of one of the parties is invalidated by an essential defect, can be brought to the Permanent Court by a special submission *(compromis)* if the interested parties agree to adopt such a solution. Unquestionably, in the case mentioned, a point of international law is at issue and the Permanent Court will *prima facie* have jurisdiction under the express provisions of Article 36, paragraph 1, of its Statute. It would be a matter for congratulation if, in accordance with the spirit of Article 12 of the Covenant, States were disposed to resort to this remedy.

But the question arises whether it would not be advantageous to facilitate for States recourse to such a solution, which would finally remove all misunderstandings and which, by rendering impossible their transformation into political conflicts, would permit strictly legal disputes to retain their essential character.

To attain this highly desirable object, it would perhaps be possible to have drawn up a draft general declaration or a protocol extending the jurisdiction of the Permanent Court in its capacity of a court of appeal.

Such declaration could only have a *strictly optional* character.

It would operate only if the parties accepted it for all disputes which, under the relevant conventions, were not within the jurisdiction of the Permanent Court. Moreover, even while accepting the declaration, States would always be free to agree to exclude the jurisdiction of the Court as a court of appeal for particular special disputes (a well-defined category of disputes) or for all the disputes contemplated in a particular convention for arbitration or judicial settlement.

The declaration would thus be optional in a double sense ; it would not operate if the parties, though they had accepted it in general, excluded its application for certain disputes. This latter power would be of great importance in the case of arbitral settlement of questions in respect of which the parties were not in dispute as to their respective rights. In fact, in the case of disputes not of a strictly legal character, the award of an arbitral tribunal acting *ex æquo et bono* would not generally be suitable for an appeal procedure. The parties, of course, may be of a different opinion, and if, when accepting the declaration, they do not decide to exclude the jurisdiction of the Permanent Court, the latter will, if the case arises, have jurisdiction to the full extent.

The procedure for revision provided in the regulations of arbitral tribunals would preferably not be comprised in a general declaration such as is suggested. A general provision on this subject might be inopportune, having regard to the extraordinary and exceptional nature of the remedy in question. It would therefore be necessary for the interested parties to make a special declaration for the purpose (Article 5 of M. Rundstein's draft).

It will be seen that the acceptance of a general declaration would be equivalent to the establishment of a general submission to the jurisdiction (which at the same time would have an optional character), which would enlarge the jurisdiction of the Permanent Court.

Believing that the arguments set out by M. Rundstein are extremely important for the

development and progress of international justice, and accordingly for the interests of peace, I am of opinion that the establishment of a draft on the subject might be considered by the Council.

The problem would certainly demand preliminary and careful study, since M. Rundstein's arguments contain only basic and general propositions.

Official No: A. 6. and A. 6 (a). 1929.
[Extract No 4].

ANNEX 8.

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

Extract from the Report on the Work of the League since the Last Session of the Assembly.

A. Preparatory Work for the First Codification Conference.

1. *Work of the Preparatory Committee.*

By its resolution of September 27th, 1927, the Assembly placed on the agenda of the proposed Codification Conference the three subjects of Nationality, Territorial Waters and the Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners.

The Preparatory Committee appointed by the Council in accordance with the Assembly's resolution completed its work during three sessions held at Geneva from February 6th to February 15th, 1928, from January 28th to February 17th, 1929, and from May 6th to May 11th, 1929.

Under the procedure laid down by the Assembly, the Committee's task was to draw up bases for discussion for the Conference in the light of the replies made by the Governments to the request for information addressed to them by the Committee. This request was transmitted to the Governments by the Secretary-General on March 1st, 1928, and the Committee asked that replies might be received not later than the end of the following October. The period thus allowed for the Governments to reply proved in fact to be barely sufficient, and the majority of the replies did not reach Geneva until a considerably later date, but the Committee was eventually able to take account of information supplied by some thirty Governments. Some of the replies did not deal with all the subjects or all the points raised by the Committee.

Furthermore, the Committee, in addition to being able to consult the scientific work on the above three questions which has been done at various times by the international learned societies devoted to the study of international law, such as the Institute of International Law, was able to benefit by a valuable special enquiry into these questions organised under the auspices of the Harvard Law School in anticipation of the Conference. This enquiry resulted in the publication of a draft Convention on each subject, accompanied by a careful and exhaustive commentary.

On March 7th, 1929, the Council requested the Committee to undertake the further task of reporting as to the action which the Council might take in execution of a suggestion contained in the Assembly resolution of 1927 to the effect that, when convening the Conference, the Council should set out certain general rules intended to govern the proceedings of the Conference on a number of points specified in the resolution.

The Committee has embodied the results of its work in a report which will, for convenience of use at the Conference, be published in three volumes, one for each subject.[1] As recommended by the Assembly in 1927, the report is drawn up in the form adopted in preparing the work of the Naval Conference of London, 1908-1909. The volume on each subject contains two general reports by the Committee, the replies from Governments relating to each point submitted to them by the Committee, the observations of the Committee on these replies and the bases of discussion formulated by the Committee. These bases of discussion are not proposals of theCommittee but are an attempt to formulate a statement of rules upon which agreement appears to exist or which do not give rise to divergencies of view so serious as to make it impossible to anticipate that an agreement may be reached after consideration and, if necessary, modification and amendment, of those bases by the Conference.

Certain suggestions upon which agreement appears more difficult, or on which there has not been an adequate expression of opinion on the part of the various Governments, could not be adopted as bases of discussion, but it will be open to each Government to take up any particular suggestion and make it the subject of a proposal for discussion by the Conference. For convenience of reference the full text of the Government replies is also reproduced.

The Committee's recommendations for the general rules to govern the proceedings of the Conference will be printed in a separate document.[2]

2. *Date of the Conference.*

Under the Assembly's resolution of 1927 the Council was requested to convene the Conference as soon as the preparations were sufficiently advanced. It was contemplated at that date, and

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[1] See documents C.73.M.38.1929.V ; C.74.M.39.1929.V ; C.75.M.69.1929.V.
[2] See document C.190(1).M.93.1929.V.

also during the Assembly's session of 1928, that the Conference might be able to meet in the present year. In a preliminary report considered by the Council at its session of March last, the Preparatory Committee expressed the opinion that a meeting of the Conference in 1929 was for various reasons materially impossible, and recommended that a date in the spring of 1930 should be selected. It pointed out that a certain period of time would be necessary to enable Governments and learned bodies to examine the replies of each Government, the Committee's observations and the bases of discussion, and that such a study, if sufficient time were allowed for it, would make it possible for existing differences of opinion to be attenuated. A delay of a few months would not therefore be time lost.

