

Revised Edition

THE
PERMANENT COURT
OF
INTERNATIONAL JUSTICE

Section.
International Secretariat,

GENEVA.

6d.

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Information Section,
League of Nations Secretariat,
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NOTE

This pamphlet, which has been compiled on the basis of information furnished by the Registrar of the Permanent court of International Justice, is one of a short series issued by the Information Section of the Secretariat of the League of Nations on various aspects of League work. It should not be regarded as an official statement engaging the responsibility of the League; for official purposes, reference should be made to the Statute, to the Rules of Court, to the other publications of the Court, and to the official proceedings of the League of Nations.

December 1926.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

I. Origin.

During the whole of the nineteenth century, international arbitration played a very important role as a means of settling disputes, and towards the end of the century it had so developed that the time seemed ripe for its organisation and extension on a broad international basis.

This was, in fact, one of the main objects of the First Peace Conference held at The Hague in 1899, when a Convention "for the Peaceful Settlement of International Disputes" was adopted, providing for the creation of the Permanent Court of Arbitration. This Convention contained rules for the establishment of a panel of persons particularly suited to act as arbitrators, from amongst whom States might select three to five members to form an arbitral tribunal for any dispute arising between them. It also created an International Bureau to centralise and to facilitate the work of arbitral tribunals, and enacted a body of rules codifying arbitral procedure as it had hitherto developed, these rules being made available for parties to an arbitration unless they agreed between themselves on other rules.

The Second Peace Conference, held at The Hague in 1907, improved this Convention, and at the same time endeavoured to extend international jurisdiction by creating a judicial body composed of a small number of permanent salaried judges, always at the disposal of States desiring to

submit a difference to their judgment and capable of developing a continuous jurisprudence in the realm of international law. This resulted in the Convention for the creation of the International Prize Court, and in the draft Convention for an International Court of Arbitral Justice. The International Prize Court was to be a Court of Justice in the narrow sense in which the word is generally used, and the Convention which created it contained complete rules regarding its composition, functions and jurisdiction. The salient point was that it had been possible to arrive at an agreement between the Powers of the world upon the composition of an International Court, though, it is true, with jurisdiction in a limited field only.

But the attempt to create an International Court of Justice failed. An irreconcilable divergence of opinion arose between the Great Powers and other States as to the method of nominating and electing the judges of the Court. A resolution was therefore passed merely recommending to the signatory Powers the adoption of a draft Convention concerning a "Court of Arbitral Justice" to be put into force as soon as agreement had been reached on the selection of the judges and the constitution of the Court.

Two or three years later, the United States of America suggested that the International Prize Court, upon whose composition agreement had actually been reached, should be utilised as a Court of Arbitral Justice, but this suggestion led to no result.

It was then hoped that the necessary agreement would be reached at the Third Peace Conference, which was to have met at The Hague in 1915, and for which the preparatory work had been undertaken by the various Governments and by students of international law. The war prevented this Conference from assembling, but the idea which was to have been its task to realise was not lost. It was embodied in Article 14 of the various Treaties of Peace concluding

the war, namely, as Article 14 of the Covenant of the League of Nations. This Article runs as follows :

“The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.”

II. Preparation and Adoption of the Statute.

Under the mandate thus received, the Council of the League of Nations, as early as February 1920, appointed a Committee of ten distinguished jurists ⁽¹⁾, representing all parts of the world, to prepare a plan which the Council could submit to the Members of the League of Nations for adoption. The Committee, which met at The Hague in the middle of June and worked till the end of July of the same year, produced a “draft scheme” which was discussed by the Council at its sessions in San Sebastian in August and at Brussels in October the same year. With a few modifications, the scheme was adopted by the Council and, with some further amendments, was unanimously approved by the Assembly of the League on December 13th, 1920. The plan thus approved, constituting the Statute of the new Court, was then, in view of the special wording of Article 14 of the Covenant, submitted to the States invited to adhere

(1) Messrs. Adatci (Japan), Altamira (Spain), Bevilacqua (Brazil) replaced by M. Fernandes, Baron Descamps (Belgium), Messrs. Hagerup (Norway), de Lapradelle (France), Loder (Netherlands), Lord Phillimore (Great Britain), M. Ricci Busatti (Italy), and Senator Elihu Root (United States of America), with the assistance of Commendatore Anzilotti, at that time an Under Secretary-General of the Secretariat of the League, accompanied by Mr. James Brown Scott and M. Hammarskjöld, of the League Secretariat.

to the Covenant, on the understanding that it should come into force as soon as ratified by the majority of the Members of the League. The adoption of this system had the effect, among other things, of making the Statute a real international Convention which cannot be modified except by the consent of the States which have ratified it or adhered to it. The necessary number of ratifications was obtained by September 1921, and it was therefore possible to elect the members of the Court during the session of the Assembly then in progress.

The Court accordingly was able to meet for the first time in January 1922.

III. Authorities.

The texts which determine the constitution, organisation, jurisdiction and procedure of the Court include : first, the Statute approved by the Assembly and put into a separate treaty duly ratified; second, a body of "Rules of Court" prepared by the Court under the Statute ⁽¹⁾; third, a number of resolutions of the Council and the Assembly of the League which complete the Statute; fourth and last, a great number of Treaties, Conventions and other international agreements, conferring jurisdiction on the Court.

IV. Composition.

The Court is at present composed of eleven judges and four deputy-judges. Upon the proposal of the Council, however, the Assembly may pass a resolution bringing the number of judges up to a maximum total of twenty-one, of whom

(1) The original Rules, which were issued on March 24th, 1922, were replaced by the revised Rules, which came into force on July 31st, 1926.

six would be deputies. It will this be possible to take into account an increase in membership, or a considerable augmentation of the Court's activities.

The judges are elected from a list of candidates composed as follows :

Each national group in the Permanent Court of Arbitration (appointed respectively by the individual States which are members of this Court) nominates, after consultation with its highest Court of Justice, its schools of law and academies devoted to the study of law, not more than four candidates, of whom two only may be of the nationality of the nominating group. In the case of States not members of the Court of Arbitration, special nominating groups may be appointed by the respective Governments under conditions identical with those governing the appointment of the groups of members of that Court.

The electors must bear in mind that the Court should represent the main forms of civilisation and the principal legal systems of the world.

The election is carried out by the Council and the Assembly of the League voting separately, and the elected candidates are those who obtain an absolute majority in each of the two bodies. Special provisions are made for avoiding a deadlock, should the two electing bodies be unable to agree. In this event a joint committee of the two bodies would be called upon to propose a single candidate for the place to be filled, and, in the last resort, those members of the Court who are already elected may co-opt.

The adoption of this system, which, when put into practice for the first time in 1921, worked with ease and rapidity, overcame the difficulties which led to the failure of the earlier attempts to create an International Court of Justice.

The system ensures for the judges elected the confidence both of the Great Powers permanently represented on the

Council, and of the other States, preponderant in the Assembly whilst at the same time, by the method of nomination above described, even the appearance of any dependence of the judges on the Governments of the States to which they belong, is effectively avoided.

The judges are appointed for nine years, and are re-eligible. By-elections are made only for the remainder of the term of office of the judges whose places are to be filled.

The President and Vice-President of the Court are elected by the Court itself for a term of three years and are also re-eligible.

Regular judges are bound by very strict rules against the holding of incompatible offices.

