LEAGUE OF NATIONS

MINUTES OF THE CONFERENCE

REGARDING

THE REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

AND THE

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THAT STATUTE

Held at Geneva from September 4th to 12th, 1929.

Geneva, October 31st, 1929.

[Distributed to the Council, the Members of the League and other interested Governments.]

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Geneva, October 31st, 1929.

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LIST OF DELEGATES AT THE CONFERENCE.

Australia:	Sir William Harrison MOORE, K.B.E., C.M.G., B.A., LL.D.
Austria:	Dr. Marcus LEITMAIER, Ministerial Adviser.
Belgium:	M. Henri ROLIN, Barrister at the Brussels Court of Appeal, Legal Adviser at the Ministry for Foreign Affairs.
Brazil:	M. Mario DE PIMENTEL BRANDAO, Ambassadorial Counsellor.
Bulgaria:	His Excellency M. Vladimir MOLLOFF, Minister for Finance.
British Empire:	Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C., Legal Adviser to the Foreign Office.
Canada:	The Right Honourable Sir George Eulas FOSTER, G.C.M.G., B.A., D.C.L., LL.D., Senator.
Chile:	His Excellency M. L. DE PORTO-SEGURO, Envoy Extraordinary and Minister Plenipotentiary in Berlin.
China:	His Excellency Dr. CHAO-CHU-WU, Envoy Extraordinary and Minister Plenipotentiary at Washington, Member of the Permanent Court of Arbitration.
Colombia:	His Excellency Dr. Francisco José URRUTIA, Former Minister for Foreign Affairs, former President of the Senate and of the Chamber of Deputies, Envoy Extraordinary and Minister Plenipotentiary in Switzerland.
Cuba:	His Excellency M. Guillermo DE BLANCK, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate accredited to the League of Nations.
Czechoslovakia:	His Excellency Dr. Stephen OSUSKY, Envoy Extraordinary and Minister Plenipotentiary in Paris. *Substitute:* M. Arnost HEIDRICH, Head of the Czechoslovak League of Nations Office.
Denmark:	M. Georg COHN, Head of Department at the Ministry for Foreign Affairs.
Dominican Republic:	His Excellency M. Maximo VASQUEZ, Envoy Extraordinary and Minister Plenipotentiary in Paris.
Estonia:	M. Auguste SCHMIDT, Assistant Minister for Foreign Affairs.
Finland:	His Excellency M. Rafael ERICH, Former Prime Minister, Envoy Extraordinary and Minister Plenipotentiary. *Substitute:* Baron Aarno YRJO-KOSKINEN, Envoy Extraordinary and Minister Plenipotentiary, Secretary-General of the Ministry for Foreign Affairs.
France:	M. Henri FROMAGEOT, Legal Adviser to the Ministry for Foreign Affairs. *Substitute:* M. René CASSIN, Professor at the Faculty of Law in Paris.
Germany:	Dr. GÖPPERT.
Greece:	His Excellency M. Nicolas POLITIS, Former Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary in Paris.
Guatemala:	His Excellency Dr. Carlos F. MORA, Envoy Extraordinary and Minister Plenipotentiary in Berlin. His Excellency M. L. DE PORTO-SEGURO, Envoy Extraordinary and Minister Plenipotentiary of Chile in Berlin.
Hungary:	His Excellency M. L. GAJZAGO, Envoy Extraordinary and Minister Plenipotentiary.
India:	Sir William Ewart GREAVES, Late Judge of the High Court, Calcutta.
Irish Free State:	Mr. John A. COSTELLO, Attorney-General.
Italy:	His Excellency Professor Vittorio SCIALOJA, Minister of State, Senator former Minister for Foreign Affairs. M. Massimo PILOTTI, Counsellor at the Court of Cassation.

Japan:	His Excellency M. Isaburô YOSHIDA, Envoy Extraordinary and Minister Plenipotentiary in Switzerland.
Latvia:	His Excellency M. Charles DUZMANS, Permanent Delegate accredited to the League of Nations.
Liberia:	Dr. Antoine SOTTILE, Doctor of Law, Chargé d'Affaires, Permanent Delegate of Liberia accredited to the League of Nations.
Lithuania:	His Excellency Professor A. VOLDEMARAS, Prime Minister, Minister for Foreign Affairs. *Assistant Delegate:* His Excellency M. V. SIDZIKAUSKAS, Envoy Extraordinary and Minister Plenipotentiary in Berlin.
Luxemburg:	His Excellency M. Joseph BECH, Minister of State, Prime Minister. *Assistant:* M. Albert WEHRER, Doctor of Law, Legal Adviser to the Ministry for Foreign Affairs.
Netherlands:	Jonkheer W. J. M. VAN EYSINGA, Doctor of Law and Political Science, Professor at the University of Leyden.
New Zealand:	The Honourable Sir James PARR, K.C.M.G., High Commissioner in London, former Minister for Education and Justice, former Postmaster-General.
Nicaragua:	Dr. Francisco TORRES FUENTES, Member of the Nicaraguan Supreme Court of Justice.
Norway:	Dr. Arnold C. RAESTAD, Lawyer, former Minister for Foreign Affairs.
Panama:	His Excellency M. J. D. AROSEMENA, Minister for Foreign Affairs.
Paraguay:	His Excellency Dr. Ramón V. CABALLERO DE BEDOYA, Envoy Extraordinary and Minister Plenipotentiary in France.
Persia:	Dr. Parwiz KHAN KITABGI, Legal Adviser to the Ministry for Foreign Affairs.
Peru:	His Excellency M. Mariano H. CORNEJO, Envoy Extraordinary and Minister Plenipotentiary in Paris.
Poland:	Count Michel ROSTWOROWSKI, Former Chancellor of the University of Cracow, Member of the Court of Arbitration at The Hague. M. Szymon RUNDSTEIN, Legal Adviser to the Ministry for Foreign Affairs.
Portugal:	Dr. José Lobo D'AVILA DE LIMA, Professor at the University of Lisbon, Legal Adviser to the Ministry for Foreign Affairs.
Roumania:	His Excellency M. Constantin ANTONIADE, Envoy Extraordinary and Minister Plenipotentiary accredited to the League of Nations.
Salvador:	His Excellency Dr. J. Gustavo GUERRERO, Former Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary in France.
Siam:	His Highness Prince VARNVAIDYA, Envoy Extraordinary and Minister Plenipotentiary in London, Permanent Delegate accredited to the League of Nations.
Spain:	His Excellency M. Cristóbal BOTELLA, Doctor of Law, Legal Adviser to the Embassy in Paris.
Sweden:	Baron E. MARKS DE WÜRTEMBERG, Former Minister for Foreign Affairs, President of the Svea Court of Appeal.
Switzerland:	His Excellency M. Giuseppe MOTTA, Federal Councillor, Head of the Political Department. *Expert:* M. Camille GORGÉ, Head of Section in the Political Department.
Uruguay:	His Excellency Dr. Alberto GUANI, Envoy Extraordinary and Minister Plenipotentiary in France.
Venezuela:	His Excellency M. C. Zumeta. *Substitute:* M. J. M. HURTADO-MACHADO, Counsellor of Legation, Chargé d'Affaires in Berne.
Yugoslavia:	His Excellency M. Ilïa CHOUMENKOVITCH, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate accredited to the League of Nations.

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L'ADHESION DES ETATS-UNIS D'AMERIQUE AU PROTOCOLE DE SIGNATURE DE CE STATUT

Tenue à Genève, du 4 au 12 septembre 1929.

La dernière phrase du paragraphe 3 de la page 7 doit être mise en harmonie avec la proposition de Sir James Parr et, en conséquence, être lue comme suit:

"La Conférence désigne le Dr. Fransisco José Urrutia (Colombie) et S.A. le Prince Varnvaidya (Siam) comme vice-présidents.

LEAGUE OF NATIONS.

MINUTES OF THE CONFERENCE

regarding

THE REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

and the

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE

Held at Geneva from September 4th to 12th 1929.

On page 7, paragraph 3, the last sentence should correspond with Sir James Parr's proposal, i.e. the sentence should read:

"The Conference elected Dr. Fransisco José Urrutia (Colombie) and H.H. Prince Varnvaidya (Siam) Vice-Presidents of the Conference.

FIRST MEETING (PRIVATE, THEN PUBLIC.)

Held on Wednesday, September 4th, 1929, at 11 a.m.

President: Jonkheer W. J. M. VAN EYSINGA.

1. Election of the President.

The SECRETARY-GENERAL opened the meeting and asked the Conference to elect its President.

M. OSUSKY (Czechoslovakia) proposed Jonkheer van Eysinga (Netherlands) as President of the Conference.

M. POLITIS (Greece) seconded the proposal.

Jonkheer VAN EYSINGA *was unanimously elected President.*
(Jonkheer van Eysinga took the Chair.)

The PRESIDENT thanked the Conference for the great honour done to the country which had the privilege of having in its territory the seat of the Permanent Court of International Justice. He thanked M. Osusky personally for proposing his name and his colleagues for the way in which they had received the proposal.

2. Question of the Publicity of the Meetings.

The PRESIDENT proposed that, before considering the agenda, his colleagues should settle a few questions of procedure.