By a resolution of March 7th, 1929, the Council accepted this recommendation of the Committee and decided, in principle, that the Codification Conference should be held in the spring of 1930.

The supplementary Report to the Assembly will contain information as to any further decisions in regard to the Conference which may be taken by the Council after its members have had an opportunity to consider the results of the work of the Preparatory Committee.

B. Work of the Committee of Three Jurists appointed in Accordance with the Assembly's Resolution of September 24th, 1928, Part III.

This Committee was appointed by the Council by a resolution of December 14th, 1928. It consists of the following members of the Committee of Experts for the Progressive Codification of International Law : Professor Diena, M. Guerrero and Professor Schücking. The terms of the Assembly's resolution are as follows :

"The Assembly,

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

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

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

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

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

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

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

At a session held at Geneva from April 15th to 23rd, 1929, the Committee of Three Jurists presented a report to the Council on the two questions referred to it (annex 9). The body of the report sets out the principles adopted by the Committee in performing its task. A first annex contains, in the form of a table, the systematic survey of the subjects of international law which the Committee was asked to prepare ; the questions dealt with by technical organisations of the League or Conferences the initiative for which has been taken by particular Governments are indicated in footnotes. A second annex deals with the methods by which publication of general Conventions in the form of a Code might, in the Committee's opinion, be undertaken ; it is followed by a third annex containing an estimate of the cost of the work prepared by the Secretariat.

The Committee's report is on the agenda of the June session of the Council.

C. Committee of Experts for the Progressive Codification of International Law.

The decision taken by the Assembly in 1928 with regard to the work of this Committee was as follows :

"1. The Assembly,

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

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

"*(a)* Legal position and functions of consuls ;

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

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

"2. The Assembly notes that a new questionnaire dealing with the question of domicil

has been drawn up by the Committee of Experts and transmitted to the Governments by the Secretary-General.

"It adjourns to its session of 1929 the question whether it is necessary to convene the Committee of Experts again for the purpose of examining the replies from the Governments received in the interval by the Secretary-General of the League of Nations and, eventually, of studying other questions which may arise in connection with the codification of international law.

"The Assembly recommends that the Committee of Experts should, when it next meets, examine whether it would be possible and desirable to endeavour, by the procedure of codification, to formulate a declaration of the fundamental rights and duties of States."

In view of the above resolution, no session of the Committee was held in the year under review.

Extract from the Supplementary Report on the Work of the League since the Last Session of the Assembly.

PREPARATORY WORK FOR THE FIRST CODIFICATION CONFERENCE.

At a third and final session held in May 1929, the Preparatory Committee considered information received from the Governments in the interval since its second session and adopted a second report to the Council, submitting in definitive form the bases of discussion which it proposed for the Conference on the three questions which are on the agenda of the Conference, namely, Nationality, Territorial Waters, and Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners.[1] The Committee also gave effect to the Council's request for its advice as to the formulation of general rules intended to govern the proceedings of the Conference. It embodied its recommendations on this subject in a set of "Draft Rules of Procedure" for the Conference.[2] An explanation and commentary on the draft Rules, which are regarded by the Committee as merely proposals which the Conference is free to adopt, reject or amend, are contained in the Committee's second report to the Council.

It is contemplated that the detailed examination of the three questions on its agenda will be conducted by the Conference in three main Committees, on which all the delegations will be represented and which will work simultaneously. To permit of this method, the Committee suggests that each delegation might consist of a sufficient number of technical delegates in addition to a plenipotentiary delegate.

As regards the scope of the work of the Conference, the Committee's report contains the following statement :

"The suggestion that the Conference should deliberate on the bases of discussion prepared by the Preparatory Committee was also prompted by a desire to facilitate the work of the Conference. In point of fact, these bases of discussion were furnished by the Governments themselves, which replied to the requests submitted to them for information. The Committee merely collated their replies, and brought out the points on which they are in agreement. The individual delegations will, moreover, have the fullest liberty to submit amendments. The reason why proposals which do not come within the scope of the bases of discussion can only be dealt with if this is allowed by a previous decision is to obviate the necessity for the Conference to handle questions on which, as a result of the work of the Committee of Experts and the replies received from Governments, agreement would appear to be very unlikely. Moreover, the Conference will have the fullest possible powers to allow any question to be considered."

As regards the four points expressly mentioned in the Assembly resolution of September 27th, 1927, the Committee says :

"The Committee examined the four points to which the Assembly resolution of September 27th, 1927, specially drew the Council's attention. It considered that all these points were not equally suitable for inclusion in the Rules.

"As regards the use to be made of the majority rule, the draft is based on the idea that this rule should merely be adopted for the successive votes which may have to be taken when the various parts of a draft proposal are being framed in a Committee. The matter is more delicate when the question of the final adoption of a draft is involved. The Preparatory Committee is of opinion that the Conference should do everything in its power to secure unanimous agreement, and that, where agreement is reached, it should be definitely placed on record. Moreover, in conformity with the Assembly resolution, the draft Rules recognise, as being an Act of the Conference, any convention concluded by a majority of the States represented. Finally, it provides for a declaration, also representing the views of the majority and indicating what the States which subscribe to it regard as constituting existing international law.

"At this point the Preparatory Committee was confronted with the problem of the place which should be given, in the work of codification, to the conclusion of conventions conferring on the rules which they lay down the character of conventional law, and to the signature of

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[1] The two reports of the Committee are printed in each of the three volumes of the bases of discussion (see reference given below in the text).

[2] Document C.190(1).M.93.1929.V.

declarations designed to recognise existing law. This problem is one of the special aspects of the problem of "the spirit of the codification", and is an exceedingly delicate matter. A particular Government which is prepared to sign some provision or other as a conventional rule might possibly refuse to recognise it as being the expression of existing law, whereas another Government which recognises this provision as existing law may not desire to see it included in a convention, being apprehensive that the authority of the provision will bə weakened thereby. It did not appear to be possible to give a decision on this matter in the draft Rules. That is a problem which the Conference will be better able to settle when it has definite stipulations before it. The attention of Governments should be drawn to the importance of this point.