V. Organisation.

The full Court ordinarily sits with eleven judges. This number may, if necessary, be made up by calling upon deputy-judges. If it is impossible to obtain the presence of eleven judges, the Court may sit with ten or nine members.

There are, however, some exceptions. First, there is the Chamber of three judges, appointed yearly, to serve as a Chamber of Summary Procedure. This Chamber sits only at the request of the parties. Secondly, there are two special or technical Chambers; one for labour questions, and another for questions of communications, transit, etc..., with special reference to points arising out of Parts XIII and XII respectively of the Versailles Treaty and the corresponding parts of the other Peace Treaties dealing with these two sets of questions. These Chambers, in order to secure continuity of jurisprudence, are appointed for three years. They sit only at the request of the parties, and if no such request is made, the full Court sits.

Further, the number of persons sitting in the Court may be modified under the rules concerning national judges and the presence of technical assessors. For example, when the full Court is sitting, judges of the nationality of each contesting party retain the right to sit, but, if the Court includes a judge of the nationality of one of the parties only, the other party also may select a judge of its own nationality to sit with the members of the Court. If, on the other hand, the Court includes no judge of the nationality of the contesting parties, each of them may select a judge of its own nationality. The presence of national judges is intended to be a guarantee that judgments shall be drafted in terms as little hurtful to the national feelings of the parties as possible, and that all the merits of the case shall be duly considered. It should be borne in mind that by far the larger number of the judges sitting will be in all respects independent of the parties.

In the case of the special Chambers, the number of members sitting cannot be increased by the addition of national judges, but if only one of the parties has a national judge on the Bench, a national of the other party may be substituted for one of the ordinary members whom the President invites to retire for this purpose. The composition of the Chamber of Summary Procedure cannot be modified by reason of the nationality of the parties.

The presence of four technical assessors is provided for when the Court, or the special Chamber concerned, is hearing labour cases or cases concerning communications and transit. For labour questions, their presence is obligatory; for questions of communications and transit, they are called upon to sit only if the parties so desire or the Court so rules. The assessors are in each case selected by the Court itself from lists of persons nominated for the purpose by the Members of the League of Nations, and also, in the case of the Labour list, by the Governing Body of the International Labour Office.

The Court elects its own principal Secretary, known as the "Registrar", whose office may be combined with that of Secretary-General of the Court of Arbitration. He is responsible for all the administrative work, and has certain duties connected with the judicial and advisory functions of the Court, which communicates through him with the Governments and with the League. He is assisted by a deputy-registrar, likewise elected by the Court, and by "editing secretaries" and other officials whom he appoints with the Court's approval.

The expenses of the Court are borne by the League of Nations. Its budget, which is passed by the Assembly of the League, forms one of the three parts of the general League budget—League, Court, and Labour Organisation—and at present totals about two million gold francs. For budget purposes, the Court is considered as one of the financially autonomous organizations of the League. Special contributions may be paid by States, other than Members of the League, which are parties to suits before the Court.

The seat of the Court is at The Hague, where premises have been reserved for it in the Carnegie "Peace Palace", with its excellent law library. The President and the Registrar must reside at the seat of the Court, but the presence of the judges is required only during the sessions. The special Chambers may, if they think fit, sit elsewhere than at The Hague.

VI. Competence.

Under Article 14 of the Covenant, the functions of the Court are twofold : judicial and advisory. Its judicial functions are defined as follows :

"The Court shall be competent to hear and determine any dispute of an international character which the Parties thereto submit to it."

Its advisory functions are founded upon the last phrase of the Article :

“The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.”

(a) *Advisory Functions.*

The Court can give an advisory opinion only at the request of the Council or the Assembly of the League of Nations. Experience has shown, however, that the Council is likely to make free use of its right in order to obtain advice not only on disputes or questions submitted to it, but also on questions or points which International Organisations or individual States request the Council to transmit to the Court on their behalf. The Court has, however, been careful to reserve the possibility of not complying with requests for opinions, though it may be expected that this right will be exercised only in exceptional circumstances.

Such circumstances may arise, for instance, if the Courts opinion would, in point of fact, constitute a judicial settlement of a dispute between States not having accepted the jurisdiction of the Court.

(b) *Judicial functions.*

The Court has jurisdiction to deal with disputes in two different sets of circumstances :

1. The jurisdiction is said to be voluntary where two States by a special agreement submit a certain dispute to the Court for judgment.

2. The jurisdiction is said to be compulsory, that is to say, a State can summon another State to appear before the Court with or without its consent :

(a) Where it is especially provided in a Treaty or Convention in force that any or certain disputes

arising out of such Treaty or Convention shall be submitted to the Court, no provision being made for the conclusion of a special agreement prior to the reference to the Court.

- (b) Where the Parties to a dispute have, by a general declaration independent of the particular dispute, expressly accepted the jurisdiction of the Court as compulsory.

Once the jurisdiction of the Court is accepted by the parties it is possible, should one of them refuse to appear, to pass judgment "by default", *i. e.*, in its absence, although only under the strictest guarantees.

The specific acceptance of compulsory jurisdiction is effected by a declaration to be appended to an "Optional Clause" attached to the Protocol adopting the Court's Statute, and by which a State recognises as compulsory, *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all or any legal disputes concerning :

- (1) The interpretation of a Treaty;
- (2) Any question of International Law;
- (3) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (4) The nature or extent of the reparation to be made for the breach of an international obligation.

This clause is now in force as between sixteen of the twenty-six States who have signed it.

The "Treaties and Conventions in force" conferring compulsory jurisdiction on the Court extend over a very large field. They comprise, in the first place, treaties of arbitration and conciliation concluded by twenty four States.

Further, each of the Peace Treaties provides for the reference of certain questions to the Court. This is the case regarding any dispute arising out of the interpretation and application of any of the Articles dealing with ports, waterways and railways, or, generally speaking, with matters of transportation. It is also the case under the Parts of the Peace Treaties dealing with Labour, and more particularly in regard to complaints made by one Member of the International Labour Organisation against another in respect of the non-fulfilment of the terms of any Labour Convention. Finally, it is the case under an Article which provides for the revival of certain bilateral Treaties between the Allies and the Central Powers.

Beyond these general clauses, common to all the Treaties, the Treaty of Versailles, for instance, stipulates that disputes arising out of the clauses relating to the Kiel Canal may also be referred to the Court, whilst the Treaty of St. Germain contains a similar stipulation concerning disputes arising between Czechoslovakia and Austria over the distribution and operation of the telegraphic and telephonic systems.

Similarly, the Court has jurisdiction over disputes arising out of the clauses for the protection of racial, religious or linguistic minorities inserted in certain of the Peace Treaties or in special so-called Minorities Treaties, the latter concluded between the Principal Allied and Associated Powers and Poland, Czechoslovakia, the Kingdom of the Serbs, Croats and Slovenes, Roumania, and Greece. Similar provisions with respect to minorities have been accepted by other States by unilateral declarations before the Council of the League of Nations. In contested cases relating to the protection of minorities, one or more Members of the Council of the League of Nations must act as plaintiffs before the Court.

All the "mandates" conferred on certain Allied Powers, for the administration under the League of territories which, as a consequence of the war, ceased to be under the sove-

reignty of Germany or Turkey, contain a provision to the effect that disputes regarding their interpretation or application shall, if not settled by negotiation, be submitted to the Court.