He assumed that they would agree to hold the meetings in public as in 1926. He thought, however, that it might be desirable to begin by an exchange of views in private. If his colleagues approved that suggestion, he would ask all those who were not present in an official capacity to be good enough to withdraw.

The proposal of the President was adopted and the Conference continued to sit in private.

3. Election of the Vice-Presidents.

The PRESIDENT suggested that, as in 1926, the Conference should first appoint its Vice-Presidents.

Sir James PARR (New Zealand) wished to congratulate the President on being in the Chair again, as he had been in 1926. It had not been possible to do much in 1926, when the question before the Conference was the application of the United States of America to join the Permanent Court on certain conditions. Coming from the country which was most remote from Geneva, he found further evidence of the fact that the League spirit of conciliation, the judicial spirit, was growing, in that they were meeting again under the chairmanship of Jonkheer van Eysinga to deal with one matter at least which was closely related to the unsuccessful proceedings of 1926.

He desired to propose as Vice-Presidents the representatives of Colombia (Dr. Francisco José Urrutia) and Siam (H. H. Prince Varnvaidya), who had the necessary knowledge and experience to take the Chair should anything unforeseen prevent the President from attending.

His Highness Prince VARNVAIDYA (Siam): said he was very grateful to the New Zealand delegate for proposing his name. As, however, he was the head of a delegation, he feared he might not be able to find sufficient time to accept the honour of being Vice-President of the Conference. He would be glad to withdraw his candidature if the Conference thought one Vice-President would be enough.

The PRESIDENT said he thought he was expressing the feelings of the whole Conference when he asked His Highness not to insist on withdrawing but to be good enough to accept the office of Vice-President. His colleagues would try to make his duties as light as possible.

The Conference elected Prince VARNVAIDYA (Siam) *and* M. URRUTIA (Colombia) *Vice-Presidents of the Conference.*

4. Question of the Appointment of a Committee on the Credentials of Delegates.

The PRESIDENT thanked the New Zealand representative for his reference to the events of 1926. It had then been thought unnecessary to appoint a Committee on Credentials. The position at the present time, however, was rather different, as it was hoped to conclude the session by the signature of certain documents. It might, therefore, be desirable to appoint

a small Committee on Credentials, which would see to the observance of the rules that should govern every self-respecting Conference, while ensuring sufficient elasticity to allow the various delegations from countries which in many cases were very distant from Geneva to sign the documents which it was hoped to draw up at the end of the session.

If the Conference approved his suggestion, the General Committee of the Conference would, at the next meeting, submit a proposal as to the composition of the Committee on Credentials, which would, he was sure, discharge its duties in the spirit he had just indicated.

The President's proposals were adopted.

5. Rules of Procedure of the Conference.

The PRESIDENT suggested that, as had been the case in 1926, the Conference might quite well dispense with a Committee to draw up Rules of Procedure. The delegates were accustomed to work together and already possessed very good Rules in those of the Assembly and its Committees. The Conference might refer to those Rules when necessary.

This proposal was adopted.

6. Agenda of the Conference.

THE PRESIDENT thought that all his colleagues were aware of the nature of the agenda (see note by the Secretariat concerning the provisional agenda, reproduced as Annex 1). In pursuance of a decision of the Council, the delegates were met together as representatives of the States parties to the Statute of the Permanent Court of International Justice.

Everyone knew that the present judges would complete their first period of nine years on January 1st, 1931, and that, at the last session of the Assembly, the French delegation had made a proposal which subsequently became a collective proposal. That proposal was intended to secure a re-examination of the Statute of the Court. He would emphasise the word " re-examination " because, on the one hand, there was no desire to restrict the scope of this examination and yet, on the other, there was no wish to re-open a discussion of the Statute as a whole, which dated from 1920.

A general discussion might indeed lead very far afield. It was probably for that reason that all idea of a general revision was abandoned in favour of the more restricted idea of re-examination.

The Assembly resolution had been discussed by the Council and the latter had appointed a small Committee of Jurists which had met at Geneva in March 1929 under the Chairmanship of the eminent Italian jurist and statesman, M. Scialoja. The Committee was fortunate in having the assistance of a large number of jurists appointed by the Council and also the very valuable advice of those with the best knowledge of the daily routine of the Court. He referred to the President of the Court, M. Anzilotti, the former President, M. Huber, and the Registrar, M. Hammarskjöld.

There had also been the financial standpoint to be considered, and the Committee had been glad that the Council had invited the Chairman of the League's Supervisory Commission to take part in its deliberations and give it the benefit of his advice, so that decisions might be reached with a full knowledge of their financial bearing.

The first result of the work of the Committee of Jurists was the draft proposal, accompanied by a very clear and instructive report over the signatures of M. Fromageot and M. Politis. All the members of the Conference were acquainted with that work, which would be found in document A.9.1929.V (Annex 2).

Such was the first question which the Council had referred to the Conference for a decision.

In the second place, the Council had, a few days previously, laid another question before the Conference, the one to which Sir James Parr had just referred, namely, the question of the accession of the United States of America to the Statute of the Court.

Early in 1926, the United States Senate had adopted a resolution that was evidence of its desire to accede to the Statute with certain reservations (Annex 3). The 1926 Conference at which the United States had not been represented, devoted four full weeks to considering those reservations. In the end, a document had been drawn up and studied in all countries, particularly in the United States of America. Then there had been silence for some time.

Happily, at the end of 1928, the United States again took up the matter and did so at the very moment when, by a fortunate coincidence, the Committee of Jurists was meeting at Geneva. Mr. Elihu Root, who had also been invited by the Council to participate in the re-examination of the Statute, was entrusted with the duty—and I think everyone will be gratified to hear this—of bringing a letter from the United States Secretary of State asking that the negotiations with regard to the accession of that country to the Statute of the Court might be re-opened (Annex 4).

The Committee of Jurists was thus confronted with a double task. It had, first, to re-examine the Statute and, subsequently, to consider the letter from the United States Government. The second part of the work was dealt with in a report signed by Sir Cecil Hurst, to which was attached a very important document, namely, the draft Protocol to which the President had referred when he had said that it was hoped to sign, amongst others, a certain document before the members of the Conference left Geneva (Annex 5). Such was their second task.

There was a third point in that connection which did not come within the purview of the Conference. Nevertheless, it was of great importance to the whole series of questions which the Conference had to bear in mind. He referred to the financial problem which M. Osusky, had been good enough to explain to the Committee of Jurists. That problem came

within the competence of the Assembly. The Conference was aware that, under Article 32 of the Statute, a resolution of the Assembly was required for most financial questions. He was glad to be able to inform the Conference that the Chairman of the Fourth Committee of the Assembly, where that question had been raised on the previous day, had expressed a desire to place the item on the agenda of the first meeting in the following week.

He thought it would be best to deal first with the question of the accession of the United States of America to the Statute of the Court, for that was doubtless the matter in which everybody was most interested. Subsequently, the Conference could re-examine the articles of the Statute of the Court. He made this suggestion the more readily because he understood that the Secretary-General had a statement to make in that connection, which he was sure the Conference would be very interested to hear.

The SECRETARY-GENERAL then made a communication to the Conference in the following terms :

" Mr. President, Gentlemen, — I thank you for giving me the opportunity of making this statement to the Conference.

" I am informed from a sure source, which I cannot divulge but on which the members of the Conference can absolutely rely, that the Secretary of State of the United States of America, after careful consideration, is of opinion that the draft Protocol drawn up by the Committee of Jurists would effectively meet the objections set forth in the reservations made by the United States Senate and would constitute a satisfactory basis for the United States to adhere to the Protocol and Statute of the Permanent Court of International Justice, dated December 16th, 1920. After the States signatory to the Protocol of Signature and the Statute of the Permanent Court have accepted the draft Protocol, the Secretary of State will request the President of the United States for the requisite authority to sign, and will recommend that it be submitted to the Senate of the United States with a view to obtaining its consent to ratification."

The Conference decided to treat this statement as confidential for the time being.

(The Conference went into public session).

7. Question of the Order in which the two Items on the Agenda should be discussed.

The PRESIDENT explained that he wished to make good a slight omission on his part. He had forgotten to remind the Conference that the subject matter of the Protocol had been referred by the Council to the Assembly, and that the First Committee of the Assembly, which had worked very expeditiously, had referred it to the Conference, so that it was duly authorised to consider the question. Sir Cecil Hurst's report and the draft Protocol were embodied in document A.11.1929.V. which had been distributed to all the delegations (Annex 5).

M. G. DE BLANCK (Cuba) informed the Conference that he had been instructed by his Government to make the following statement :

" The Senate of the United States of America, after considering the present Statute of the Permanent Court of International Justice, formulated, on January 27th, 1926, five reservations concerning the accession of the United States to that Statute. The second sentence of reservation No. 4 reads as follows :

" ' The Statute for the Permanent Court of International Justice, adjoined to the Protocol, shall not be amended without the consent of the United States.'

" This reservation has already been admitted, and is to be found in Articles 1 and 3 of the draft Protocol concerning the accession of the United States to the Permanent Court of International Justice, as adopted by the Council of the League and communicated by that body.

