

# LEAGUE *of* NATIONS

Vol. III

*Special Number*

September, 1920

## Permanent Court



of

## International Justice

**Draft Scheme  
for the  
Institution of the Court**

Published Bimonthly by the  
**WORLD PEACE FOUNDATION**  
40 Mt. Vernon Street, Boston

Price, 5 cents per copy; 25 cents per year

# World Peace Foundation

Boston, Massachusetts

\*FOUNDED IN 1910 BY EDWIN GINN



The corporation is constituted for the purpose of educating the people of all nations to a full knowledge of the waste and destructiveness of war, its evil effects on present social conditions and on the well-being of future generations, and to promote international justice and the brotherhood of man; and, generally, by every practical means to promote peace and good will among all mankind.—*By-laws of the Corporation.*

It is to this patient and thorough work of education, through the school, the college, the church, the press, the pamphlet and the book, that the World Peace Foundation addresses itself.—Edwin Ginn.

The idea of force can not at once be eradicated. It is useless to believe that the nations can be persuaded to disband their present armies and dismantle their present navies, trusting in each other or in the Hague Tribunal to settle any possible differences between them, unless, first, some substitute for the existing forces is provided and demonstrated by experience to be adequate to protect the rights, dignity and territory of the respective nations. My own belief is that the idea which underlies the movement for the Hague Court can be developed so that the nations can be persuaded each to contribute a small percentage of their military forces at sea and on land to form an *International Guard or Police Force.*  
Edwin Ginn.

\*Incorporated under the laws of Massachusetts, July 12, 1910, as the International School of Peace. Name changed to World Peace Foundation, December 22, 1910.

## A LEAGUE OF NATIONS

Published Bimonthly by

WORLD PEACE FOUNDATION  
40 MT. VERNON STREET, BOSTON, MASS.

The subscription price is 25c. per year in advance or \$1.00 for five years.  
Prices in quantities on application.

General Secretary, Edward Cummings.

Corresponding Secretary, and Librarian, Denys P. Myers

## FOREWORD

The instructions which Mr. Root as President Roosevelt's Secretary of State issued to Mr. Choate and his colleagues who represented the United States at the Second Hague Conference in 1907, contain the original plans for such a court as is embodied in the draft scheme for the institution of the Permanent Court of International Justice, which the Council of the League has now referred to the 41 members of the League of Nations.

In 1907 the plan failed because of the insuperable obstacle of discovering some method of appointing 15 judges for 45 nations, in a manner acceptable to great and small nations alike.

In the present plan this obstacle has been satisfactorily overcome by utilizing the Assembly and the Council of the League in such a way as to enable small as well as large nations to participate in the selection of judges.

It is of interest to Americans that, although the United States is not a member of the League, and therefore not entitled to participate in its deliberations, the Council gave a special invitation to Mr. Root to serve on the Commission of 12 jurists which was charged with the duty of drawing up the plan. The method of procedure is as follows :

1. Appointment by the Council of the Commission, February 13, 1920.
2. Deliberations of the Commission at The Hague, June 16-July 24.
3. Report of the Commission to the Council at San Sebastian, July 30-August 4.
4. Letter transmitting the draft scheme to member states, August 27.
5. Adoption of the draft scheme by the Council at Paris, September 16.
6. Consideration of the plan by member nations, which will instruct their delegates to the first meeting of the Assembly at Geneva, November 15.
7. Resubmission for ratification by member states.

The supreme importance of this project for the success of the League of Nations or any other plan for organizing the world to secure peace and justice is impressively set forth in the letter of transmission, as follows:

### LEAGUE OF NATIONS

Sunderland House, Curzon Street,  
London, W. 1  
27th August, 1920.

The Council of the League of Nations has the honor to communicate to the Government the scheme presented by the International Committee of eminent jurists who were invited to submit plans for the establishment of a Permanent Court of International Justice, and who have recently concluded their deliberations at The Hague.

The Council do not propose to express any opinion on the merits of the scheme until they have had a full opportunity of considering it: but they permit themselves to accompany the documents with the following observations.

The scheme has been arrived at after prolonged discussion by a most competent tribunal. Its members represented widely different national points of view; they all signed the Report. Its fate has therefore been very different from that of the plans for a Court of Arbitral Justice, which were discussed without result in 1907. Doubtless the agreement was not arrived at without difficulty. Variety of opinions, even among the most competent experts, is inevitable on a subject so perplexing and complicated. Some mutual concessions are therefore necessary if the failure of thirteen years ago is not to be repeated. The Council would regard an irreconcilable difference of opinion on the merits of the scheme as an international misfortune of the gravest kind. It would mean that the League was publicly compelled to admit its incapacity to carry out one of the most important of the tasks which it was invited to perform. The failure would be great and probably irreparable; for, if agreement proves impossible under circumstances apparently so favorable, it is hard to see how and when the task of securing it will be successfully resumed.

It is in the spirit indicated by these observations that the Council on their part propose to examine the project submitted to them by the Committee of Jurists; and they trust that in the same spirit the Members of the League will deal with this all-important subject when the Council brings the recommendations before the Assembly.