In addition to the jurisdiction over cases concerning commerce, communications or transit, given to the Court under the Peace Treaties, jurisdiction is conferred on it by a certain number of international agreements concerning special rivers. As examples may be mentioned the Treaties between the Principal Allied Powers and Poland and Roumania respectively, extending the Court's jurisdiction to disputes concerning the traffic on the Vistula and the Pruth river systems; and the Conventions establishing the definitive statutes of the Danube and of the Elbe.

Of broader scope are the Conventions concluded at the Conference held under the League's auspices at Barcelona concerning freedom of transit and relating to "navigable waterways of international concern" generally, and the Porto Rosa agreement for the regulation of international railway traffic, all of which recognise the Court as the supreme jurisdiction.

This same role is allotted to the Court in the domain of aerial navigation by the general Paris Convention as well as by a series of bilateral Treaties.

There seems to be a growing tendency to insert in commercial Treaties a clause conferring jurisdiction on the Court. This is the case, for instance, with a number of Conventions concluded by the "new" States, but also, *i. a.*, with a Treaty of commerce signed by Germany and by Great Britain.

The Polish-German Agreement concerning Upper Silesia, concluded under the auspices of the League of Nations, recognises the jurisdiction of the Court in certain respects. The same applies to some other political treaties, for instance, a Treaty of Alliance and Friendship between France

and Czechoslovakia; a political agreement between Czechoslovakia and Austria, a Convention between Poland and Danzig, the Geneva Convention between Finland, Sweden and other interested States in regard to the Aaland Islands; to this group also belong the Memel and Tangier Conventions, the London (Dawes plan) and Locarno agreements; and, finally, the Treaty between Great Britain and Iraq, which contains a clause similar to that which is to be found in the majority of mandates above referred to.

Apart from the "Optional Clause", there are at present about 160 independent international agreements conferring compulsory jurisdiction on the Court.

In the event of a dispute as to whether in a given case the Court has jurisdiction, the matter is to be settled by a decision of the Court itself.

Parties before the Court. — The question now arises : Who can appear as Parties before the Court in a dispute over which it has jurisdiction as just explained?

In this respect the Statute lays down the general rule that only States and Members of the League of Nations (including the self-governing British Dominions) can be Parties before the Court. It is, of course, for the Court to decide in each special case whether the character of a State should be recognised as belonging to any party wishing to appear.

With this limitation the Court is open to all States or Members of the League of Nations. It is thus open to all Members of the League, to the States mentioned in the Annex to the Covenant (*e. g.* the United States of America), as well as to all other States on certain conditions. These conditions are, that such State shall have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court and undertakes to carry out in full good faith the decisions delivered, and that it

contributes towards the expenses of the Court an amount to be fixed by the latter.

This Declaration can be made for the purpose of a particular dispute, or once and for all. In the latter case, it may be combined with an acceptance of the compulsory jurisdiction of the Court, similar in effect to the acceptance by the Members of the League of the Optional Clause above referred to; however, the acceptance of the compulsory jurisdiction of the Court by one of these "other" States does not necessarily confer upon it the right to arraign before the Court a State having accepted the Clause.

It is expressly laid down in the Statute that in no case may the special conditions for the admission before the Court of "other States" result in any two parties being placed in a position of inequality before the Court.

VII. Procedure.

General.

The Court meets annually on June 15th for an ordinary session. It is consequently a permanent Court in the strict sense of the word. It may be convoked for extraordinary sessions if, in the opinion of the President, the state of work renders such a step desirable. The Chamber for Summary Procedure meets whenever a case is submitted to it. So far, the full Court has held twelve sessions, five of which were ordinary; the Chamber for Summary Procedure has met twice.

The sessions continue until the Court has concluded the cases on the list drawn up for each particular session. This list comprises all contested cases ready to be heard, all questions for advisory opinions ready to be dealt with when the session begins, and also, subject to the decision of the Court, cases and questions which develop during the session.

The official languages of the Court are French and English. With the Court's consent other languages may, however, be used.

Advisory Opinions.

The procedure for dealing with advisory opinions is laid down in some detail in the revised Rules of Court. These Rules, according to the practice which has so far been followed, in all essentials assimilate the advisory procedure to the procedure provided for contested cases. The Court will, more especially, in order to obtain all possible information, afford to all interested Governments and international organisations an opportunity to appear before it and will therefore receive documents and arrange, hearings which are to take place in public.

The deliberations on the terms of the opinion are secret. But the opinion, once its terms have been fixed, is read in public and is published in a special collection.

Contested Cases.

The procedure for dealing with contested cases differs slightly according to whether it is a matter falling within the compulsory jurisdiction of the Court, or a case submitted by special agreement between the parties.

In the latter event, proceedings are opened by the filing of the agreement, which is followed by the filing, within the same limit of time, of "cases" and "counter-cases", the former containing a statement of the respective claims of the parties and of the grounds for these claims, whilst the "counter-cases", are replies to the cases. "Replies" to the "counter-cases" may be submitted.

In the case of compulsory jurisdiction, however, the proceedings are instituted by the claimant party filing an application which is communicated to the other party. Proceed-

ings are then followed up by the filing of written documents of procedure, the party having instituted the proceedings filing a "case", to which the other party replies by a "counter-case", whereupon the first party submits a "reply", to which a "rejoinder" submitted by the respondent constitutes an answer. Preliminary objections by the respondent must be filed within the time-limit fixed for the deposit of the counter-case. If the party which has been summoned before the Court does not submit its counter-case within the time-limit fixed, the Court may, if it decides that it has jurisdiction, pass judgment "by default" on the strength of the arguments submitted by the claimant.

When the written documents of procedure have been filed, the oral proceedings begin. They are carried on in the same way whether it is a question of voluntary or of compulsory jurisdiction. The oral proceedings consist of speeches by Counsel and of statements of witnesses and experts and are, as a rule, public. When the proceedings have been closed, the Court withdraws to consider its judgment in private.

Three special features of the procedure before the Court should be mentioned.

In the first place, it is possible for third States to intervene, either because they are parties to a treaty or convention the interpretation of which is in question, or because the decision in the case may affect their legal interests.

Secondly, if in the course of the proceedings the parties arrive at an agreement between themselves so that a judgment is no longer necessary, the Court may confirm that agreement, embodying it in the minutes of its sittings.

In the third place, it is provided that, in the event of the rights of one party being likely to be prejudiced during the course of proceedings, the Court may indicate interim measures calculated to protect such rights.

Summary Procedure. — The procedure in the Chamber of Summary Procedure—created for the speedy despatch of business—is simplified to the utmost possible extent. The parties supply, in principle, only one document each, and, if possible, the Court renders judgment exclusively on the basis of these two statements. If this is not possible, it may arrange a hearing in order to obtain oral explanations on points which appear obscure; but at this hearing no pleadings can take place.

The judgment. — In all cases, the judgment of the Court is final and without appeal. It is, however, possible for a party to obtain revision of the judgment if a new fact is discovered which, if known before the judgment was given, might have exercised a decisive influence on the Court's finding. In order to avoid an element of insecurity, it is provided that use must be made of this right within six months after the discovery of the fact and within ten years after the date of the judgment. The Court may, in certain strictly limited cases, interpret its own judgments.

The judgments are, like the advisory opinions, read out in public and, moreover, immediately published.