" If it is agreed and laid down that the Statute cannot be modified in future without the consent of the United States, it is perhaps rather an unusual proceeding for the States signatory to the Statute to meet for the purpose of modifying that Statute at the very time when they are considering the question of the accession of the United States to the Permanent Court of International Justice.

" Since the United States of America are not represented at this meeting, we should merely examine the Protocol for the accession of the United States to the Statute of the Permanent Court, without modifying that Statute until the United States is a party.

" Any modifications of this Statute at the present time would make it necessary for the United States Government to submit to the Senate : (1) the Protocol on the reservations and (2) the new Statute. If the United States Senate put forward a single amendment to the new Statute, our efforts would be nullified and we should be obliged to forego the co-operation of the United States.

" It would therefore be more logical to postpone all definite decisions and refrain from discussing modifications to be made in the Statute until the United States, having signed the Protocol on the reservations, takes part officially in our work and is a party to such agreements as may follow.

" The modifications to be made in the Statute would not seem to be of a very urgent nature. In the text to be inserted in place of Article 3, we read : 'The Court shall consist of fifteen members'. The utility of this phrase is not very apparent. Article 3 of the present Statute actually authorises the Assembly to increase the number of judges to fifteen.

" Nor does the proposal that the Court should remain in permanent session and should no longer hold an annual meeting on June 15th appear to be necessary. Hitherto, unless I am mistaken, the Court has held eight ordinary and nine extraordinary sessions. I do not include its preliminary meeting.

" In eight years—that is to say, from January 30th, 1922, to the present date—or in ninety-six months, it has been in session for thirty-seven months—in round figures—has pronounced sixteen decisions, an average of two a year, and has given about the same number of advisory opinions. Even supposing that the work of the Court increases, we do not think it would be indispensable for it to remain in permanent session. The judges at The Hague would have absolutely nothing to do for the greater part of the year. Consequently, my Government feels that there is no reason why men of such high qualifications should remain at The Hague when they could, without any derogation from their duties, be of service to mankind in other spheres. If Article 23 were omitted, there would naturally be no need to maintain Article 17.

" The Permanent Court in permanent session would simply mean an increase in the allowances provided for under the new system ; this would lead to increased expenditure by the Court and a proportionate increase in the contribution of each State Member of the League, amounting in all to more than half a million florins (one million Swiss francs). The present economic situation of most State Members would seem to preclude such increased expenditure.

" We also think it necessary to point out that it would be very difficult, if not impossible —at any rate in the case of judges from distant countries—to persuade these judges to reside at The Hague. Nor do we see how distinguished jurists could be inducted to sever their connection with their countries, to restrict, in fact, a part of their intellectual or scientific activity, in order to become administrative officials. More could be said on this subject, but we do not think it necessary to enlarge further on the disadvantages of such a situation."

The PRESIDENT thanked the delegate of Cuba for his interesting statement. As that statement would be published, everybody would be able to study it. M. de Blanck would not, he thought, object to the previous question being examined as soon as the Conference came to discuss the second point on its agenda.

He therefore called upon the Conference to discuss, first of all, the question of the Protocol of Signature. It would thus have adequate time to study the Cuban delegate's statement.

M. FROMAGEOT (France) said that, if the question raised by the Cuban delegate was to be discussed later, he would reserve his observations. Was it well, however, to adjourn discussion of the Cuban declaration until the question of the accession of the United States of America had been examined ? By this means, the question would, to a certain extent, have been prejudged and would not remain fully open.

The Conference had met, in the first place, to consider whether any alterations ought to be made in the draft Statute. In the previous year, the Assembly had approved the French delegation's suggestion that it would be desirable—and that before 1930—to consider whether any modifications ought to be made in order that the elections might take place in the following year in conformity with the revised Statute.

As a matter of fact, the alterations were not very radical ; they did not affect the fundamental principles of the Court. The Government of the United States of America had been invited to participate in the work, and the Committee of Jurists had had the great honour and pleasure of receiving Mr. Root in the spring of the present year. Mr. Root had made useful suggestions, the traces of which would be found in the proposals for the revision of the Statute. Consequently, as far as he could see, the Government of the United States was aware of the proposals that had been made.

To say that the matter was not urgent was contrary to the opinion of a large number of Governments represented at the Assembly. The latter, indeed, had held that the question was as urgent as the accession of the United States. In those circumstances, without entering into a discussion of the objections which had been raised by the delegate of Cuba, he felt bound to say that he did not think it advisable to defer the discussion until a decision had been taken on the question of accession. It was true that the two questions were connected, but obviously they could not be discussed simultaneously.

The PRESIDENT thought M. Fromageot was right in stating that the two questions could not be considered simultaneously. That was precisely why he had ventured to suggest that they should be considered *seriatim* ; first, the Protocol of Signature, and then the question of the revision of the Statute. He thought that the Conference was agreed on that point.

In conformity with his Government's instructions, the Cuban delegate had submitted to the Conference a very interesting and very general declaration. He thought it would be desirable to peruse that document quietly without interrupting the discussion on the Protocol of Signature. He would ask M. Fromageot if he could not agree to that course, since questions of procedure involved a considerable loss of time, and it would be both desirable and interesting to begin the examination of the fundamental issues.

M. POLITIS (Greece) pointed out that, when a short time before, the President had proposed that the Conference should first examine the question of the accession of the United States of America to the Protocol of Signature and then the amendments to the Statute of the Court, he had not raised any objection, although he would have preferred the inverse order because he thought that the Conference was unanimous in its desire to conduct its work on the basis of the two reports prepared by the Committee of Jurists with the assistance of the distinguished representative of the United States of America.

It now appeared to him that the situation was not quite the same. The Conference had heard the Cuban delegate's declaration, which raised, so to speak, the previous question. Unless he was mistaken, the representative of Cuba desired the Conference to deal with only one of the two questions, namely, that of the accession of the United States, on the grounds that the other question was not yet mature and should not be considered at the present juncture.

Certainly, the opinion of the Conference with regard to the accession of the United States to the Protocol of Signature might undergo a change if the Conference found itself obliged to abandon the amendments to the Statute. He also thought that insurmountable obstacles would arise later.

M. Fromageot had recalled the intentions of the 1928 Assembly when it had unanimously accepted the idea proposed by the French delegation—supported as it was by nineteen other delegations—to the effect that urgent action should be taken to revise those points in the Statute which experience had shown would benefit by amendment.

The work had been conducted with all possible speed in the hope that the 1929 Assembly would ratify the Protocol that had been drawn up, and that by 1930 the various Governments would also have had all the time they required to consider and ratify it.

If, however, as the honourable delegate for Cuba proposed, only the question of the accession of the United States were considered, there would not merely be too little time to consider the amendments, but there would be no time to consider them at all, unless a new conference were convened at which the United States was represented. In point of fact, the United States would agree to the Statute as it stood. Therefore, according to Article 3 of the Statute, no modification could be made without the participation of all the Contracting States, and the United States would by then have become a Contracting State.

If, on the contrary, they first secured the co-operation of the United States in remodelling the Statute, it would not be necessary, after the Statute had been remodelled and if it were accepted by the United States, to convene a conference, with the participation of the United States, until the necessity for further alterations was felt.

That was how he saw the question. The point was a particularly serious one in view of the declaration of the Cuban delegate. He was of the opinion that, as the previous question had been raised, the Conference could not continue its discussions without reaching an agreement on the question of method.

M. URRUTIA (Colombia) said he thought it was not for the Conference to determine the questions which it had been convened to consider. The nature of the Conference had already been specified in a Council resolution which fixed the agenda and indicated the subjects which the Conference was called upon to consider.

He asked the President to be good enough to cause the Council resolution adopted at Madrid, on the strength of which the Conference had been convened, to be read. The Secretary-General had invited the various Governments to send their representatives to a Conference to consider certain definite questions. In conformity with the Council's invitation, the Governments represented at the Conference had agreed to send delegates to discuss the items on the Conference's agenda. It would be most unusual, after the Governments had accepted that invitation and sent their representatives to the Conference, if the latter were to say : " We shall not discuss these questions, but others of our own choice ".

He thought it was necessary carefully to define the questions which the Conference had been called upon to consider. He did not think its members were at liberty to alter the nature of the Conference. That might have been possible at the time when the Council was taking its decision, but the character of the meeting had now been fixed by the Council resolution and the invitation had been sent out to the various Governments.

The PRESIDENT explained that all he had meant to suggest was that the discussion on the previous question might have been opened at another time. Since, however, it had commenced, he would raise no objection to the point being settled.

All that the previous speakers had said was correct. The agenda of the Conference, as fixed by the Council, comprised two questions : (1) the accession of the United States to the Statute of the Court and (2)—an item which had been placed on the agenda as a result of the Assembly resolution of the previous year—the revision of the Statute itself. From a chronological point of view the order ought, as M. Politis had pointed out, to be reversed. In that connection, he thought it was not possible to alter what was, if he might say so, the very foundation of the Conference. He quite agreed with those who said that it ought also to consider the amendments to the Statute of the Court. He believed, moreover, that all the speakers shared that opinion and that it would be difficult to accept the Cuban delegate's proposal. He thought his colleagues were unanimous on that point. Ideas might differ as to the order to be followed, but it would obviously be advantageous to deal first with the question of the Protocol. The other question ranked first in seniority, but he did not feel that that was an essential point. Was there any object in continuing further the discussion on the fundamental points of the Conference ?