"The solution which will be found for this problem involves certain consequences relating to the terms of validity of the provisions adopted and the right to denounce them. While such a right is very natural in the case of a convention, it is much less so in the case of a declaration laying down teh content of ordinary international law. These also are points for which it is not easy to give solutions in advance in the Rules. The Conference will, however, require to examine them carefully in connection with the individual Acts which it has to frame, and must find suitable solutions in accordance with the contents of each instrument.

"The Conference will also have to decide whether a procedure should be laid down for revision, and how and to what extent the new instrument will, in the case of revision, replace the old instrument. That again would not appear to be a point which could be dealt with in the Rules for the Conference.

"The spirit of the codification, moreover, cannot be dealt with in the Rules. It was not possible to indicate whether only existing law should be registered, or whether the aim should be to adapt existing law to contemporary conditions of international life. The Conference will have to settle this question when the individual points are taken up. The Preparatory Committee would desire merely to state here that the work of codification involves the risk of a setback in international law if the content of the codification instrument is less advanced than the actually existing law. This is a matter which the Conference must always bear in mind.

"Finally, the Conference will have to decide carefully, in regard to each of the instruments which it adopts, the procedure of ratification and accession, and to determine to what extent reservations will be allowed. Only a few particulars could be indicated on this matter in the draft Rules."

At its meeting of June 12th, 1929, the Council considered the work of the Preparatory Committee and adopted the following resolution :

"The Council :

"Having acquainted itself with the report of the Preparatory Committee for the Codification Conference ;

"Notes with great satisfaction that the preparatory work for the first Codification Conference is thus concluded, and thanks the Preparatory Committee for the work it has accomplished ;

"Requests the Secretary-General to transmit the documentation containing the bases of discussion and the report on the rules which might govern the procedure of the Conference to the Members of the League and to the other Governments mentioned below ;

"Further requests the Secretary-General to transmit to the various Governments a copy of the letter dated March 26th, 1929, from the Chairman of the Advisory and Technical Committee for Communications and Transit, so that the Governments may be able to take this matter into account, in so far as they may deem it necessary, when issuing their instructions to their delegates to the Conference.

"Reserves the right to convene the Conference as soon as this year's Assembly has voted the necessary credits, and decides in principle to invite the following Governments :

"(1) The Members of the League of Nations ; (2) Brazil, Costa Rica, Egypt, Ecuador, Free City of Danzig, Iceland, Mexico, Monaco, San Marino, Turkey, the Union of Soviet Socialist Republics, and the United States of America ;

"Provisionally fixes March 13th, 1930, as the date for the opening of the Conference ;

"Requests the Secretary-General to get into touch with the Netherlands Government with a view to ascertaining whether this Government would be prepared to receive the Conference in its territory on the above-mentioned date."

In execution of this decision of the Council, the documentation for the Conference has been sent by the Secretary-General to the Governments to be invited to the Conference under cover of a letter dated July 15th, 1929. The documents in question are as follows :

Bases of Discussion drawn up for the Conference by the Preparatory Committee, Volume I : Nationality, document C.73.M.38.1929.V ;

Bases of Discussion drawn up for the Conference by the Preparatory Committee, Volume II : Territorial Waters, document C.74.M.39.1929.V ;

Bases of Discussion drawn up for the Conference by the Preparatory Committee, Volume III : Responsibility of States for Damage caused in their Territory to the Person or Property of Foreigners, document C.75.M.69.1929.V ;

Draft Rules of Procedure, document C.190 (1).M.93.1929.V.

Letter from the Chairman of the Advisory and Technical Committee for Communications and Transit, document C.218 (1). M.96.1929.V.[1]

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[1] This letter communicates a resolution of the Committee formulating certain desiderata on the subject of territorial waters.

The Secretary-General has also been informed by the Netherlands Government that it is prepared to receive the Conference for the Codification of International Law at The Hague on March 13th, 1930, the date mentioned in the resolution adopted by the Council at Madrid on June 12th, 1929.

Official No : A. 12. 1929. V. [C. 171 (1). 1929. V.]

ANNEX 9.

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

REPORT OF THE COMMITTEE OF THREE JURISTS.

By a Council resolution of December 14th, 1928, a Committee composed of Professor DIENA, His Excellency M. GUERRERO and Professor SCHÜCKING was appointed to draw up a systematic survey of the subjects of international law with a view to a general codification, and to examine the question of publishing, as an accompaniment to the *Treaty Series* and in the form of a code, general conventions open to acceptance by States in general, in accordance with the Assembly resolution of September 24th, 1928.[1]

In pursuance of these instructions, the Committee met at Geneva from April 15th to 23rd, 1929.

It fulfilled its twofold mission as follows :

A. *Establishment of a Systematic Survey of the Subjects of International Law with a View to a General Codification.*

In carrying out this work, the Committee was guided by the following considerations :

(1) In order to adhere to its terms of reference, it included the whole of international law in its survey, without omitting any part thereof.

(2) In order to conform to the wish of the Assembly, it has had in mind the principal technical organisations of the League of Nations and the international conferences initiated by various Governments. These organisations and conferences have already dealt with a number of the questions which should appear in the systematic survey that the Committee has to prepare. When mentioning these questions, the Committee has indicated in a footnote the organisations or conferences dealing with them.

(3) The Committee thought that, although its work is to fulfil a practical need, it should not go into questions in detail ; if it had acted otherwise, it would have incurred the risk of overlooking certain points or attaching more importance to some subjects than to others. It would also have been in danger of being obliged to take up a definite position on a large number of controversial questions. In point of fact, many fields of international law are at present in a fluid and uncertain state, and the question whether certain institutions do or do not form part of established international law is still a moot point. A committee of jurists which has simply to prepare a systematic survey of international law has no power to settle these controversial matters.

In some cases, it is true, the Committee has somewhat departed from this method and has ventured to go into greater detail ; but it has done so because it had to mention the organisations dealing with certain special questions. The survey prepared by the Committee is reproduced below (Appendix I).