VIII. The Rules of Law Applied.

As a basis for its judgments, the Court must in the first place apply international conventions in so far as they can be considered as establishing rules expressly recognised by the litigant States or by the States directly interested in the question submitted. Failing such conventional rules, international custom and the general principles of law recognised by civilised nations are to be applied. For the purpose of elucidating what is the rule of law in a given case, the Court may take into account, but as a factor possessing an indicative

value only, judicial decisions and the teachings of the most highly qualified publicists of the various nations.

When considering its advisory opinions, the Court generally applies the same rules as are laid down as the basis for its judgments.

In ascertaining on a given point what is the rule that may be considered as being in force, the Court exercises the function of codifying international law. It cannot, on the other hand, create new international law; the Statute, indeed, stipulates that a decision of the Court has no binding force except between the parties concerned and in respect of the particular case or question concerning which it has been given. The Court is therefore not allowed to make law by precedent, but only to lay down, in the reasons for its judgments, what is to be considered as existing law. It is to state the law, not to make the law; to codify, not to legislate.

IX. The Role of the Court.

This work of codification is of considerable importance in two different respects : —

First, international relations have suffered much from uncertainty as to what are the existing rules of law. This uncertainty can now be successively removed by the activity of the Court.

Secondly, the activity of the Court may give an impulse to legislation, as for instance when the existing law, as authoritatively stated by the Court, does not seem to correspond to the present needs of the community of nations. Legislation may then be promoted through the appropriate machinery : either governmental diplomatic conferences, or conferences held under the auspices of the League of Nations. This indirect method of bringing about legislation in the interna-

tional field has the advantage of providing for the legislative work a clearly defined starting-point, namely the Court's statement of what is the law in force.

The Court's importance for the development of international law, considerable as it may be, is more or less incidental. Its chief value rests in the effect which its judgments and opinions exercise on the improvement of international relations.

In this respect there is one general observation to be made. The Court is a court of law and not a political institution. Most of the great political and economic issues of the world are necessarily dealt with in political and economic spheres except, doubtless, in so far as the elucidation of legal points may be concerned. Nevertheless, the continually increasing intimacy of State relations gives rise to a multitude of questions which, in the interests of all, should be decided according to law. A happy comparison has been made with the conditions existing within individual States, where political controversies are decided outside the courts of law, but where it has never occurred to anyone to contest on this ground the paramount importance of the national judicatures. A similar role in the realm of international life devolves upon the Permanent Court of International Justice. This role can only to a very limited extent be filled by the tribunals of arbitration, including those constituted under the auspices of the Permanent Court of Arbitration. From a strictly legal point of view, the difference as regards the jurisdiction of the new Court and that of the Court of Arbitration may be slight (except as concerns the so-called compulsory jurisdiction of the former); but the fact that the new Court consists of a limited number of permanent salaried judges, that it is always available, that it has a fixed procedure of its own and that it is bound to apply positive international law, fits it to accomplish in the international sphere functions similar to those which in the life of the

States belong to national judicature. The same, on the other hand, cannot be said of arbitral tribunals, whose members are elected by the contesting parties, are paid by them, work according to a procedure agreed on by the parties, and apply rules of law which those parties themselves have laid down.

X. The Work of the Court.

During the first five years of its existence, the full Court has met twelve times; the sessions have, on an average, lasted two months each.

The first (preliminary) session (January-March 1922) was devoted to the preparation of the Court's Rules of Procedure, and to other administrative work connected with its judicial and advisory activities. The following sessions have been devoted to the Court's judicial and advisory activities, properly so called. The ordinary session which the Court held in June 1922 is therefore generally known as the "First Session".

(a) FIRST SESSION (ORDINARY).

At this Session, three requests for advisory opinions were dealt with. All related to the International Labour Organisation, and, legally speaking, involved the interpretation of certain provisions of the Versailles Treaty.

The first question dealt with the composition of the delegations to the International Labour Conference, and more particularly with the influence of the trades unions on the nomination of the Labour members of those delegations. Should the Governments, for this purpose, act in agreement only with the most powerful workers' organisation in their respective countries, or, failing an agreement between all such orga-

nisations, should they act on the advice of the majority among them? The Court's opinion was that Governments should do their utmost to effect a selection which in the particular circumstances might be regarded as best calculated to ensure the representation of the workers of the country, and for this purpose should try to arrive at an agreement with all the most representative organisations. If a Government failed to achieve this, it would not, however, be acting against the terms of the Treaty if it nominated the workers' delegate in agreement with the organisations which, taken together, represented the majority of the organised workers of the country.

The second question, of the greatest importance for the development of the International Labour Organisation, was whether the Organisation had competence to deal with questions of agricultural labour. Its competence in this respect had been contested, chiefly by the French Government, and it was at the instance of this Government that the question was brought before the Court. The Court's reply, based on a detailed analysis of the relevant provisions of the Versailles Treaty, was in the affirmative.

The third question was closely connected with the second: it was whether the International Labour Organisation might occupy itself also with questions concerning agricultural production. Here the Court's reply was in the negative; but it added that the Labour Organisation could not be excluded from dealing with the matters specifically submitted to it by the Treaty on the ground that this might involve in some aspects the consideration of the means of production, or of the effects which the proposed measures would have upon agricultural production.

The replies given by the Court in these three cases, although not binding on those interested, were immediately

accepted by them, and have since constituted the basis for all further development in the fields within which they fall.

(b) SECOND SESSION (EXTRAORDINARY).

At its second Session, the Court had before it another request for an advisory opinion. As the matter was urgent, an extraordinary session of the Court had to be convened in order to deal with it.

The request originated in a difference between the French and British Governments on the Nationality Decrees issued in November 1921 by the former Government and by the native princes in Tunis and in Morocco. The decrees conferred French nationality on, amongst others, a considerable number of Maltese, who, according to British law, were still British subjects and should retain their existing nationality. The conflict became acute when the persons in question were called up for military service. It was found impossible to arrive at a solution through diplomatic channels, and a British proposal to submit the affair to arbitration met with no success, the French Government contending that the question was not suitable for arbitration.

In these circumstances, Great Britain brought the matter before the Council of the League of Nations, under the auspices of which an agreement was reached between the two Governments, to the effect that the Court should be requested to give an opinion as to whether the matter was or was not, as contended by France, within the exclusive competence of the French Government. The Court's reply having been given in the negative, France proposed to submit the whole dispute to the Court for judgment.

The two Governments subsequently entered into negotiations on the basis of the Court's opinion; they eventually reached a friendly agreement, which finally settled the matter.

At its third Session, the Court placed this agreement on record at a public sitting.

(c) THIRD SESSION (ORDINARY).

The list for the Court's ordinary Session for 1923 included three affairs : the first of these was that of the *S. S. Wimbledon* in regard to which the Court was called upon to give judgment; the two others, which were submitted for advisory opinion by the Council of the League of Nations, concerned respectively the status of Eastern Carelia and of a certain category of persons of German origin residing in territories recently ceded to Poland.

Subsequently, a further request for an advisory opinion relating to the right of certain persons of German origin to obtain Polish nationality was submitted by the Council of the League.

Case of the S. S. Wimbledon. — The case of the *S. S. Wimbledon* is of special interest, being the first occasion in history on which one party to an inter-State dispute summoned the other to appear before an international court for judgment by unilateral arraignment. It was also the first occasion upon which the Permanent Court of International Justice had to deliver a judgment; previously it had given only advisory opinions.