M. POLITIS (Greece) said, with regard to the question raised, that he would strongly urge the Conference to reverse the order of the items. He ventured to remind it that, chronologically, the question of the amendments had been raised first ; in actual fact, the Council had decided to convene a Conference to study the amendments to the Statute of the Court. Only later did it decide to add the question of the accession of the United States of America.

The principal problem before the Conference—as far as it was possible to establish a parallel between the two questions—was that of the amendments to the Statute of the Court. The accession of the United States of America was a secondary, though he admitted a very important, question. If the Conference followed that order in its discussions, it would be acting in conformity with all the previous history of the question. The only excuse for reversing the above order and discussing the second question first would be some absolutely urgent reason of convenience or method, which he, for one, failed to perceive.

But that was not all. In addition to the considerations to which he had already referred, there were considerations of a practical nature deriving from the problem itself as now

enunciated. If, first of all, an agreement was reached regarding the question of the accession of the United States of America to the Statute of the Court the Conference might find itself somewhat hampered later on when it came to consider the amendments to the Statute. If, however, as the Council intended, and in accordance with the instructions received, the Conference first discussed the amendments, it would not be in any way embarrassed when it came to consider the question of the accession of the United States to the Protocol.

M. DE BLANCK (Cuba) wished merely to ask one question. Could the Conference, in spite of the opinion of the Council, discuss only one question, reserving the other for a subsequent meeting ? He would be glad if the Conference would answer " Yes " or " No ".

The PRESIDENT announced that he would read the documents once more. He did not think there could be any ambiguity.

The Conference owed its existence to a decision of the Council to convene a Conference of " States Parties to the Statute of the Permanent Court of International Justice, to meet at Geneva on Wednesday, September 4th, 1929, with a view to examining the amendments to the Statute and recommendations formulated by the Committee of Jurists ". The invitation might have been refused ; but, as a matter of fact, all the members of the Conference were present as representatives of Governments which had accepted the invitation. Consequently, the Conference had to examine the question of amendments to the Statute, as well as the other earlier question—which had been raised as far back as 1926—of the accession of the United States to the Statute of the Court.

As M. de Blanck had put the question very clearly, he would reply to him equally clearly and say that the Conference had to deal with both questions. He had only proposed postponing the consideration of one of them in order that the members of the Conference might have time to study the documents.

M. VOLDEMARAS (Lithuania) thought that the solution of the problem was not so difficult as it appeared to be. It was quite obvious that the Conference was called upon to pronounce on the two questions, and that it was entitled to change the order in which they were to be discussed. When the Council instructed the Conference to study the Protocol and alterations in the Statute of the Permanent Court of International Justice, it had no knowledge of the fact which has just been communicated to the Conference. There could be no doubt that, if the Council were asked for an opinion, it would reply that the Conference ought certainly to take that occurrence into account. He supposed that the delegate for Cuba had felt called upon to read his statement before the fundamentals of the matter were discussed as he was of opinion that the statement might affect all the subsequent discussions. That was why he had proposed that the examination of the first question should be adjourned.

As, however, the two questions were closely allied, the discussion of one of them would in either case have some bearing on the other.

There were several ways of avoiding the difficulty.

The Conference might consider the second item on the agenda, reserving its right to refer to the same problem later if necessary. That method might be good or bad, but it was worth consideration. It was certain that some of the work might prove to be a sheer loss of time if it were found necessary to go back on what it did ; theoretically, however, the method was possible.

The second way would be to endeavour to ascertain the general opinion of the Conference. The arguments that had been put forward have revealed two opposite standpoints which appeared, for the moment at least, to be irreconcilable. It might be desirable to suspend the meeting in order to ascertain the Conference's opinion.

There was still one more point which it might possibly be desirable to elucidate.

They were starting on the assumption that the United States would very shortly become a member of the Court. The Conference might suspend its work, as the delegate for Cuba proposed, and wait until the United States accepted the Protocol and sent a delegate to participate in the task of revising the Statute, since revision in the absence of a representative of the United States might prevent the United States Government from ratifying.

The possibility of the immediate accession of the United States was, however, a mere supposition. All the members were speaking, to a certain extent, on behalf of the United States Government by endeavouring to ascertain the solution which would be most acceptable to that Government ; but what would be simpler than to sound that Government's opinion ? If the United States said that it was aware of the proposed amendments and saw no objection to their adoption, who could prevent the Conference from discussing them ? On the contrary, if the United States did not approve them, all the discussions would be a pure waste of time and it would be necessary to adjourn the question.

He did not see how it was possible to ascertain the exact opinion and dispositions of the United States of America without consulting that country. He therefore thought it might be desirable to suspend the work of the Conference.

M. COHN (Denmark) said he thought the Conference had been called upon to consider two different questions which it was its duty to examine, namely, the amendments to the Statute of the Permanent Court and the question of the accession of the United States of America to the Statute of the Court.

The previous question raised by the delegate for Cuba was, strictly speaking, a matter for the Governments to decide when they came to determine whether it would be desirable to ratify the results of the work of the Conference The answer would depend mainly on the attitude adopted by the Government of the United States with regard to the Conference's

proposals. That, however, was no reason why the Conference should not immediately discuss the problems which it had been called upon to examine. He therefore supported the view that it should adhere to the agenda which had been drawn up in conformity with the Council resolutions.

Sir Cecil HURST (British Empire) said he shared the views of his Danish colleague. He hoped the Conference would decide not to accept an adjournment of the question but come to a decision forthwith. It had been pointed out that the Conference had upon its agenda two questions, and it was clearly within the power of the Conference itself to decide upon the order in which they should be taken. To ask for one of those questions to be adjourned and dealt with some time in the future seemed to him to be inconsistent with the purpose for which the Conference had been summoned.

He thought it a little illogical for the representative of a State which was represented on the Council to make such a demand, because, after all, the Conference was meeting in pursuance of an invitation which had issued from the Council, of which Cuba was a Member. Cuba, as a Member of the Council, had concurred in the issue of an invitation which Cuba as a State had accepted, that invitation being intended for the purpose of performing some particular work. Surely it was a little illogical for the representative of Cuba to ask the Conference not to do that particular piece of work at all.

M. Politis had addressed an appeal to the Conference to reverse the order which had been proposed by the President and to take first the amendments to the Statute and then the proposed Protocol for the accession of the United States of America. Were the question to be decided from the point of view of pure logic, he quite agreed that M. Politis would be right ; but he ventured to suggest that, for practical reasons, the Conference should, on that occasion, adopt a course which might not be strictly logical.

Might he explain shortly why he thought that procedure reasonable ? The Conference was, in reality, about to undertake two tasks. One, it was hoped, in view of what had been said that morning, would be a short task ; the other might take longer. If the short task could be completed quickly, it would be a reason for dealing with it first.

Great public interest was attached to the accession of the United States to the Statute of the Court. If that part of the work could be finished and if the Assembly could be presented with a draft Protocol framed upon the supposition and in the sure hope that the United States was prepared to accept it, the Assembly and the world at large would, he thought, be glad to have that report quickly. It would then be unnecessary to inform them that the Conference was dealing with a mass of detailed proposals relating to the Statute of the Court and that the other question was standing over until the question of amending and introducing such detailed amendments had been finished. Surely the Assembly would be entitled to become a little impatient if such a procedure were adopted, even though logically—as he admitted—it would be more correct. Therefore, he hoped that M. Politis would not press for the President's proposal to be reversed and would be content to deal first with the question of the adhesion of the United States to the Statute of the Court.

Might he add one reason which seemed to him to be a very pertinent one to bear in mind ? The Conference was about to deal with a series of proposed amendments to the Statute of the Court in the preparation of which a distinguished member of the United States had taken part. The results of all the work of the Committee of Jurists had been printed in one document ; therefore, the announcement that had been made that morning, to the effect that there was every reason to believe that the United States was content with the proposals on one point, was made at a moment when that country had full knowledge of the detailed amendments which it was proposed to introduce into the Statute of the Court. Consequently, if the agreed amendments did not depart very appreciably from what had been proposed by the Committee of Jurists, there would be no reason to assume that they would cause any umbrage or difficulty to the United States. It could be assumed that, had there been any doubt as to the effect which the adoption of those changes might have, the United States Government would hesitate as to whether or not the Protocol was satisfactory. That fact, he felt, made it safe as well as practicable to adhere to the President's proposal and deal first with the question of the draft Protocol for the accession of the United States to the Statute, a work which he hoped would be completed quickly.

M. OSUSKY (Czechoslovakia) said that the situation was being obscured by constant references to the Council's resolutions. The Council had requested the various countries to appoint delegates to consider two questions and, simultaneously with these two questions, a report by the Committee of Jurists.

One delegate had proposed that one of these questions should be omitted from the agenda. It would be necessary, therefore, to take a decision on that point.