B. *Code of General Conventions open to Acceptance by States in general.*

The Committee was at pains to define precisely what it understood by general conventions for the purposes of the publication contemplated by the Assembly, before proceeding to prepare the systematic scheme for the publication of those conventions. The Committee's report containing suggestions regarding the publication of general conventions in the form of a code is reproduced below (Appendix II).

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[1] The text of the Assembly's resolution is as follows :

"The Assembly,

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

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

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

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

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

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

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

Appendix I.

Systematic Survey of the Subjects of International Law with a View to a General Codification.

Part I. — Persons in International Law.

I. International legal personality. — Conditions for its existence.
II. Essential rights and duties of States possessing the quality of persons in international law.
III. The extinction of States and the legal consequences arising therefrom.
IV. Neutralised States.
V. The League of Nations and its organisation :
  (*a*) Rules of law arising out of the Covenant, and their development.
  (*b*) Rights and duties created by treaties the execution of which is supervised by the League of Nations, particularly as regards :
    (1) The legal status of minorities in certain countries.
    (2) International mandates.
  (*c*) The Permanent Court of International Justice and its Statute.
  (*d*) The International Labour Organisation.

Part II. — Objects of International Law.

Section I.

I. State territory :
  (*a*) Territory in the strict sense of the term ;
  (*b*) Inland waters ;
  (*c*) The territorial sea ; [1]
  (*d*) The air space above territory.
II. Acquisition and loss of territory.
III. International rivers, straits and canals subject to a special regime.
IV. The high seas.
V. Vessels, their nationality ; jurisdiction over vessels.
VI. The air space above the high seas or territories free from all sovereignty.

Section II. — Individuals.

I. Nationality. [2]
II. The legal status of aliens. [3]

Part III. — Legal Relations between States.

Section I. — Organs of International Relations.

I. Heads of States and Ministers for Foreign Affairs.
II. Diplomatic agents.
III. Consular agents.
IV. International organs.

Section II. — International Conventions.

I. Conditions of form and substance required for the validity of treaties.
II. Interpretation, effects and means of guaranteeing the execution of treaties ; extinction of treaties.

Section III. — International Obligations formed without Conventions.

I. Source of such obligations.—International delinquencies.
II. The international responsibility of States. [4]

Section IV.—Pursuit of Common Interests.

I. Communications and transit :
  (1) Maritime, fluvial and air navigation[5] (see Part II).
  (2) Road traffic.[5]
  (3) Postal services.
  (4) Telegraphs.
  (5) Radiotelegraphy.

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[1] The subject of territorial waters is on the programme of the Conference for the Progressive Codification of International Law which is to be convened by the Council of the League of Nations at The Hague in 1930.

[2] This subject will also be dealt with by the Hague Conference of 1930 for the Progressive Codification of International Law.

[3] Some aspects of this subject are being dealt with by the Economic Committee of the League of Nations.

[4] The questions of damage caused in their territory to the person or property of foreigners is to be dealt with at the Hague Conference for the Progressive Codification of International Law, 1930.

[5] League of Nations Organisation for Communications and Transit.

II. Protection of intellectual and cultural interests.[1]
III. Economic and financial interests.[2]
IV. Humanitarian interests.[3]
V. Health interests.[4]
VI. Labour interests.[5]
VII. Legislation and administration of justice :
(1) Conventions for the adoption of uniform municipal laws on certain subjects. Bills of exchange.[6] Maritime law.[7]
(2) Settlement of conflicts of laws in matters of civil and commercial law and of procedure. [8]
(3) International criminal law and mutual assistance between States with a view to the punishment of criminal offences. [9]

PART IV. — INTERNATIONAL DISPUTES.

Section I.—Methods of settling Disputes.

I. Good offices.
II. Mediation.
III. Commissions of enquiry.
IV. Commissions of conciliation.
V. Pacific methods of procedure provided by the Covenant.
VI. Arbitral settlement.
VII. Judicial settlement.

Section II.—Means of Pacific Constraint.

I. Retortion.
II. Reprisals.

Section III.—Collective Execution provided for by Article 16 of the Covenant.

PART V. — WAR.

Section I.—The Law of War in general.

Section II.—The Conduct of War.

I. Land warfare.
II. Warfare at sea.
III. Air warfare.

Section III.—Neutrality.

Appendix II.

PUBLICATION IN THE FORM OF A CODE OF CONVENTIONS OPEN TO STATES IN GENERAL.

According to the Assembly resolution, the Committee's second duty is to carry out the methodical classification of general conventions with a view to republishing them from time to time in the form of a code. This work will certainly prove of very considerable service.

In the first place, the Committee had to decide upon a definition of the term "general conventions", since the scope of the publications contemplated in the Assembly's resolution would ultimately depend upon this definition; and, moreover, a criterion would thereby be established which could always be followed afterwards. The Committee then examined the method of carrying out a systematic classification of conventions, with a view to laying down a rule to govern the publication of the general conventions not only in present circumstances but in the future as well.

While realising the technical character of its task, the Committee is of opinion that, although it should take theoretical criteria into account, it should not lose sight of the practical aims envisaged by the Assembly.

The Committee had first to settle a very important and difficult question, namely, what conventions are to be regarded as general, that is to say, according to the words of the Assembly's resolution, conventions which are open to acceptance by States in general.

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[1] League of Nations Committee on Intellectual Co-operation and Institute of Intellectual Co-operation, Paris. International Educational Cinematographic Institute, Rome.

[2] Economic and Financial Organisation of the League of Nations. International Institute of Agriculture, Rome. Institute for the Exploration of the Riches of the Sea, Copenhagen.

[3] Advisory Commission for the Protection and Welfare of Children and Young People (which also deals with the traffic in women and children). Advisory Committee of the League of Nations on Traffic in Opium and other Dangerous Drugs.

[4] Health Organisation of the League of Nations. Office international d'Hygiène publique, Paris.

[5] International Labour Organisation.

[6] Economic and Financial Organisation of the League of Nations. International Institute for the Unification of Private Law, Rome.

[7] Brussels Conferences.

[8] Hague Conferences on Private International Law. As regards the execution of foreign arbitral awards, Economic and Financial Organisation of the League of Nations.

[9] As regards the supposition of counterfeiting currency, International Conference of Geneva, 1929.