In March 1921 the British *S. S. Wimbledon*, chartered by a French company and carrying a cargo of munitions consigned to Poland, arrived at the entrance to the Kiel Canal *en route* for Danzig and was refused access by the Director of Canal Traffic. This official, acting under instructions, cited in support of his refusal the German Neutrality Regulations.

According to Article 380 of the Treaty of Versailles, the Kiel Canal and its approaches are to be maintained free and

open to the vessels of commerce and war of all nations at peace with Germany on terms of entire equality.

The French Embassy at Berlin having failed to obtain the withdrawal of this refusal, the *Wimbledon* was ordered to proceed via the Danish Straits, thus undergoing delay and deviation. The question was submitted to the Conference of Ambassadors, but that body did not succeed in effecting an agreement. During the ensuing negotiations the German Government was the first to suggest that the case should be submitted to the Court. Subsequently, it was the Allied Governments—France, Great Britain, Italy and Japan—who took the initiative of instituting proceedings against Germany before the Court. As it was provided in the Statute that, if in a given case the Court did not include upon the Bench a judge of the nationality of one of the parties, that party might select one, Germany appointed a national judge. Poland availed herself of the right to intervene which she possessed as a signatory of the Peace Treaty.

The judgment of the Court as fixed by a majority of nine judges was delivered on August 17th. It was to the effect that the German authorities were wrong in refusing passage to the *S. S. Wimbledon*, and that therefore the German Government was bound to make good the prejudice sustained (estimated by the Court at 140,000 French francs) as the result of this action. Two judges were unable to concur in the judgment of the majority, and made use of their right to deliver a separate opinion. The same course was adopted by the German national judge.

Eastern Carelia (Advisory opinion). — A dispute had arisen between Finland and Russia regarding the interpretation of Articles 10 and 11 of the Peace Treaty signed at Dorpat on October 14th, 1920, between those two countries and of the declaration made at the time of signature by the Soviet Government's Delegation, with regard to the autonomy of Eastern Carelia.

These clauses guaranteed a certain measure of autonomy and certain rights to the population of Finnish origin in Eastern Carelia, a territory which includes that part of the former Russian Empire situated to the east of Finland and bounded by the White Sea, the Gulf of Bothnia and Lake Ladoga. The Finnish Government was of opinion that the provisions of the Treaty and of the declaration had not been complied with. The Soviet Government, on the other hand, maintained that these provisions merely recorded an existing situation, Eastern Carelia having been established by the Soviet Government, before the Treaty of Dorpat was concluded, as an autonomous community of Workers and Peasants, affiliated to the Federal Republic of Moscow. It maintained, moreover, that the question of the administration of the district was solely a matter for Russian domestic jurisdiction.

The question put to the Court was whether these Articles and the Declaration constituted engagements of an international character which placed Russia under an obligation to Finland as to the carrying out of the provisions contained therein.

Notice of the Request for an opinion was duly given by the Court to the Governments likely to be able to furnish information on the question, including that of Soviet Russia.

The Finnish Government requested a hearing, whereas the Russian Government refused, by telegram, to take any part in the proceedings before the Court. The Court's reply to the question put was given on July 23rd. The majority of the Court, composed of seven judges, arrived with regret at the conclusion that the Court was incompetent to give an opinion. The Court based this conclusion on the fact that the question submitted to it for an opinion formed the subject of a dispute, and that to give a reply would be tantamount to giving a judicial decision on that dispute, and on the further fact that Russia had refused to take part in the

proceedings. In the view of the Court, it was indeed not possible to give a judicial decision upon a dispute between two States without the consent of both, having regard to the principle of the independence of States. Moreover, a reply to the question put would have necessarily involved an enquiry into certain matters of fact which the Court could only have conducted at a very great disadvantage without the assistance of Russia.

German Minorities in Poland (Advisory opinion). — The first of the two requests for advisory opinions submitted to the Court with regard to German minorities in Poland concerned measures taken by the Polish Government in respect of a certain category of persons belonging to the German racial minority in Poland. These persons were, first, those who held contracts called *Rentengutsvertraege* (contracts for the acquisition of landed property in return for payment of a rent), but had not obtained the *Auflassung* (a legal formality confirming the right conferred by the contract) before the Armistice; and secondly, persons holding leases called *Pachtvertraege* who had obtained, after the Armistice, a *Rentengutsvertrag* for the property which they formerly held as tenants. As a result of the measures taken by the Polish Government with regard to these persons, the latter were evicted from the properties situated in the territories ceded to Poland which they occupied under contracts concluded with the German authorities.

The question put to the Court was whether the League of Nations, under the Polish Minorities Treaty, was competent to examine these measures, and—should this question be answered in the affirmative—whether the position adopted by the Polish Government, as regards these persons, was in conformity with the international obligations assumed by that Government.

Notice of the request was given to the Governments likely

to be able to furnish information on the question, including the German Government. Written statements were filed by Poland and Germany, and oral statements were made by the representatives of both Governments.

The Court gave its reply on September 10th to the effect that the Council of the League was competent, and that the position adopted by Poland was not in conformity with the international obligations assumed by her with respect to minorities.

The second Request dealt with the position of persons of German origin in the same territories.

On this occasion, the question to be answered was whether these persons, having been born in the said territories, acquired Polish nationality *ipso facto* in accordance with the provisions of the Minorities Treaty concluded between the Principal Allied Powers and Poland, even though their parents had not been habitually resident there both at the time of the birth of the persons in question and of the coming into force of the Treaty. This point having been brought before the Council of the League of Nations and the Polish Government contending that the Council was not competent to deal with it, the latter decided to ask the Court for an opinion on the question of competence, adding that if the answer to this question were in the affirmative, the Court was also to give its opinion on the main question at issue.

On September 15th the Court delivered its opinion that the League of Nations was competent, and, with regard to the main question, that the standpoint adopted by Poland was incorrect. In the opinion of the Court, it was, indeed, sufficient for the application of Article 4 of the Minorities Treaty if the parents of the persons concerned were habitually resident in the ceded territories at the time of birth of the latter.

(d) FOURTH SESSION (EXTRAORDINARY).

Jaworzina Frontier (Advisory opinion). — This question, which concerned the demarcation of the frontier between Poland and Czechoslovakia in the territory of Spisz, was submitted to the Court by the Council as an urgent matter. It originated as follows :

At the termination of the Peace Conference, the Principal Allied and Associated Powers had agreed to let the frontier between Poland and Czechoslovakia in certain zones be decided by means of a plebiscite. Since, however, political difficulties were encountered in the preparations for the holding of this plebiscite, the Polish and Czechoslovak Governments subsequently agreed to entrust the Supreme Council of the Allies with the settlement of the frontier. The Supreme Council delegated its powers to the Conference of Ambassadors. The latter marked out the frontier without any objection being raised except as concerned the zone at Jaworzina (Spisz). With regard to that zone, the Conference took certain decisions as to the effect of which the Governments of Prague and Warsaw were not in agreement, Czechoslovakia contending that the frontier had been definitively settled in its favour, and Poland maintaining that the door was still open for modifications in the frontier line which were desired by that country.

Unable to settle this controversy, the Conference of Ambassadors sent the matter before the Council of the League, which, in its turn, asked the Court for an Opinion as to whether the question of the frontier between Poland and Czechoslovakia was still open, and if so, to what extent.