The PRESIDENT said he had thought it would be possible to discuss the basic principles that morning. He noted, however, that it was already half-past twelve and that the Conference was still discussing the previous questions. He did not want to close the meeting until it had settled its agenda. He repeated that it was for practical reasons and on account of the worldwide interests at stake that he had proposed to begin with the question of the accession of the United States, although he recognised that, logically, the reverse order would have been preferable. He adhered to his opinion on that point.

With regard to the very definite question raised by M. de Blanck as to whether the Conference could omit one of the items from its agenda, his reply was in the negative.

M. POLITIS (Greece) said that, after the appeal made him by his friend, Sir Cecil Hurst, he would not insist. He hoped, however, that Sir Cecil would excuse him if he said that there ought to be a limit to the disregard of logic. Thus, if the Conference adopted Sir Cecil's view, he merely asked that, in the documents distributed to it, the title " Conference for the Revision of the Statute of the Permanent Court of International Justice " should be replaced by, " Conference for the Accession of the United States to the Statute of the Permanent Court of International Justice ". In that way, the title and the contents would be in agreement.

Having made that reservation as a concession to his conscience, he would raise no further objection.

The PRESIDENT stated that, on the last point, he agreed with M. Politis.

M. URRUTIA (Colombia) supported the President's proposals. He desired, however, to make it clear that the Conference was convened for the purpose of revising the Statute of the Court, that the invitation was framed in the same sense and that it made no reference to the United States reservations.

He asked, moreover, that the invitation might be read, as that had not yet been done.

M. OSUSKY (Czechoslovakia) again gave it as his opinion that the Conference should take a decision regarding M. de Blanck's proposal. If that were rejected, it would then have to fix the order in which it would consider the two questions.

The PRESIDENT explained that M. Osusky's wishes would be met.

He understood that, with very few exceptions, all the delegates were agreed that they should deal with both questions and should begin with that of the accession of the United States.

At the next meeting this question could be examined in detail.

The proposals of the President were adopted and it was agreed to meet again at 4 p.m.

(The meeting rose at 12.40 p.m.)

SECOND MEETING (PUBLIC).

Held on Wednesday, September 4th, 1929, at 4 p.m.

President: Jonkheer W. J. M. VAN EYSINGA.

8. Question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice: Adoption of the Draft Protocol prepared by the Committee of Jurists.

The PRESIDENT proposed that the Conference should examine the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Court (Appendix to Annex 5). He thought that everyone would be glad to hear a statement by the Rapporteur of the Committee of Jurists for that question. He asked Sir Cecil Hurst to say a few words on this subject.

Sir Cecil HURST (British Empire) assumed that his colleagues did not want any elaborate explanation of the contents either of the report of the Committee of Jurists or of the draft Protocol. He felt sure that all the members of the Conference, would have studied the report and made themselves acquainted with the contents of the draft Protocol. Possibly, all he needed to add were some small explanations that might be helpful to the members of the Conference in deciding upon the attitude they would adopt.

It was true that his name appeared in the report as Rapporteur ; but those who were members of the Committee of Jurists knew quite well that, although he had prepared the rough draft of the report before it was presented to the Committee, it had been very carefully revised in collaboration with Mr. Root himself. The members of the Committee of Jurists had felt that, in framing the scheme which they hoped would enable the United States to adhere to the Court, they were dealing with a question which was of particular interest to the United States member of that Committee. It was, therefore, not unnatural that they should have endeavoured to ensure that the terms of the report which was submitted to the Committee should have the full concurrence of the United States member of the Committee, even though he might not be the Rapporteur.

Sir Cecil Hurst was aware that many of the members of the present Conference had been present at the previous Conference in 1926. Those members would remember that the great difficulty with which they had then been faced was the reservation included by the United States as part of the fifth paragraph of their reserves :

> " Nor shall it [*i.e.*, the Court] without the consent of the United States entertain any request for any advisory opinion touching any dispute or question in which the United States has or claims an interest."

In 1926, the Conference, being deprived of the active participation of a representative of the United States in its work, had been unable to find a satisfactory method of overcoming the particular difficulty by which the League was at that time confronted. It was only at a later stage that it had become possible to understand what was the position, what was the difficulty that underlay the United States desire to secure the acceptance of that reservation, what it was exactly that underlay the hesitation displayed on the European side of the Atlantic in the acceptance of that reserve. It had then become clear that what really was at the bottom of that reserve was, on both sides, a little fear as to the effect which acceptance might have. There was on the one side, he thought on the side of the United States, a feeling, when the reservation had been framed, that, through the machinery of the Court and by asking the Court for its opinion in any advisory capacity, cases might be dealt with which really affected the interests of the United States.

As the Committee of Jurists said in their report :

> " The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved."

There had been some hesitation, as was shown in that paragraph, on the part of the United States ; but there had also been some hesitation on the part of the Members of the League.

Again, the report says :

> " Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure ".

It was in face of that mutual want of confidence on both sides that, when the Committee of jurists met in March 1929, Mr. Root had made the very helpful suggestion that the real way of bridging the difficulty was to ensure some method by which the two parties would be put in contact so that, if a question arose in the Council regarding which any Government desired to secure the advisory opinion of the Court, there might be some method through mutual direct contact, by which the League could assure the United States, and the United States on the other hand could assure both itself and the Council, that there was no intention to prejudice in any way the interests of the other party.

Mr. Root's real contribution to the work in March had been embodied in another paragraph of the report :

> " Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America ".

He would also venture to read the next sentence, because that, again, from the point of view of the members of the Conference, was a very important one :

> " The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and the responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering, upon unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article 1 of the draft now submitted."

There lay the real explanation of the proposal that was before the Conference, namely, that it should secure the acceptance by the United States of the Statute of the Court because it was in a position to accept the United States reservations, just as the United States was in a position to assure itself that no prejudice to its interests was possible in requests by the League for advisory opinions from the Court, because both parties saw that this simple method of getting in touch for the discussion of any question was bound to ensure an arrangement satisfactory to both.

Such was in reality the essence of the proposal now submitted.

The machinery by which this result was to be achieved was provided for in the terms of the Protocol. With goodwill on both sides there would be no difficulty whatever in finding the appropriate channel of communication; that communication might be effected through a diplomatic channel or directly, or it could be effected by local representatives. With goodwill, there was and could be no difficulty.

The very gratifying communication which had been made to the Conference that morning proved, he thought, that the Government possibly most interested in the question was prepared to accept the scheme as it had been laid before the Conference. That being so, he could only trust that the Governments which were represented at the Conference would likewise find that the scheme which had been laid before it was adequate for their purpose. Most of the delegates were lawyers, and it was the habit—he was almost tempted to say the bad habit—of a lawyer whenever he read a document to think that he could see possible improvements in it. He had no doubt that most of the members of the Conference thought so on the present occasion. In view, however, of the communication made at the morning meeting, he would express the hope that it would not be necessary to make any modifications.

The PRESIDENT thanked Sir Cecil Hurst for his statement.

M. FROMAGEOT (France) wished merely to state that they had heard with deep satisfaction that morning the communication made to them by the Secretary-General of the League of Nations with regard to the Protocol and the opinion of the Government of the United States. In the light of that communication, and after hearing the remarks of his British colleague, he thought he might say that, subject to ratification, he could sign the Protocol on behalf of the French Government without any alterations.

M. PILOTTI (Italy) associated himself with M. Fromageot's statement. On behalf of the Italian Government he was prepared to sign the Protocol as it stood.

Sir George FOSTER (Canada) said that the present situation was a source of great satisfaction to him, as a member of the 1926 Conference, which had had under consideration the resolutions of the United States Senate and its reservations. Difficulties had been encountered at that time, but the work and the result of the work of the Conference had by no means proved a failure; it was the inevitable first step which had necessarily to precede ultimate achievement.

He had listened to the statement of Sir Cecil Hurst, and he thanked him for the candid and frank confession he had made with reference to the peculiar temperament and disposition of the legal fraternity. At first he had thought of suggesting that the laymen should have a turn that afternoon and that the lawyers should be satisfied with the laurels won in previous well-contested fields; but now that the lawyers themselves had made that approach it would be a good thing for the laymen to join hands with them, thanking them for all the help they had given, refreshed by the frank confession they had made, and feeling sure that in years to come, chastened by this experience, they would come to the assistance of the laymen in all such progressive and helpful efforts for the establishment of peace.

The whole kernel of the trouble, as had been explained, had simply been lack of contact and conference. If there had not been such lack of contact and conference in 1926, three years' delay would probably have been saved.

In the presence of the document now before the Conference, which had been so carefully examined and by such an authority, there were only two things that could be done—accept its conclusions, or undertake a revision of them section by section and article by article. He personally would have the strongest objection to undertaking to dissect, tear up, and then patch up a document which had been so ably prepared, and which he considered to be excellent. He would have the strongest objection to such a procedure, even if it succeeded, because the document in question had received the imprimatur of a legal mind from the United States of America, which was in agreement with and which had assisted in the formation of this Protocol.

He did not think it was necessary for him to say anything in praise of Mr. Root. One observation alone he desired to make. Mr. Root stood pre-eminent in the United States without reference to party or to faction, and consequently when the League had the collaboration of a gentleman of such capacity and influence it would be a gratuitous if not a hazardous undertaking to disturb the conclusions which had been reached jointly with him, since it was certain that those conclusions, with the great influence of Mr. Root and his friends behind them, would have every chance of being accepted by the United States of America.