After a careful examination of the subject, the Committee felt able to divide conventions into two categories.

The first category would include under the term "absolutely open conventions" those to which all countries may become parties at any time by a unilateral declaration of their intention to do so.

The second category would include conventions which might be termed "relatively open", *i.e.*, (1) conventions which, while providing for the accession of other States, require such accessions to be accepted by the original contracting parties, even though—as is the case in some of these conventions—such acceptance may be expressed tacitly (*e.g.*, the Geneva Convention of July 6th, 1906, for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field) ; (2) conventions which contain clauses whereby other States may accede if invited to do so after its conclusion by the central organ which is the depository of the convention (*e.g.*, the Barcelona Convention on Transit of April 20th, 1921, and many other conventions concluded under the auspices of the League of Nations).

The category of closed conventions would, on the other hand, comprise those not containing a clause allowing of accession by States in general.

This classification was only adopted by the Committee after it had caused the Secretariat to examine more than 400 multilateral conventions. The Committee also utilised a study issued by the "Institut für internationales Recht" of Kiel University entitled "Systematisches Verzeichniss der völkerrechtlichen Kollektivverträge", an interesting publication which the Committee found of great service.

If a code is to be published of the existing collective conventions from which rules of international law can be derived, the Committee thinks that the conventions to be taken into consideration should not be merely those of the first category.

The Committee would add that, even among closed collective conventions, there are some which could advantageously be utilised for the preparation or codification of objective international law.

In point of fact, some of these conventions can be extended to other States, subject to the consent of the original contracting States expressed in a special diplomatic act. As an example may be quoted the Hague Conventions on Private International Law, which were afterwards opened for acceptance by certain new States by means of special protocols.

According to the information placed at the Committee's disposal, the number of conventions to be published would be about 250. This figure would seem to represent the maximum number of general conventions which it would be of practical interest to publish in a code. This figure includes general conventions of recent date which have not yet come into force, but which it is believed will shortly do so.

The Committee suggests that the conventions in question should be grouped in the proposed publication as follows :

1.—Conventions regarding the constitutional organisation of the League of Nations.
2.—Rules of law regarding :
- (*a*) Territory.
- (*b*) The sea,
- (*c*) The air.

3.—Conventions regarding means of communication and transit :
- (*a*) Straits and maritime canals,
- (*b*) Rivers,
- (*c*) Railways,
- (*d*) Roads,
- (*e*) Maritime navigation,
- (*f*) Air navigation,
- (*g*) Posts,
- (*h*) Telegraphs, telephones and radiotelegraphy.

4.—Conventions regarding the protection of intellectual and cultural interests.
5.—Economic conventions.
6.—Humanitarian and sanitary conventions.
7.—Labour conventions.
8.—Conventions for the creation of uniform municipal law.
9.—Conventions regarding the status of aliens.
10.—Conventions on international private law :
- (*a*) Civil,
- (*b*) Commercial,
- (*c*) Procedure.

11.—Conventions on international criminal law and conventions on mutual assistance between States with a view to the punishment of criminal offences.
12.—Conventions for the pacific settlement of international disputes.
13.—Conventions on the law of war :
- (*a*) Land,
- (*b*) Sea,
- (*c*) Air.

The work begun by the Committee in accordance with the Assembly's resolution is necessarily of a preparatory character.

If the Assembly decides to continue the study of this question, a consultation of the contracting

States, or at all events of the States which are depositaries of the conventions, is essential. The Committee considers that the parties to be consulted should include the offices of the international unions established by some of these conventions, as these central organs often possess important information on the matters within their competence.

The object of the consultation which the Committee suggests as a second stage of its work would be to obtain the authentic texts of the conventions to be published and also a large amount of relevant information. This information would include, for example, the names of the original contracting parties and the acceding parties, the period of validity of the conventions, the reservations made by certain contracting parties, denunciations, etc. A questionnaire for the purpose of this consultation would be sent in due course to the various Governments and, where necessary, to the offices of the international unions.

The Committee's object in offering the Council a suggestion as to the method to be followed to give effect to the aim of the Assembly resolution is to enable the latter to have all the necessary information at its disposal.

According to the particulars supplied by the Secretariat, the proposed publication would probably consist of several volumes, of which not more than two, of about 500 pages each, could be issued in the course of 1930.

As regards the cost of the publication, the Committee has asked the Secretariat to prepare budget estimates. These are attached to the present report (Appendix III).

In submitting to the Council the systematic scheme for the publication of general conventions and in indicating the field which the Committee considers this publication should cover, the undersigned members desire to take this occasion to express their gratitude to the Secretariat for the zealous and able assistance it has rendered them.

(Signed) Giulio DIENA. *(Signed)* J. Gustavo GUERRERO. *(Signed)* Walther SCHÜCKING.

Geneva, April 23rd, 1929.

Appendix III.

ESTIMATES.

The Secretariat has been requested by the Committee of Jurists to make an estimate of the charge on the Budget which might result from the publication of general conventions in the form of a code.

Two different methods might be followed in producing the publication :

(1) As rapid as possible a publication of the conventions ;
(2) Issue of a limited number of volumes each year.

In the first case, a somewhat considerable credit would be required in the Budgets of 1930 and 1931 and eventually 1932. It would also be necessary to take account of the cost of the increase of staff which would be necessary to carry out the work successfully in a brief period of time.

In the second case, publication of two volumes per annum might be contemplated. This would necessitate a credit of about 20,000 francs per annum for printing, on the assumption that the volumes were in the same form as the *Treaty Series*. Issue of only two volumes of general conventions in each year would not necessitate an increase of staff. Accordingly, adoption of the second proposal would involve credits of, approximately, the same sum of 20,000 francs in each successive year until all the conventions already concluded have been published.

Until the enquiry suggested by the Committee has been carried out, it is not possible to estimate the number of volumes of which the publication would consist. The systematic plan drawn up by the Committee could be followed, but it would perhaps be desirable to publish in advance those sections of the plan which are of more general interest or contain the texts which are least easily accessible in other forms.