**DRAFT SCHEME**  
FOR THE  
INSTITUTION OF THE PERMANENT  
**COURT OF INTERNATIONAL JUSTICE**

*Mentioned in Article 14 of the Covenant of the League of Nations.  
Presented to the Council of the League by the  
Advisory Committee of Jurists*

**ARTICLE 1**

A Permanent Court of International Justice, to which Parties shall have direct access, is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Hague Convention of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

**CHAPTER I**

*Organization of the Court*

**ARTICLE 2**

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality, from among persons of high moral character, who possess the qualifications required, in their respective countries, for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

**ARTICLE 3**

The Court shall consist of 15 members: 11 judges and 4 deputy-judges. The number of judges and deputy-judges may be hereafter increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of 15 judges and 6 deputy-judges.

## ARTICLE 4

The members of the Court shall be elected by the Assembly and the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

## ARTICLE 5

At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the members of the Court of Arbitration, belonging to the States mentioned in the Annex to the Covenant or to the States which shall have joined the League subsequently, inviting them to undertake, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than two persons; the nominees may be of any nationality.

## ARTICLE 6

Before making these nominations, each national group is hereby recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

## ARTICLE 7

The Secretary-General of the League of Nations shall prepare a list, in alphabetical order, of all the persons thus nominated. These persons only shall be eligible for appointment, except as provided in Article 12, paragraph 2.

The Secretary-General shall submit this list to the Assembly and to the Council.

## ARTICLE 8

The Assembly and the Council shall proceed to elect by independent voting first the judges and then the deputy-judges.

## ARTICLE 9

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

## ARTICLE 10

Those candidates who obtain an absolute majority of votes in the Assembly and the Council shall be considered as elected.

In the event of more than one candidate of the same nationality being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

#### ARTICLE 11

If, after the first sitting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third sitting shall take place.

#### ARTICLE 12

If after the third sitting one or more seats still remain unfilled, a joint Conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Committee is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations made by the Court of Arbitration.

If the Joint Conference is not successful in procuring an election, those members of the Court who have already been appointed shall, within a time limit to be arranged by the Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

#### 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 complete any cases which they may have begun.

#### ARTICLE 14

Vacancies which may occur shall be filled by the same method as that laid down for the first election.

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

## ARTICLE 15

Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court, having regard first to the order in time of each election and secondly to age.

## ARTICLE 16

The exercise of any function which belongs to the political direction, national or international, of States, by the Members of the Court, during their terms of office is declared incompatible with their judicial duties.

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

## ARTICLE 17

No member of the Court can 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 Inquiry, or in any other capacity.

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

## ARTICLE 18

A member of the Court can not be dismissed unless, in the unanimous opinion of the other Members, he has ceased to fulfill the required conditions.

When this happens a formal notification shall be given to the Secretary-General.

This notification makes the place vacant.

## ARTICLE 19

The members of the Court, when outside their own country, shall enjoy the privileges and immunities of diplomatic representatives.

## ARTICLE 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

## ARTICLE 21

The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.



The duties of Registrar of the Court shall not be considered incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ARTICLE 22

The seat of the Court shall be established at The Hague.  
The President and Registrar shall reside at the seat of the Court.

ARTICLE 23

A session shall be held every year.

Unless otherwise provided by rules of Court this session shall begin on the 15th June, and shall continue for so long as may be necessary to complete the cases on the list.

The President may summon an extraordinary meeting of the Court whenever necessary.

ARTICLE 24

If, for some special reason, a member of the Court considers that he can not take part in the decision of a particular case, he shall so inform the President.

If, for some special reason, the President considers that one of the members of the Court should not sit on a particular case, he shall give notice to the member concerned.

In the event of the President and the member not agreeing as to the course to be adopted in any such case, the matter shall be settled by the decision of the Court.

ARTICLE 25

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

If 11 judges can not be present, deputy-judges shall be called upon to sit, in order to make up this number.

If, however, 11 judges are not available, a quorum of 9 judges shall suffice to constitute the Court.

ARTICLE 26

With a view to the speedy dispatch of business the Court shall form, annually, a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ARTICLE 27

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

## ARTICLE 28

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

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges, a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates by some national group in the Court of Arbitration.

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

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfill the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

## ARTICLE 29

The judges shall receive an annual salary to be determined by the Assembly of the League of Nations upon the proposal of the Council. This salary must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

Deputy-judges shall receive a grant, for the actual performance of their duties, to be fixed in the same way.

Traveling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 28 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

A special regulation shall provide for the pensions to which the judges and registrar shall be entitled.

## ARTICLE 30

The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II

*Competence of the Court*

ARTICLE 31

The Court shall have jurisdiction to hear and determine suits between States.

ARTICLE 32

The Court shall be open of right to the States mentioned in the Annex to the Covenant, and to such others as shall subsequently enter the League of Nations.

Other States may have access to it.