Coming as he did from a country which was a neighbour of the United States, a neighbour of the best pretentions and on the best grounds of friendship, he experienced great joy to find that (although later than had been hoped) there was now a good prospect of the United States of America, that large and populous neighbour of Canada, having a seat upon the Permanent Court and thus adding to its prestige and its influence.

For a hundred years there had been perfect peace and amity between those two countries of the North American Continent. The United States had been beside Canada long before the great war; it had been beside Canada through all that period of anxious anticipation and desire which preceded the entry of the United States into the war. Canada had been the neighbour of the United States and by its side ever since, always praying that, step by step, without compulsion, and from its own conscience and desire, that country would take a greater and greater part with Canada in the work of assuring world peace. 1926 and 1929! What a different situation existed now, not only in Europe, not only in other countries of the

world, but, perhaps more than anywhere else, in the United States of America itself. That was another step forward towards the period when contact and conference would settle the affairs of the world and would bring about the certainty of ultimate peace.

On behalf of the Government which he represented, and in his personal capacity, he was glad to say that he accepted the Protocol as it stood, without alteration.

Prince VARNVAIDYA (Siam) declared that the Siamese Government had no amendments to propose. He was therefore prepared, on behalf of his Government, to accept the draft Protocol as it stood.

M. GÖPPERT (Germany) considered the draft Protocol to be wholly satisfactory and stated that the German Government could accept it.

M. OSUSKY (Czechoslovakia) said that, without considering whether the method proposed was the only one which might solve the problem or was indeed the best solution, the Czechoslovak Government was glad that a formula had been found to allow the accession of the United States to the Court of Justice and had instructed him to declare forthwith that he would sign the Protocol without modification.

M. ZUMETA (Venezuela) declared that the Venezuelan Government would sign the draft Protocol as it stood. He would, however, at a more propitious moment, submit certain additional considerations.

M. ANTONIADE (Roumania) said that the Roumanian Government welcomed the accession of the United States to the Protocol of Signature of the Statute of the Permanent Court at The Hague. He agreed with the draft Protocol as submitted and was ready to sign it.

M. DE BLANCK (Cuba) declared that his Government was also prepared to sign the draft Protocol.

M. SCHMIDT (Estonia) said that he was authorised by his Government to sign the draft Protocol without any alteration.

M. GORGÉ (Switzerland) said that the Swiss Government was also prepared, if all the members of the Conference agreed, to sign the draft Protocol as it stood.

He wished, however, in connection with Article 5, not to submit an amendment, but to ask Sir Cecil Hurst for an explanation.

Article 5 began as follows :

> " With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General . . . "

Was there not a contradiction—a textual if not a logical one—between that sentence and the last two paragraphs of the article ? Cases might arise in which the Court would give effect to a request for an advisory opinion even when the consent of the United States had not been obtained.

He wondered whether the text would not be clearer if drafted thus, for instance :

> " With a view to ensuring that the Court shall not, without having requested the opinion of the United States . . . "

There was no doubt as to the general interpretation to be given to the article, but he would like to have the opinion of the Rapporteur on the point to which he had referred.

Sir Cecil HURST (British Empire) said he trusted there was no such contradiction as his Swiss colleague feared. It must be remembered that the Conference was approaching a question of which the limits were somewhat dominated by the terms of the Senate resolution (Annex 3) which said in its fifth paragraph :

> "That the Court shall not render any advisory opinion except publicly after due notice to all States . . . nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

It was desirable, for the satisfaction of public opinion in the various countries concerned, that the Conference should as far as possible make it clear that on the new basis provided for, that of actual contact, the Conference was in a position to accept the reserves made by the United States ; that was to say, the conditions which were to be found in the Senate resolution. It was from that Senate resolution that the words had been taken which came at the beginning of Article 5, namely :

> " With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest . . . "

Up to that point the words were merely a quotation from the Senate resolution. It was in reality a method of saying: "For the purpose of giving satisfaction to the fifth condition embodied in the Senate resolution, the Secretary-General shall, through any channel designated for that purpose, inform the United States etc.". This method ensured that there would be contact between the parties, so as to give satisfaction to that condition as laid down by the United States. If the result of the discussion were such as not to give satisfaction to the United States, it would be remembered that the United States had the power to withdraw if necessary.

Consequently, he did not think there was really any contradiction between the terms of that article and those of the remainder of the Protocol. The words to which importance had been attached by his colleague were merely a quotation from the Senate resolution.

M. GORGÉ (Switzerland) said that he was entirely satisfied with Sir Cecil Hurst's very clear explanations.

The representatives of SWEDEN, AUSTRALIA, DENMARK, CHILE, BELGIUM and BULGARIA expressed the willingness of their Governments to sign the draft Protocol in the form submitted.

M. BOTELLA (Spain) observed that the adoption of the Protocol by the Council, on which Spain was represented, sufficed to demonstrate the Spanish Government's opinion with regard to the report of the Committee of Jurists.

Sir William GREAVES (India) said he desired to make the same declaration on behalf of the Government of India. India was a country to which the rule of law was dear, and it was a great pleasure to his country that the United States of America was prepared to declare its adherence to the Protocol establishing the Court on the terms of the draft which was being considered by the Conference that afternoon.

M. RUNDSTEIN (Poland) said he was happy to be able to state, on behalf of his Government, that Poland would accept the Protocol without any change. He would venture to repeat the phrase which terminated Sir Cecil Hurst's noteworthy report, namely, that:

> "With the acceptance of the Protocol, further progress had been made in establishing the reign of law among the nations of the world and in diminishing the risk that there might be a resort to force for the solution of their conflicts."

M. CHOUMENKOVITCH (Yugoslavia) made the same declaration on behalf of the Yugoslav Government, which was prepared to sign the draft Protocol in the form in which it had been submitted to the Conference.

The PRESIDENT said that, unless he was mistaken, the Conference was unanimous, since he himself could vouch for the approval of the Netherlands.

As the delegate for Canada had very aptly pointed out, very considerable progress had been made in the last three years. What action should be taken on this unanimous vote?

The Council had referred the matter to the Conference on the assumption—he referred to the Council resolution—that the recommendations of the Jurists would be approved by the Assembly. The First Committee of the Assembly, and then the plenary meeting of the Assembly, had, so to speak, left the matter to the Conference and asked it to express an opinion in the first place.

That being so, he thought the only possible course was to refer the matter back to the First Committee, informing the Chairman of that Committee of the result of the discussions of the Conference and at the same time communicating that result to the President of the Assembly.

M. ROLIN (Belgium) wondered whether it was desirable to divide the results of the work into two parts. That morning the delegate of Cuba had pointed out to the Conference something which, even of it were not an obstacle, might prove to be a difficulty, if the President's suggestion was followed.

If the United States was officially informed of the signature of the Protocol—for he supposed that that was the intention—before the Statute had been revised, in other words, before the United States could be notified that the revision carried out in agreement with Mr. Elihu Root had also been approved, it might be found that the United States had acceded to the Protocol without any reference to the amendments to the Statute which would thus, for the time being, remain suspended in mid-air.

Would there be any objection to deferring the reply for some days and awaiting the close of the Conference, so that the Council might inform the Government of the United States of the approval of the Conference both of the Protocol and of the new Statute? Personally, he was in favour of that procedure.

M. PILOTTI (Italy) said he was not sure that M. Rolin's objection was justified. It was not for the members of the Conference to sign the Protocol. The Conference was not the Assembly; it was only a Conference of States Members of the Court. It could only say that it had examined the draft Protocol and had found no objections to it. The First Committee of the Assembly could then go on with its work, unless it discovered any objections of its own.

For the present, however, the Conference could form no opinion as to the final results. All the members were convinced that their—or their Governments'—signatures were necessary, but it was not yet time to affix them. The United States could only accede to the Protocol when the members of the Conference had completed their work, and they would certainly not affix their signatures to the Protocol until the Conference had disposed of its agenda.

M. YOSHIDA (Japan) said he shared the views of his Belgian colleague. He did not think that there was any objection on the part of the Japanese Government, but, so far, he had not received instructions. He was not, therefore, prepared to sign immediately.

The PRESIDENT said he understood that the Conference had been unanimous with regard to the Protocol. Had not the Japanese delegate voted in its favour ?

M. YOSHIDA (Japan) replied that he had not voted in its favour, but did not vote against it.

The PRESIDENT observed that a number of delegates had not yet received full powers, but Japan was represented on the Council, and the fact that the Council had approved the Protocol seemed to prove that Japan had no objection to it.

M. YOSHIDA (Japan) said he presumed that his Government had no objection.

Sir Cecil HURST (British Empire) said he would like to address one question to the President of the Conference. M. Rolin's proposal troubled him a little because it seemed that there was one small point for which provision had still to be made. The effect of the draft Protocol was to impose a certain limitation on the method of work followed by the Council or by the Assembly of the League. Under the Covenant, both the Council and the Assembly had the right to ask the Court for advisory opinions, and in the terms of the Covenant there was no limitation upon the powers of the Council and of the Assembly to ask for those opinions. Now, the effect of the draft Protocol, if it were accepted by all the parties concerned, would be to impose some small limitation upon the right of the Council and of the Assembly in the matter of asking for advisory opinions, because, in those cases where there was a possibility of the interests of the United States being affected, there would be a preliminary interchange of views with the United States before that opinion was asked for from the Court.