Taking the estimates of the Committee, the publication in question might contain a maximum of 250 multilateral conventions. If the text of the conventions were inserted in full, together with their annexes and administrative regulations, some sections of the new collection, more particularly those dealing with the conventions concerning the various international unions, would fill several volumes even after the omission of texts which have ceased to be in force. Ten conventions were adopted at ten Conferences of the International Telegraphic Union, and the nine Conferences of the Universal Postal Union have produced about forty conventions. The agreements adopted at the Conference of the Universal Postal Union held at Stockholm in August 1924, fill 560 pages of Volumes XL and XLI of the *Treaty Series*. In such cases the question arises as to whether it would not be desirable only to reproduce the texts of the conventions and to leave out annexes and administrative regulations which are not of general interest from the point of view of international law.

In the same connection, the question arises whether only the texts adopted at the various conferences should be reproduced or whether, as is the practice in the *Treaty Series*, the new collection should contain translations in the official languages of the League of Nations.

REPORT BY THE REPRESENTATIVE OF ITALY AND RESOLUTION ADOPTED BY THE COUNCIL ON JUNE 10TH, 1929.

By a resolution dated December 14th, 1928, the Council appointed a Committee composed of Professor Diena, His Excellency M. Guerrero and Professor Schücking, in pursuance of the Assembly resolution of September 24th, 1928. In this resolution the Assembly requested that the preparation of a systematic survey of the subjects of international law should be entrusted to a Committee of Three Jurists, to be chosen preferably from among the members of the Committee of Experts, and that this survey should be communicated to the Members of the League as soon as possible.

By the same resolution the Assembly also requested the Council "to submit to examination, by the above-mentioned Committee of Three Jurists, the question of publishing, as an accompaniment to the *Treaty Series* and in the form of a code—of which new editions would from time to time be produced—certain general Conventions (*i.e.*, Conventions open to accession by all States) and to report to the Assembly on the matter at its next session".

This Committee of Three Jurists met at Geneva from April 15th to 23rd last and submitted a report which has been communicated to all the Members of the Council (document C.171.1929.V).

In its report, the Committee explains the principles to which it has adhered in carrying out its twofold mission. The first annex (Appendix I) contains a systematic survey of the subjects of international law, as requested by the Council. (Appendix II) is the Committee's detailed report on the publication of general conventions in the form of a code. (Appendix III) contains budget estimates, prepared by the Secretariat at the request of the Committee, concerning the publication contemplated in (Appendix II).

The Assembly suggested that the survey of subjects of international law prepared by the Committee should be communicated as soon as possible to all the Members of the League. It would seem to be desirable that the Council should at the same time communicate them to the Assembly.

The second question, that of the publication of general conventions in the form of a code, is more strictly a matter for the Assembly to deal with. The latter, though recognising the practical value of the proposed publication, reserved the right, after examining the results of the above-mentioned enquiry, to decide as to the advisability of undertaking this work.

In these circumstances, I think that the Council might thank the Committee of Three Jurists for the valuable work it has accomplished and decide that its report shall be communicated to all Members of the League of Nations and to the Assembly.

I would therefore propose to my colleagues the following resolution :

Resolution proposed by the Representative of Italy and adopted by the Council.

"The Council :

"Thanks the Committee of Three Jurists for the work it has accomplished ;

"And decides that the report of the Committee shall be communicated to the Members of the League and to the Assembly".

A. I. 7. 1929.

ANNEX 10.

STUDY OF METHODS OF ACCELERATING THE RATIFICATION OF INTERNATIONAL CONVENTIONS VOTED BY ORGANISATIONS OF THE LEAGUE OR BY THE INTERNATIONAL LABOUR ORGANISATION.

DRAFT RESOLUTION SUBMITTED BY THE DANISH DELEGATION ON SEPTEMBER 6TH, 1929, AND STATEMENT PREPARED BY THE SECRETARIAT RELATING TO THE QUESTION OF THE RATIFICATION OF CONVENTIONS CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

On September 6th, 1929, the Danish delegation submitted to the Assembly of the League a resolution on the ratification of international conventions.

At its second meeting on September 7th, 1929, the Agenda Committee decided that this question should be placed on the agenda of the present Assembly and be referred to the First Committee for consideration. The text of the resolution is as follows :

> "That the First Committee should be asked to discuss the question of methods for accelerating the ratification of international conventions voted by organisations of the League of Nations or by the International Labour Organisation, including the question whether it is desirable to constitute a mixed committee appointed by the Assembly and by the Council with instructions to take steps to hasten the ratification of conventions which have been signed."

For a proper understanding of the present position of the question submitted to the First Committee, it will be necessary to give a brief chronological statement of the various steps taken by the Council and the Assembly to ensure the more rapid bringing into force of conventions concluded under the auspices of the League of Nations by the greatest possible number of Members of the League and of other States which have been requested to sign these conventions.

The second report on the work of the Council and the Secretariat contains, for the first time, lists intended to give a general view of the position in regard to these conventions and protocols. The Transit Conventions, signed at Barcelona on April 20th, 1921, were the first international

conventions concluded under the auspices of the League of Nations which provided for the publication, in accordance with the instructions of the Council, of particulars regarding the signature and ratification of these conventions and accession thereto. The provisions in question are reproduced in most of the conventions subsequently concluded.

In view of the provisions of these conventions on this matter, the Council decided at its meeting on December 10th, 1923, that the particulars in question should as a general rule be published once a year. In pursuance of this decision, a document is issued every year *as an Annex to the Supplementary Report on the Work of the Council and the Secretariat*, which gives a general survey as regards the participation of the States in conventions concluded under the auspices of the League of Nations. This legal document indicates all the States which have signed, ratified or acceded to these conventions, with particulars of the dates of ratification and of accession and, further, contains the ratifications of the labour conventions registered by the Secretariat in virtue of Article 405 of the Treaty of Versailles and of the corresponding articles of the other Treaties of Peace.

On the proposal of Viscount Cecil, delegate of the British Empire, the Assembly adopted the following resolution on September 23rd, 1926 :

> "The Assembly,
>
> "Observing with regret that many conventions and agreements concluded under the auspices of the League of Nations have remained ineffective, or have only come into force after undue delay, owing to the difficulty experienced in securing a sufficient number of ratifications by the signatories ;
>
> "Desires to call the attention of the Governments of all States Members of the League to the necessity for taking all measures in their power to facilitate and expedite the ratification in all cases of conventions and agreements signed in their name ; and
>
> "Decides to invite the Council of the League to call for a report every six months on the progress of ratification and to consider methods for securing the more rapid bringing into force of these agreements and conventions."