In the opinion rendered by it, the Court arrived at the conclusion that in effect the question of the frontier had been settled by a definitive decision of the Conference of Ambassadors, subject only to such minor modifications in regard to

portions of the frontier line as might, under the terms of the decision itself, be suggested by the Commission entrusted with the delimitation of the frontier on the spot.

The dispute was eventually settled by the fixing of a frontier line in accordance with the Court's Opinion, and by the conclusion between the neighbouring States of an agreement concerning the traffic across the frontier.

(e) FIFTH SESSION (ORDINARY).

Mavrommatis Palestine concessions (Judgment). — This case was brought before the Court by means of a unilateral application by Greece against Great Britain in her capacity as mandatory power for Palestine. The application invoked a provision of the Mandate conferring on the Court, in certain conditions, compulsory jurisdiction over disputes concerning the interpretation or application of the clauses of the Mandate.

There being no Greek judge on the bench, Greece was invited to appoint a judge *ad hoc*.

The dispute, which formed the subject of the application, arose out of the following circumstances :

A Greek subject, named Mavrommatis, had, before the war, obtained from the Ottoman authorities concessions for certain public works in Palestine, at Jerusalem and at Jaffa. After the war, the new authorities of the country, namely, the British, granted a certain Mr. Rutenberg extensive concessions for works which appeared in part to overlap those conceded to Mavrommatis. Meanwhile, the Lausanne agreements which dealt, *inter alia*, with the maintenance of concessions granted before the war, were signed. Mavrommatis, who had for a long time been in negotiation with the competent authorities concerning the putting into execution of his concessions, sought the aid of the Greek Government, which

ultimately decided to submit to the Court a claim for compensation for the loss incurred by Mavrommatis as a consequence of the alleged wrongful refusal to recognize his concessions.

The British Government, however, objected to the jurisdiction of the Court, its main contention being that the clauses of the mandate conferring competence on the Court was not applicable to the present case.

In its judgment on the question of jurisdiction—which alone was taken at the Fifth Session—the Court upheld its jurisdiction as far as the Jerusalem concessions were concerned but admitted the objection with regard to the Jaffa concessions. The case on the merits was reserved for a subsequent session.

Monastery of Saint Naoum (Advisory opinion). — This question, which concerned the frontier between Albania and the Serb-Croat-Slovene Kingdom, bears a certain resemblance to the Jaworzina case dealt with by the Court a few months earlier.

After the second Balkan war (1913) the frontiers of Albania were to be settled by the Conference of Ambassadors, which accordingly fixed a frontier line, the southern part of which was, before the outbreak of the Great War, marked out on the spot with the exception of a small portion in the neighbourhood of the Saint Naoum monastery. In 1920, Albania was admitted as a member of the League of Nations, subject to the settlement of her frontiers, which were subsequently determined by the Conference of Ambassadors—which had been commissioned by the League to do so,—in conformity with the decision of 1913. When, however, the time came for the actual marking out on the ground of the line in the region of Saint Naoum, both Albania and the Serb-Croat-Slovene Kingdom claimed the monastery. The Conference of Ambassadors thereupon allocated the monastery to Albania, but was unable itself to settle the ensuing diffi-

culties. It then decided to refer to the Council of the League, *inter alia*, the question whether the Conference, by allocating the monastery to Albania, had exhausted its mission so that it could not revise its own decision. This question the Council in its turn submitted to the Court.

The Court, in the opinion which it delivered on September 4th, 1924, gave an affirmative answer, considering that, on the face of the evidence produced, the frontier at Saint Naoum had not been unequivocally fixed in 1913, and that, therefore, the recent decision allocating the monastery had been necessary and within the powers conferred on the Conference by the League; the Conference could not, however, revise that decision in the absence of the conditions which might possibly render such revision admissible.

The frontier was eventually fixed in accordance with the indication furnished by the Court's opinion. Subsequently, however, the Serb-Croat-Slovene Kingdom succeeded in producing a fresh document showing that, in 1913, the frontier at Saint Naoum was effectively considered as having been settled in favour of Serbia; the two Governments concerned then concluded an agreement by which the monastery was handed back to the Serb-Croat-Slovene Kingdom in consideration of compensation in another sector.

Interpretation of the Treaty of Neuilly (Chamber for Summary Procedure ; Judgment). — During the Fifth Session of the full Court, the Summary Chamber held its first session. This was devoted to a case submitted to it under a special agreement concluded between Greece and Bulgaria.

The dispute in question related to the following point :

Under a provision of the Treaty of Neuilly, Bulgarian assets within Allied territory may be charged with the payment of certain claims arising out of acts committed by Bulgaria during the war, the amount of such claims to be fixed

by an arbitrator. The arbitrator having been duly appointed, a divergence of opinion arose concerning his competence to deal with claims arising out of acts committed outside Bulgarian territory and against the person (not the property) of the claimant. It was this divergence which led the parties to seek the decision of the Court on the proper construction of the relevant clause.

In its judgment, rendered on September 12th, 1924, the Court laid down that claims in respect of acts committed outside Bulgarian territory and in respect of personal damages were authorized under the clause, but that indemnities payable in respect of such claims were to be included in the total capital sum at which Bulgaria's reparation debt had been fixed.

(f) SIXTH SESSION (EXTRAORDINARY).

This session was convoked in order to enable the Court to deal with an urgent request for an advisory opinion. In the meantime, however, the Mavrommatis case (the merits) had become ready for hearing, and as one of the parties considered it as urgent, the Court decided to include it in the list. Finally, the Chamber for Summary Procedure availed itself of this opportunity to settle a case which had been submitted to it.

Exchange of Greek and Turkish populations (Advisory opinion). — This was the case which rendered necessary the convocation of an extraordinary session. It arose out of the following facts :

One of the agreements forming part of the Lausanne peace settlement provided for the compulsory exchange of the Turkish population of Greece and the Greek population of Turkey, with certain exceptions, *inter alia*, the

Greek inhabitants of Constantinople "established" before a given date. Difficulties having arisen between the two interested Governments with regard to the meaning of the word "established", the authority set up to deal with the problems arising out of the exchange—a Mixed Commission—eventually accepted an offer by the Council of the League to obtain the opinion of the Court on the point at issue.

This opinion, which was delivered on February 21st, 1925, defined the notion of "establishment" as used in the Lausanne Convention, and gave indications according to which the Mixed Commission would be able to decide whether in a given case a person was liable to exchange or not.

The dispute was subsequently settled by an agreement concluded between the two Governments concerned on the basis of the Court's opinion.

Mavrommatis Jerusalem Concessions (Judgment). — The situation of fact with the Court had to deal when giving judgment on the merits of this case is sufficiently clearly indicated in the summary given in connection with the judgment on the British objection to the Court's jurisdiction (Cf. Fifth Session, above). It should, however, be mentioned that, in the written proceedings on the merits, the parties had agreed to obtain the decision of the Court on one further point which was not covered by its jurisdiction under the terms of the Mandate for Palestine.

The judgment on the merits is dated March 26th, 1925. Therein, the Court laid down that the Jerusalem concessions of Mavrommatis were valid; that the rights granted to Rutenberg, so long as they existed, constituted a breach of the obligations accepted by Great Britain under the Lausanne agreement concerning the maintenance of pre-war concessions; but that, as it had not been proved that this breach had caused prejudice to Mavrommatis, no compensation was due to him.