He understood, however, that the draft Protocol, before it was submitted to the Conference, had been approved by the Council. That approval by the Council intimated that, so far as the Council was concerned, it was prepared to accept that small limitation upon its powers. He thought, however, that there was still one technical step to be taken : the Assembly for its part must accept the draft Protocol in order to signify its acceptance of such limitation upon its powers of asking for an advisory opinion. If that view were right, he felt that the step of referring the draft Protocol, as accepted by the Conference, back to the Assembly or the First Committee—he treated them as one for that purpose—was a step that had to be taken quite irrespective of signature. He therefore thought it desirable not to wait, as M. Rolin had suggested, but to send it as soon as possible to the Assembly in order that the latter might play its part in the general acceptance, the bringing into force of the whole scheme.

M. ROLIN (Belgium) did not wish to prolong a formal discussion such as that which had taken place at the morning meeting, but he would point out that the importance of informing the First Committee of the results of the first part of the work of the Conference, to which M. Pilotti had referred, was not very great.

As regards the amendments to the Statute, the position was the same. In this case, also, the approval of the Assembly was necessary, since the Court was the Court of the League as well as of the States. In these circumstances, there was no more reason to go at once before the Assembly than to complete the work of the Conference and then go before it. The only point which seemed to M. Rolin to be important, and which he had raised at the morning meeting after hearing the statement by the Cuban delegate, was that, contrary to what some of the members had thought, the Conference was acting imprudently in giving an official and final character to the approval by the members of the League of the draft Protocol, while the approval of the Statute as amended by the States and by the League was not yet final. Such a procedure might cause the United States Government or Senate to take a decision regarding the existing Statute and the Protocol, whereas they were asked to take a decision on the amended Statute and the Protocol. These considerations could be examined later, and, if the majority of the Conference then desired to transmit the decision of the Conference to the First Committee, he would raise no objection.

The PRESIDENT remarked that he had intended to draw M. Rolin's attention to the same points which Sir Cecil Hurst had put forward. The Assembly had still to be consulted before the slightly modified procedure regarding advisory opinions contemplated for the United States became an accepted fact. Since the First Committee had worked with such speed, the Conference would perhaps be well inspired to follow its example. As M. Rolin had pointed out, there would be a certain element of uncertainty until all the questions had been settled. That was inevitable. He thought, however, that, since an opinion had been given by the Conference, it would be desirable to transmit that opinion to the Assembly immediately in order that the First Committee and the Assembly might reach a decision regarding the slight variation in procedure embodied in the Protocol. If M. Rolin did not insist, and if no other objection were raised, that course might, he thought, be adopted.

The President's proposal was adopted. [1]

The PRESIDENT observed that the Conference had thus completed the first point on their agenda. He proposed that before it considered the other item—the problem of the revision of the Statute—it should adjourn for a few minutes.

(The meeting was adjourned at 5.30 p.m. and resumed at 6 p.m.)

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[1] The text of the letter sent by the President of the Conference to the President of the Assembly and to the Chairman of the First Committee is included in Annex 6.

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

The PRESIDENT observed that the Conference had now to consider the second point on its agenda : The re-examination of the Statute of the Court. That morning the members had heard a statement by the representative of the Cuban Government. The statement itself constituted a previous question. He understood that the Cuban delegate proposed that the matter should be deferred until a later meeting.

He would venture to point out that the Conference was dealing with work which had already been begun by the 1928 Assembly.[1] The French delegation, for the reasons he had mentioned to the Conference that morning, had proposed that the Statute should be re-examined in view of the general re-election of the judges that would take place during the Assembly of 1930. That meant that it would be necessary to make haste, and that was why the Council had sought to adopt the most expeditious procedure possible. It had convened the Conference to deal with the question, in order that the 1929 Assembly, then in session, might take cognisance of the results. He therefore thought that it would be difficult to entertain the Cuban delegate's suggestion. It would, however, be for the Conference itself to decide that point. He repeated that, in his opinion, it could not do otherwise than continue to follow the line of conduct traced for it by the Council, namely, to proceed with the re-examination in order to be able to submit proposals for new or modified articles to the Assembly.

He thought that the various points of view with regard to the question raised by the Cuban delegate had all been expressed that morning. The Conference was, therefore, in a position to take a decision.

Did it agree to continue the discussion along the lines laid down in 1928 ?

Noting that there was no opposition, he thought that M. de Blanck would not object if the Conference continued the discussion, it being understood that M. de Blanck maintained his point of view.

M. DE BLANCK (Cuba) said that he did maintain his point of view, but raised no objection ; it would be useless to do so, as he already knew the opinion of the Conference concerning his proposal.

The PRESIDENT suggested that the Conference should take the report by M. Fromageot and M. Politis, as its starting-point (Annex 2). He would therefore ask M. Fromageot to explain the main outlines of the report and the modifications proposed by the Committee of Jurists.

M. FROMAGEOT (France) said he first wished to remind the members of the Conference of the circumstances under which the re-examination of the Statute of the Court had been proposed, decided upon and begun, and the spirit in which the work had been commenced.

As the President had pointed out, the original suggestion had been put forward by the French Government.

The French Government had thought that it would be desirable, after eight or nine years' experience, to consider whether certain improvements should not be made in the Statute of the Court, without affecting the essential framework, which had already proved to be solid, and without claiming to reverse any of the principles in virtue of which the Court had received almost universal international recognition. If that were the case, the French Government also thought that it might be desirable, before the total re-election which was due in the following year, to establish beyond all doubt the conditions under which the Court would work for the next nine years.

It would be regrettable—the French Government had thought—for elections to take place in 1930 without any attempt to make good such shortcomings as had been observed. During the judges' term of office it would be inadvisable to alter the rules of an institution for the proper working of which those judges were responsible. At the time of their election, the judges were entitled to know what the institution was to which they were being elected, and what obligations acceptance of their election implied.

Before all else the Permanent Court of International Justice was at the service of the various Governments ; the Governments were not at the service of the Court.

The French Government had therefore submitted its proposal to the Assembly, which had adopted it unanimously. The Council had been requested to organise the work and had for that purpose constituted a Committee of legal experts, and had also, in conformity with the Assembly's wishes, invited a representative of the United States Government to participate. The Conference knew who that representative had been and the prestige that attached to his personality and name. To expatiate on Mr. Root's qualifications would be mere presumption on his part.

The President and Vice-President of the Permanent Court of International Justice had also been good enough to join the Committee. They had, as the members of the Committee would remember, expressed their views on many occasions, and very wise those views had proved to be. They were accompanied by the Registrar of the Court, who was perhaps one of those who were most intimately acquainted with the working of that institution. Consequently, from the technical standpoint of the working of the Court, from the legal standpoint of the principles involved, and from the standpoint of American opinion and the possibility of American approval, all precautions had clearly been taken to conduct the work with prudence and with a full knowledge of the facts.

[1] The resolution adopted by the Assembly on September 20th, 1928, is quoted in Annex 2.

Those were the conditions under which the examination of the Statute of the Court had been contemplated. The actual procedure had been as follows :

As soon as the Committee met, it naturally had to ascertain how the Court was expected to function. When it had been established nine years previously, there had been much doubt as to its future activity. A short while previously, Sir George Foster had reminded the Conference of the difference between the situation in 1926 and that in 1929. But if the delegates cast their minds back still further and compared 1929 with 1920, they would see that the difference was still greater ; they would perceive what great progress had been made along the path of the judicial and juridical settlement of disputes between States.

The number of arbitration treaties had grown and multiplied. The habit had been formed of applying to the Permanent Court. Public opinion throughout the world had a confidence in that Court which would, it was to be hoped, never be deceived. That confidence was growing. Public opinion was convinced that there—as somebody had said to him a short while previously—they would find healers of souls ; that was to say, doctors whose duty it was to mitigate or cure all maladies, great or small, which might embitter international relations.

Everything should be done to ensure that the body entrusted with so momentous a task should fulfil that task as the nations expected. There must be no risk of seeing such hopes disappointed.

What, then, should be the character of the Court ? It should be, above all, a truly judicial body consisting of judges versed, not merely in the ways of men, like national judges, but in the ways of Governments and nations ; judges with a thorough legal training, who would never give an arbitrary decision, and whose judgments would always be perfectly sound at law. When decisions were sound at law they would be sound at equity ; the law, when properly applied, could never result in injustice. Law was justice. There could be no law without justice or justice without law.

The judges must conform to the character of the Court, which was a purely judicial organ constantly at the disposal of the parties, namely, the Governments. It would be hard to justify to the public a Court which only met when the affairs or convenience of its judges allowed. The Court should be permanently available and open to Governments just as the doctor should be constantly at the disposal of his patients. Naturally, when there were no patients the doctor was free, but when a patient called for his attendance he must be there to do his duty—and do it wholeheartedly. He trusted that his colleagues would excuse this simile, but it applied to the Court which owed its devotion, its wholehearted devotion, at all times and at all seasons, to the Governments which required its help. As soon as two Governments applied to the Court to settle some difference or dispute which had arisen between them, as soon as they counted on the Court to avoid or mitigate, if not a rupture, at least very strained relations, it was necessary that the Court should be there to render the service which the two Governments demanded of it.