This resolution led to the instructions which were given to the Secretary-General by the Council when it adopted the report submitted to it by the Polish delegate at its forty-third session on December 6th, 1926. In accordance with this report, the Secretary-General submits to the Council every six months a list, arranged in chronological order, of the international engagements concluded under the auspices of the League. This list indicates the States and territories which have become contracting parties, either by ratification or accession, those which have not yet ratified international engagements they have signed, and also States which have not signed or acceded to conventions framed at conferences attended by them or to which they had been invited to accede. This list does not give any particulars regarding labour conventions, these being dealt with in the separate publications of the International Labour Office.

The Secretary-General has just submitted to the Council at its fifty-sixth session held on August 30th, 1929, a sixth list of this kind.

The submission of these lists by the Secretary-General has given the Council an opportunity of considering the progress made in the ratification of certain conventions, and has enabled the Members of the Council to furnish information as to the position in regard to the ratification of certain conventions in their respective countries, their submission to Parliament, and the possibility of depositing the instruments of ratification with the Secretariat.

After examining the list drawn up by the Secretary-General, the Council decided at its meeting of March 6th, 1928, that the Minutes of the meeting in question should be transmitted to all Members of the League, and that their attention should be drawn to the importance which the Council attaches to the increase in the number of ratifications. On the proposal of the Rapporteur, the Council decided to place the whole question of ratifications on the agenda of its next session.

On the suggestion of the representative of Italy, who was the Rapporteur to the Council on this matter, it was also decided that the list would contain all the reservations or declarations made either on signing or ratifying or acceding to the said conventions.

The Council had to examine this question again, in pursuance of the above-mentioned decision, at its fiftieth session held on June 7th, 1928, and, on the report of the representative of Italy, it adopted the following resolution :

> "The Council, considering it essential that the agreements and conventions concluded under the auspices of the League should secure the greatest possible number of ratifications, requests the League Committees to consider from time to time the position in regard to the ratification of the conventions in which they are interested.
>
> "As a result of the reports of the Committees, the Council might, should it deem it advisable, instruct the Secretary-General to call the attention of the various States to the desirability of ratifying the said agreements and conventions, or certain of their number, with as little delay as possible."

In the opinion of the Rapporteur, the examination of these conventions by the League's advisory committees, from the point of view of the progress made with this ratification and the examination by the Council of the half-yearly report of the Secretary-General, would give satisfactory results.

In connection with the discussion in the Council on the report of the work of the Economic Committee (twenty-sixth session), the representative of Germany, as Rapporteur on economic questions, pointed out that "the report of the Committee contains observations bearing on the more general question of the ratification of agreements concluded under the auspices of the League of Nations", and drew the attention of the Italian representative, as Rapporteur on legal questions, to this part of the report.

Following on the suggestions which were made at that session by the Italian representative,

and which were endorsed by the Council, the Secretary-General was requested to remind Members of the League that they would be rendering the latter a great service if they could expedite the ratification of the agreements and conventions concluded under the auspices of the League of Nations and which have been signed by them.

Following upon the submission of the Secretary-General's sixth report, a declaration was made by the British representative at the fifty-sixth session of the Council, held on August 30th, 1929. He stated that the British Government attached very great importance to the question of ratifications and that he proposed to raise it in the Assembly with a view to "securing that signature should be a reality and not merely a device—as he was afraid it had sometimes been in the past—for seeming to support at Geneva propositions which were not subsequently followed up when delegates returned to their own countries".

At the meeting of the Assembly on September 4th, 1929, the first delegate of Denmark also dealt with this question, and proposed that the Assembly should adopt the resolution which is reproduced at the beginning of this Annex.

It might be added that the advisory committees of the League have often considered the position of conventions adopted by the various conferences and have made recommendations regarding their entry into force. These recommendations were communicated to the Council, and the Secretary-General has invariably brought them to the notice of the States concerned.

Official No: A. 77. 1929. V.

ANNEX 11.

PROPOSAL OF THE GOVERNMENT OF FINLAND TO CONFER ON THE PERMANENT COURT OF INTERNATIONAL JUSTICE JURISDICTION AS A TRIBUNAL OF APPEAL IN RESPECT OF ARBITRAL TRIBUNALS ESTABLISHED BY STATES.

DRAFT RESOLUTION SUBMITTED TO THE ASSEMBLY BY THE FIRST COMMITTEE.

Rapporteur : Dr. RAESTAD (Norway).

The Assembly invites the Council to submit to examination the question : What would be the most appropriate procedure to be followed by States desiring to enable the Permanent Court of International Justice to assume in a general manner, as between them, the functions of a tribunal of appeal from international arbitral tribunals in all cases where it is contended that the arbitral tribunal was without jurisdiction or exceeded its jurisdiction ?

The Assembly requests the Secretary-General to communicate the results of the above-mentioned study to the Governments of States which are Members of the League of Nations or signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, with a view to discussion at a later session of the Assembly.

A. I/8. 1929.

ANNEX 12.

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

DRAFT RESOLUTIONS PROPOSED BY M. ROLIN (Rapporteur).

1. *First Codification Conference.*

The Assembly,

Conscious of the wide scope of the preparatory work undertaken for the First Codification Conference :

Requests the Council to call the attention of all the Governments invited to the Conference to the desirability of appointing without delay their delegates to the Conference, whether plenipotentiaries, deputy-plenipotentiaries or technical delegates, in order that the members of the Conference may be able to make a thorough study of the documentation already assembled ;

And recommends that on the same occasion the States which have not replied to the Preparatory Committee's questionnaire be invited to be so good as to repair this omission.

2. *Committee of Experts for the Progressive Codification of International Law.*

The Assembly,

Considering that, for the purpose of carrying on the work already begun for the progressive codification of international law, it is advisable that the Committee of Experts should continue its labours :

Calls the attention of the Council to the desirability of inviting that Committee to hold further sessions after the First Codification Conference.