Mavrommatis, however, was entitled to have the conditions of his contract re-adapted to post-war economic conditions.

Interpretation of the Treaty of Neuilly (Chamber for Summary Procedure). — The Greek Government, which considered that the Court's judgment of September 12th, 1924 (Cf. Fifth Session, above) did not constitute a sufficient basis for the practical settlement of the points at issue, formally requested the Court to interpret the judgment in question in several respects which it indicated.

After hearing the Parties, the Court, on March 26th, 1925, delivered a judgment by which it refused to give the interpretation asked for, considering that the points on which it was sought fell outside the scope of the special agreement which formed the basis of the judgment of September 12th, 1924, so that the interpretation, if given, would go beyond that judgment and consequently would not constitute an interpretation of it.

(g) SEVENTH SESSION (EXTRAORDINARY).

Polish Postal service at Danzig. — The question submitted to the Court in this connection originated in the Peace Treaty of Versailles. That treaty, when proclaiming Danzig as a "Free City" conferred on Poland certain rights in the city, *inter alia*, a right to establish in Danzig a Polish postal service.

The scope of this right formed the object of further agreements and of decisions and expressions of opinion by the High Commissioner of the League. On one point—as to whether Poland was entitled to collect (letter boxes) and to distribute mail in the city—an acute difference of opinion arose, Danzig contending that the point had already been decided in the negative. The question was submitted to the Council of

the League, which in its turn asked the Court whether there actually was a decision in force settling the point at issue and, if not, what was the sphere of operation of the Polish postal service at Danzig.

The Court, in an opinion delivered on May 16th, 1925, held that none of the decisions relied on by Danzig were decisions in force settling the matter in law, and that the Polish postal service at Danzig must be understood to include the normal functions of a postal service as regards the collection and distribution of postal matter outside the post-office.

The dispute was eventually settled by the Council on the basis of the Court's opinion.

(h) EIGHTH SESSION (ORDINARY).

On the list for this session there were two cases, one of which was, however, eventually withdrawn. It was a request for an advisory opinion concerning the expulsion from Constantinople of the Œcumenical Patriarch. Greece and Turkey disagreed as to whether or not he was liable to exchange under the Lausanne agreement (Cf. Sixth Session, above), and the matter was submitted by Greece to the Council of the League. Turkey, however, objected to the jurisdiction of that body, whereupon the Council asked the Court for an opinion on its own competence. An agreement on the merits of the dispute was, however, eventually reached by the Governments concerned, and as a result, the request for an opinion was withdrawn.

German interests in Polish Upper Silesia (Judgment). — This case in reality included two entirely distinct groups of affairs, one of which embraced at least twelve individual cases (in reality more, for although there were only twelve persons or companies representing different interests, several

of them were interested in different pieces of property governed by different sets of legally relevant circumstances).

The first group related to the taking over by the Polish Government of a nitrate factory situated at Chorzow in the part of Upper Silesia allotted to Poland and constructed during the war by virtue of a contract concluded between the German Reich and a private German enterprise. Germany contended that, as the factory was privately owned, the Polish law, in the application of which the taking over had occurred, implied an unlawful liquidation of such property, and that the taking over of the private interests concerned was contrary to the Convention dealing with the partition of Upper Silesia. Poland, on the other hand, was of opinion that the factory was the property of the Reich and could be lawfully taken over by Poland under the Versailles Treaty.

The other group of affairs related to the fact that Poland had given notice to certain German owners of large rural estates in Polish Upper Silesia of her intention to expropriate these estates. Germany held that the notifications had not been given in due form, or else that they related to estates which were not liable to expropriation under the terms of the Convention concerning the partition of Upper Silesia.

In the application instituting proceedings which she filed concerning the two groups of cases, Germany relied on a clause in the Upper Silesian convention conferring compulsory jurisdiction on the Court in certain fixed conditions.

Poland replied by making certain preliminary objections, more especially in regard to the jurisdiction of the Court. It was on this objection that the Court had to pass judgment at its Eighth Session. There being no German and no Polish national on the bench, Germany and Poland were allowed to appoint judges *ad hoc*.

The judgment was given on August 25th, 1925. In it,

the Court upheld its jurisdiction in all the cases, but was careful, as concerned the factory at Chorzow, to make certain reservations to the effect that nothing in its decision on the objections could prejudice its future decision on the merits.

(i) NINTH SESSION (EXTRAORDINARY).

This session was convoked in order to enable the Court to deal with certain aspects of the so-called Mosul question.

Frontier between Turkey and Iraq (Advisory Opinion). — The fixing of this frontier, under the Lausanne Treaty, had been left to a friendly agreement between the two parties, failing which the dispute was to be referred to the Council of the League. When eventually the matter was referred to it, the Council was, in the first place, confronted with a disagreement between the parties as to the real nature and legal effects of the decision at which it was to arrive. It was in these conditions that the Council asked the Court for an opinion concerning the character (arbitral award, recommendation, mediation) of the decision in question, and also concerning the manner in which the decision should be taken (unanimously or by a majority vote, etc.).

The Court delivered its opinion on November 21st, 1925. It arrived at the conclusion, on the first point, that the decision contemplated by the relevant article of the Lausanne treaty was a recommendation under the terms of Article 15 of the Covenant, but a recommendation which, by virtue of the previous consent of the parties, would have the effect of a decision compulsorily settling the dispute and determining the frontier line. On the second point, the Court concluded that the vote must be unanimous, the parties taking part in the voting; but that their votes were not to be counted for purposes of unanimity.

The dispute was eventually settled according to the procedure laid down in the opinion delivered by the Court.

(j) TENTH SESSION (EXTRAORDINARY).

This session was entirely devoted to the judgment on the merits of the cases concerning certain

German interests in Polish Upper Silesia. — A rough outline of the facts has been given in connection with the judgment on the objection to the Court's jurisdiction in this case (Cf. Eighth Session, above).

In its judgment on the merits, the Court, as concerned the factory at Chorzow, first of all laid down that the application of the Polish law—under which the factory had been taken over—to private persons or companies, was not compatible with the Upper Silesian Convention, and it further decided that the expropriation of the factory without indemnity was prohibited by the Convention; finally, it ruled that the factory belonged *bona fide* to certain German companies, to whom it had been sold by the Reich, and that therefore the cancellation by Poland of their rights was contrary to the provisions of the Upper Silesian Convention.

With regard to the various cases concerning the intended expropriation of certain rural estates, the Court in the first place noted that a few of them had been withdrawn by agreement or otherwise. As concerned the remaining ten, the Court, in five cases, decided that the notice of expropriation given was contrary to the provisions of the Upper Silesian Convention. In four other cases it dismissed the application, whilst in one it declared that the claim had no longer any object.

(k) ELEVENTH SESSION (ORDINARY).

Competence of International Labour Organisation (Personal Work of the Employer) (Advisory opinion). — During the

discussion, and after the adoption by the International Labour Conference, of the Convention "concerning night work in bakeries", the question arose as to the competence of the International Labour Organisation to draw up and propose labour legislation which, in order to protect workers, also regulated incidentally the same work when performed by the employer. This was the question which, at the request of the Governing Body of the International Labour Office, the Council of the League decided to submit to the Court.