The conditions under which the Court shall be open of right or accessible to States which are not Members of the League of Nations shall be determined by the Council, in accordance with Article 17 of the Covenant.

ARTICLE 33

When a dispute has arisen between States, and it has been found impossible to settle it by diplomatic means, and no agreement has been made to choose another jurisdiction, the party complaining may bring the case before the Court. The Court shall, first of all, decide whether the preceding conditions have been complied with; if so, it shall hear and determine the dispute according to the terms and within the limits of the next Article.

ARTICLE 34

Between States which are Members of the League of Nations, the Court shall have jurisdiction (and this without any special convention giving it jurisdiction) to hear and determine cases of a legal nature concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of reparation to be made for the breach of an international obligation;
- e. the interpretation of a sentence passed by the Court.

The Court shall also take cognizance of all disputes of any kind which may be submitted to it by a general or particular convention between the parties.

In the event of a dispute as to whether a certain case comes within any of the categories above mentioned, the matter shall be settled by the decision of the Court.

#### ARTICLE 85

The Court shall, within the limits of its jurisdiction as defined in Article 84, apply in the order following:

1. international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. international custom, as evidence of a general practice, which is accepted as law;
3. the general principles of law recognized by civilized nations;
4. judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

#### ARTICLE 86

The Court shall give an advisory opinion upon any question or dispute of an international nature referred to it by the Council or Assembly.

When the Court shall give an opinion on a question of an international nature which does not refer to any dispute that may have arisen, it shall appoint a special Commission of from three to five members.

When it shall give an opinion upon a question which forms the subject of an existing dispute, it shall do so under the same conditions as if the case had been actually submitted to it for decision.

### CHAPTER III

#### *Procedure*

#### ARTICLE 87

The official language of the Court shall be French.

The Court may, at the request of the contesting parties, authorize another language to be used before it.

#### ARTICLE 88

A State desiring to have recourse to the Court shall lodge a written application addressed to the Registrar.

The application shall indicate the subject of the dispute, and name the contesting parties.

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.

ARTICLE 39

If the dispute arises out of an act which has already taken place or which is imminent, the Court shall have the power to suggest, if it considers that circumstances so require, the provisional measures that should be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

ARTICLE 40

The parties shall be represented by agents.  
They may have Counsel or Advocates to plead before the Court.

ARTICLE 41

The procedure shall consist of two parts: written and oral.

ARTICLE 42

The written proceedings shall consist of the communication to the judges and to the parties of statements of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

ARTICLE 43

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ARTICLE 44

The proceedings shall be under the direction of the President, or in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ARTICLE 45

The hearing in Court shall be public, unless the Court, at the written request of one of the parties, accompanied by a statement of his reasons, shall otherwise decide.

## ARTICLE 46

Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

## ARTICLE 47

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

## ARTICLE 48

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply to the Court any explanations. Any refusal shall be recorded.

## ARTICLE 49

The Court may, at any time, intrust any individual, bureau, commission or other body that it may select, with the task of carrying out an inquiry or giving an expert opinion.

## ARTICLE 50

During the hearing in Court, the judges may put any questions considered by them to be necessary, to the witnesses, agents, experts, advocates or counsel. The agents, advocates and counsel shall have the right to ask, through the President, any questions that the Court considers useful.

## ARTICLE 51

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

## ARTICLE 52

Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 33 and 34, but also that the claim is supported by substantial evidence and well founded in fact and law.

## ARTICLE 53

When the agents, advocates and counsel, subject to the control of the Court, have presented all the evidence, and taken all other steps that

they consider advisable, the President shall declare the case closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

#### ARTICLE 54

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

#### ARTICLE 55

The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

#### ARTICLE 56

If the judgment given does not represent, wholly or in part, the unanimous opinion of the judges, the dissenting judges shall be entitled to have the fact of their dissent or reservations mentioned in it. But the reasons for their dissent or reservations shall not be expressed in the judgment.

#### ARTICLE 57

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agent.

#### ARTICLE 58

The judgment is final and without appeal. In the event of uncertainty as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

#### ARTICLE 59

An application for revision of a judgment can be made only when it is based upon the discovery of some new fact, of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

No application for revision may be made after the lapse of five years from the date of the sentence.

ARTICLE 60

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ARTICLE 61

Whenever the construction of a convention in which States, other than those concerned in the case, are parties, is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be as binding upon it as upon the original parties to the dispute.

ARTICLE 62

Unless otherwise decided by the Court, each party shall bear its own costs.



# LEAGUE *of* NATIONS

Vol. III, No. 5

October, 1920

## Report of the International Financial Conference

Published Bimonthly by the  
**WORLD PEACE FOUNDATION**  
40 Mt. Vernon Street, Boston

Price, 25 cents per year

No application for revision may be made after the lapse of five years from the date of the sentence.

#### ARTICLE 60

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

#### ARTICLE 61

Whenever the construction of a convention in which States, other than those concerned in the case, are parties, is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be as binding upon it as upon the original parties to the dispute.

#### ARTICLE 62

Unless otherwise decided by the Court, each party shall bear its own costs.