3. *Work of the Committee of Three Jurists.*

The Assembly,

Having examined with the greatest interest the report of the Committee of Three Jurists :

Takes note of the Systematic Survey of the Subjects of International Law drawn up by the Jurists with a view to a general codification ;

Observes that the report of the Committee upon the publication in the form of a code of the conventions which are open to States in general shows that such a publication could not at present be achieved in a satisfactory manner ;

Is of opinion, in particular, that it would be necessary first to proceed to codify the various successive conventions which deal with certain particular subjects so as to determine what precisely are the texts in force and the States which are parties thereto ;

And requests the Council to invite the technical organisations of the League to make an effort in this direction, with the assistance of the Secretariat and in collaboration, where desirable, with the bureaux of the various International Unions, in order that eventually appropriate international conferences may give effect to the results of their labours.

A. I/12. 1929.

ANNEX 13.

STUDY OF METHODS OF ACCELERATING THE RATIFICATION OF INTERNATIONAL CONVENTIONS CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

DRAFT RESOLUTION PROPOSED BY THE DRAFTING COMMITTEE.

The Assembly,

Recalling the Assembly resolution of September 23rd, 1926, regarding undue delay in the ratification of conventions concluded under the auspices of the League of Nations ;

Recognising the progress already made by the concerted efforts of the Council and the Secretariat ;

Considering that further measures appear desirable :

Requests the Council to set up a Committee to investigate, with the assistance of the Secretariat services, the reasons for the delays which still exist and the means by which the number of signatures, ratifications or accessions given to the conventions referred to above could be increased ;

Recommends that this Committee should consist of seven members familiar with the technical aspects of general conventions or with parliamentary and constitutional practice ;

And requests the Secretariat to draw up yearly, for circulation to the Assembly, double-column tables indicating the position as regards signature and ratification of, or accessions to, the various conventions concluded under the auspices of the League of Nations.

A. I/14. 1929.

ANNEX 14.

AMENDMENT OF THE COVENANT OF THE LEAGUE OF NATIONS AS A RESULT OF THE GENERAL ADHESION OF THE MEMBERS OF THE LEAGUE TO THE PACT OF PARIS FOR THE RENUNCIATION OF WAR.

DRAFT RESOLUTION PROPOSED BY THE SUB-COMMITTEE.

Rapporteur : M. COT (France).

The Assembly,

Having taken note of the resolution submitted to it on September 6th on behalf of various delegations that, in view of the large measure of acceptance obtained by the Pact signed at Paris on August 27th, 1928, whereby the parties renounced war as an instrument of national policy in their relations with one another, it is desirable that Articles 12 and 15 of the Covenant of the League of Nations should be re-examined in order to determine whether it is necessary to make any modifications therein, and,

Having also taken note of the resolution proposed by the Peruvian delegation on September 10th, recommending that a report should be obtained as to the alterations which were necessary in the Covenant of the League in order to give effect to the prohibitions contained in the Pact of Paris :

Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above ;

Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government (see Appendix), together with such further papers as may be necessary ;

Invites the Council to appoint a Committee of eleven persons to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris. This Committee should meet in the first three months of 1930 and in the course

of its labours should take into account any replies or observations which have been received from the Members of the League by that date. The report of the Committee will be submitted to the Members of the League in order that such action as may be deemed appropriate may be taken during the meeting of the eleventh ordinary session of the Assembly in 1930.

Appendix.

TEXT OF THE AMENDMENTS TO THE COVENANT PROPOSED BY THE BRITISH DELEGATION.

Article 12 (1) to be amended to read as follows :

"The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree that they will in no case resort to war."

Article 13 (4) to be amended to read as follows :

"The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

Article 15 (6) to be amended to read as follows :

"If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that, as against any party to the dispute that complies with the recommendations of the report, they will take no action which is inconsistent with its terms."

Article 15 (7) to be amended to read as follows :

"If the Council fails to reach a report which is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war."

A. I/15. 1929.

ANNEX 15.

APPLICATION OF ARTICLE 19 OF THE COVENANT OF THE LEAGUE REGARDING THE RECONSIDERATION OF TREATIES WHICH HAVE BECOME INAPPLICABLE.

DRAFT RESOLUTION SUBMITTED BY THE SUB-COMMITTEE.

Rapporteur : M. PILOTTI (Italy).

The Assembly,
Having taken cognisance of the declaration by the Chinese delegation that certain treaties

formerly concluded between China and other States, being inconsistent with present conditions in China, have become inapplicable within the meaning of Article 19 of the Covenant ;

Appreciating the importance of the points as to which the Chinese delegation feels concern ;

After having considered the resolution proposed by the Chinese delegation, which is annexed hereto ;

Considering that, under the terms of Article 19 of the Covenant of the League of Nations :

> "The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world" ;

Noting that the question of the application of Article 19 has previously been studied :

Declares that a Member of the League may, on its own responsibility, subject to the Rules of Procedure of the Assembly, place on the agenda of the Assembly the question whether the Assembly should give advice as contemplated by Article 19 regarding the reconsideration of any treaty or treaties which such Member considers to have become inapplicable or the consideration of international conditions the continuance of which might, in its opinion, endanger the peace of the world ;

Declares that, for an application of this kind to be entertained by the Assembly, it must be drawn up in appropriate terms, that is to say, in terms which are in conformity with Article 19 ;

And declares that, in the event of an application in such terms being placed upon the agenda of the Assembly, the Assembly shall, in accordance with its ordinary procedure, discuss this application and, if it thinks proper, give the advice requested.

Appendix.

DRAFT RESOLUTION PROPOSED BY THE CHINESE DELEGATION ON SEPTEMBER 10TH, 1929.

The Assembly,

Considering that Article 19 of the Covenant of the League of Nations, which provides that :

> "The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world",

is one of the most essential articles of the Covenant, in the cause of international co-operation and peace ;

Observing that, nevertheless, it has not once been acted upon during the decade of the existence of the League ;

Believing that such inaction has been due to the fact that the Assembly has not had the necessary assistance and advice ;

Hereby resolves that there shall be appointed a committee to consider and report on the best methods to make effective the above-mentioned Article.

INDEX

Abbreviations.

Cttee.	Committee
Govt.	Government
Int.	International
Para.	Paragraph
Perm.	Permanent
Resol.	Resolution
Sec. Gen.	Secretary-General
Sub-Cttee.	Sub-Committee
Suppl.	Supplementary