The Court's opinion was given on July 23rd, 1926. It replied in the affirmative to the question submitted, but at the same time made it clear that a controversy might arise as to whether a specific proposal for the regulation of the personal work of the employer would really be "incidental", and indicated the means of solving a possible conflict in this respect.

XI. Conclusion.

The Permanent Court of International Justice has thus become an organic part of international life. The difficulties which previously made it impossible for nations to agree on the methods of nomination and election of judges have been overcome; the Members of the Court have been duly elected and have already won confidence by their labours; the rules of procedure and other internal arrangements have been made; the jurisdiction of the Court is being constantly increased by special agreements and treaty references; the actual business transacted in the early days of the Court certainly exceeded expectations; and nations are giving evidence of readiness to use the Court more and more as their familiarity with it increases.

ANNEX I

Statute for the Permanent Court of International Justice

ART. 1. — A Permanent Court of International Justice 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 organised by the Conventions of The Hague of 1889 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

Organisation of the Court.

ART. 2. — The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst 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 recognised competence in international law.

ART. 3. — The Court shall consist of fifteen members : eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

ART. 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 repre-

sented 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.

ART. 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 join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, 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 four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ART. 6. — Before making these nominations, each national group is 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.

ART. 7. — The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

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

ART. 8. — The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

ART. 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 civilisation and the principal legal systems of the world.

ART. 10. — Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

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

ART. 11. — If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

ART. 12. — If, after the third meeting, 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 Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

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

ART. 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.

ART. 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 whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

ART. 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 and shall have regard firstly to priority of election and secondly to age.

ART. 16. — The ordinary Members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

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

ART. 17. — No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

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.

ART. 18. — A member of the Court cannot be dismissed unless, in the unanimous opinion of the members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations by the Registrar.

This notification makes the place vacant.

ART. 19. — The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ART. 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.

ART. 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 deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ART. 22. — The seat of the Court shall be established at The Hague.

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

ART. 23. — A session of the Court shall be held every year.

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

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

ART. 24. — If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

It the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ART. 25. — The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

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

ART. 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 Court will sit with the number of judges provided for in Article 25. On all occasions 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.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

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.

In Labour cases the International Labour 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.

ART. 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 Court will sit with the number of judges provided for in Article 25. 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.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

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.

ART. 28. -- The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

ART. 29. — With a view to the speedy despatch 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.

ART. 30. — The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

ART. 31. — Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party 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 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 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. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil 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.

ART. 32. — The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity 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.

The Vice-President, judges and deputy-judges, shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling 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 31 shall be determined in the same way.

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

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ART. 33. — 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.

ART. 34. — Only States or Members of the League of Nations can be parties in cases before the Court.

ART. 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.

ART. 36. — The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal dispute 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 the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ART. 37. — When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

ART. 38. — The Court shall apply :

1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognised by civilised nations;

4. Subject to the provisions of Article 59, 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.

This provision shall not prejudice the power of the Court to decide a case *ex æquo et bono*, if the parties agree thereto.

CHAPTER III.

Procedure.

ART. 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 the parties, authorise a language other than French or English to be used.

ART. 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.

ART. 41. — The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve 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.

ART. 42. — The parties shall be represented by Agents.

They may have the assistance of Counsel or Advocates before the Court.

ART. 43. — The procedure shall consist of two parts : written and oral.

The written proceedings shall consist of the communication to the judges and to the parties 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.

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

ART. 44. — 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.

ART. 45. — The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ART. 46. — The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ART. 47. — Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ART. 48. — 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.

ART. 49. — The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

ART. 50. — The Court may, at any time, entrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an enquiry or giving an expert opinion.

ART. 51. — During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ART. 52. — 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.

ART. 53. — 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 favour of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

ART. 54. — When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

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

ART. 55. — 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.

ART. 56. — 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.

ART. 57. — If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ART. 58. — 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 agents.

ART. 59. — The decision of the Court has no binding force

except between the parties and in respect of that particular case.

ART. 60. — The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ART. 61. — An application for revision of a judgment can be made only when it is based upon the discovery of some 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, recognising 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.

The application for revision must be made at latest within six months of the discovery of the new fact.

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

ART. 62. — 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.

ART. 63. — Whenever the construction of a convention to 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 equally binding upon it.

ART. 64. — Unless otherwise decided by the Court, each party shall bear its own costs.

ANNEX II

The Protocol.

Signatures.

1. The Protocol of Signature of the Permanent Court of International Justice has been signed by :

Abyssinia	Estonia	Norway
Albania	Finland	Panama
Australia	France	Paraguay
Austria	Germany	Persia
Belgium	Greece	Poland
Bolivia	Guatemala	Portugal
Brazil	Haiti	Roumania
British Empire	Hungary	Salvador
Bulgaria	India	Kingdom of the
Canada	Irish Free State	Serbs, Croats and
Chile	Italy	Slovenes
China	Japan	Siam
Colombia	Latvia	South Africa
Costa Rica	Liberia	Spain
Cuba	Lithuania	Sweden
Czechoslovakia	Luxemburg	Switzerland
Denmark	Netherlands	Uruguay
Dominican Republic	New Zealand	Venezuela

Total : 52

Ratifications.

This Protocol has been ratified by :

Abyssinia	Belgium	Canada
Albania	Brazil	China
Australia	British Empire	Cuba
Austria	Bulgaria	Czechoslovakia

Denmark	Japan	Serbs, Croats and
Estonia	Latvia	Slovenes.
Finland	Lithuania	Siam
France	Netherlands	South Africa
Greece	New Zealand	Spain
Haiti	Norway	Sweden
Hungary	Poland	Switzerland
India	Portugal	Uruguay
Irish Free State	Roumania	Venezuela
Italy	Kingdom of the	
		Total : 39

ANNEX III

The Optional Clause.

Signatures.

2. The Optional Clause has been signed or accepted by :

Abyssinia	Estonia	Netherlands
Austria	Finland	Norway
Belgium	France	Panama
Brazil	Guatemala	Portugal
Bulgaria	Haiti	Salvador
China	Latvia	Sweden
Costa Rica	Liberia	Switzerland
Denmark	Lithuania	Uruguay
Dominican Republic	Luxemburg	

Ratifications.

The Optional Clause in force between :

Abyssinia	Estonia	Norway
Austria	Finland	Portugal
Belgium	Haiti	Sweden (1)
Bulgaria	Lithuania	Switzerland
China	Netherlands	Uruguay
Denmark		

ANNEX IV

Composition of the Court.

<i>President</i>	M. HUBER (Swiss).
<i>Former President</i>	M. LODER (Dutch).
<i>Vice-President</i>	M. WEISS (French).
<i>Judges</i>	M. ALTAMIRA (Spanish). Commendatore ANZILOTTI (Italian). M. DE BUSTAMANTE (Cuban). Lord FINLAY (English). Mr. MOORE (American). M. NYHOLM (Danish). M. ODA (Japanese). M. PESSÔA (Brazilian).
<i>Deputy-Judges</i>	M. BEICHMAN (Norwegian). M. NEGULESCO (Roumanian). M. WANG CHUNG HUI (Chinese). M. YOVANOVICH (Serbian).
<i>Registrar</i>	M. HAMMARSKJÖLD (Swedish).
<i>Deputy-Registrar</i>	M. RUEGGER (Swiss).

(1) Ratification of the Protocol included ratification of the Optional Clause.

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