Viewing the question from that angle, as the Committee of Jurists had done in the spring, the Conference would inevitably, on examining the Statute in its present form, come to the conclusion that certain, though not by any means serious, modifications were necessary to ensure that the Court should be the truly judicial and permanent body which he had outlined.

It would be seen from the report before the Conference that, in the case of some of these changes, it had been thought unnecessary to embody them in the form of amendments to the text of the Statute ; such changes in the working of the Court could be effected by means of ordinary assembly resolutions or recommendations. That, if it had been possible, would obviously have been the simplest and most convenient way to have made all the necessary alterations ; but, unfortunately, it was not possible. In certain cases only did it seem that the desired result could be obtained by means of an Assembly recommendation.

He would quote as an example the Committee of Jurists' conclusion that it would be preferable for the judges to be familiar with at least the two official languages of the Court. That might seem rather a peculiar statement ; nevertheless, it was not unnecessary. As everyone knew, the two official languages of the Court were English and French, and the judgments were drawn up in those languages. Was it not, therefore, natural to insist that the judges should be acquainted with those languages ? It did not seem necessary to mention that in the Statute. But it was nevertheless advisable to recommend that persons who knew neither French nor English, nor even one of these two languages perfectly, should not be put forward as candidates.

He quoted another example. He had declared earlier in his speech that it was desirable that the judges should have not only a solid legal training, so that they might be expected to avoid giving arbitrary decisions, but should also possess some knowledge of the political life of nations. It had not been thought necessary to modify the text of Article 2 of the Statute nor to mention this concept of practical experience coupled with sound doctrinal knowledge. It had been thought that an Assembly recommendation would suffice to ensure that the Governments at the time of voting or the national arbitration groups would, when called upon to submit candidates, pay due attention to that point.

Finally, in order that foreign Governments might be sure that the candidate proposed to them possessed the necessary qualifications, it had been thought that it would be advisable, when putting forward the names of candidates, to indicate the reasons for which the candidate in question was held to be qualified for the post. That, it would be noticed, figured as a recommendation.

He repeated that it had not been thought necessary to alter the text of the Statute in order to insert those provisions.

On the other hand, when the Committee came to consider the question of the number of judges, it had felt that the Statute would have to be modified. Experience had shown that, under the existing system of eleven ordinary judges and four deputy-judges, the ordinary judge whose home was overseas might, for certain reasons, be prevented from coming to The Hague. The Court would then be made up by calling on the deputy-judges.

In the early days, as he had observed at the outset, it had been thought that the Court of Justice would not have very much to do. That was why the Statute had laid down that it would only sit in ordinary session during the vacation, namely, after June 15th. The ordinary judges who lived in distant countries, to whom he had just referred, were more or less justified in reasoning thus : " I have been appointed to come and work at The Hague on and after June 15th ; it was never understood that I should have to go there in the winter." Cases, however, were laid before the Court, and the Court had to meet. What happened then ? The Court called in the deputy-judges. Which deputy-judges ? Those who were available, namely, the European judges. The result was that, in the summer, cases would be heard by a normally constituted Court, whereas in the winter they would be heard by an almost exclusively European Court.

Was it in keeping with the Statute of the Court or with the intentions of the Assembly of the League that the Court should not represent the outlook and legal concepts of the various countries ? There was a very wise clause in the Statute to the effect that the Court should consist of persons representing the various forms of civilisation ; that was to say, the various intellectual and legal traditions and conceptions. He did not need to explain to so distinguished an assembly of lawyers how profound were the differences which, on certain points, separated the legal concepts and laws of the various countries. It was not necessary to go very far from France in order to find legal concepts often diametrically opposed to those of his own country. On how many points, indeed, did the Anglo-Saxon outlook and theory differ from Continental juridical ideas ?

It was desirable that the Court should represent those various points of view. Under the existing system of European deputy-judges sitting whenever the Court was not in ordinary session during the summer months, the Court frequently lacked that worldwide character which had been intended by the Assembly.

It was also argued that, from a financial point of view, the system of deputy-judges had its drawbacks. He admitted that financial questions were not his domain and he would therefore not dwell on the point.

The Committee had sought to discover means for obviating these difficulties. It had come to the conclusion that the deputy-judges might be replaced by ordinary judges, it being understood that all the judges should hold themselves permanently at the disposal of the Court. But that conclusion raised another difficulty. Several of the judges came from Asia, while others came from America. Could those judges be reasonably expected to live for nine years in Europe ? He did not say necessarily at The Hague, but in London, Brussels, Paris or Berlin—that was to say, within a reasonable distance of The Hague—and to abandon their homes for so long a period ? That did not seem to be either fair or desirable. It was not fair, for such judges would not be in the same position as European judges; it was not desirable, for it would be a bad policy to keep the judge away from his home and country for so long a period, since he would thus lose contact with the general march of ideas and social progress and development in his own land.

But, just as diplomatic agents remained at their posts for a number of months or years and then went back on leave to their country in order to get into touch once more with the national atmosphere, it had been thought that it would be fair to the judges, and desirable in the interests of the Court, that members of the Court coming from overseas might—as proposed in the report—be granted six months' leave every three years in order to revisit their homes and families and re-acquaint themselves with their countries' progress, so that they might bring to the Court the effective and useful contribution of their particular national outlook.

The suggestions with regard to the disqualification of judges from undertaking other work were based on the same grounds. When the judges had been appointed nine years previously, it had been thought that members of the Permanent Court of International Justice would be in much the same position as members of the Court of Arbitration, and that their title would be little more than an honour involving only slight duties. It had, indeed, been laid down that they could not occupy administrative or political posts elsewhere ; but there had been no very stringent rule regarding the possibility of their engaging in other professional work. At the present time such an arrangement entailed serious disadvantages. The Court had plenty to do. It had won for itself too high a place in the esteem, opinion and confidence of the nations to allow of its members engaging in any other " professional activity " than that of judge. He thought the President would remember that the expression he employed was exact. It was a reminiscence of the participation of Mr. Root in the work, since Mr. Root himself had proposed it and caused it to be adopted.

He did not wish to criticise or even to be suspected of criticising. Criticism would be entirely unjustified. The Court as then composed consisted of persons who were absolutely trustworthy in every respect. They had, however, been appointed under certain conditions and, consequently, they continued—as they were perfectly entitled to do—to abide by those conditions. Any criticism on that account would, he thought, be unfair. But it was necessary to consider the future and to make other arrangements for the nine-year period which would commence in the following year.

M. Fromageot added that, with regard to changes in salaries, M. Osusky was better qualified than he to furnish the Conference with all the explanations it might require. He would merely

observe that the Committee felt that, as the judges would be permanently at the disposal of the Court, it would be better to accord them an annual salary than an allowance for each day during which they were present at The Hague.

There was just one more point, namely, the advisability of making the changes immediately. The Conference must not think that these changes were not urgent. The conclusions of the Committee were either sound or unsound. If they were sound, the Conference should—subject to any alterations it might decide to make—accept them. If they were unsound, the Conference should reject them. If, however, the Conference concluded that some action was necessary, that action must be taken before the election in 1930. The changes must be confirmed and signed during the present session of the Assembly. It was important that they should be ratified by the Governments before the next elections. If the Conference did not act thus, it would be wasting its time ; because, otherwise, the elections would take place in accordance with the 1920 rules, and from 1930 to 1941 it would be impossible to make any changes in the Statute—for it would not be very loyal towards the judges elected in 1930 to alter their obligations and duties in the course of their term of office. If, then, the Conference decided to act, it must act immediately.

Such were the explanations he had thought it desirable to offer the Conference. He was sure that his colleague, M. Politis, was prepared, like himself, to give the Conference any other explanations it might desire.

The PRESIDENT thanked M. Fromageot for his very interesting statement, which would greatly help the Conference when it came to consider the articles of the Statute.

He asked the Conference to be good enough to allow its President to fix the date of the next meeting, which would be indicated in the *Journal* of the Assembly.

This proposal was adopted.

10. Appointment of the Committee for the Verification of Credentials.

The PRESIDENT said that all that now remained was to appoint a Committee for the Verification of Credentials, to which he had referred that morning, it being understood that the Committee would take its decisions on a very liberal basis.

If the Conference would allow the General Committee to make a suggestion, he would propose the delegates of ROUMANIA, BRAZIL, JAPAN, GERMANY, ITALY, PANAMA, and PERSIA.

This list was adopted.

(The meeting rose at 6.55 p.m.)

THIRD MEETING (PUBLIC).

Held on Thursday, September 5th, 1929, at 4 p.m.

President: Jonkheer W. J. M. VAN EYSINGA.

11. Revision of the Statute of the Permanent Court of International Justice (continuation).

The PRESIDENT thought that, after the very interesting explanations given by M. Fromageot on the previous day regarding the re-examination of the Statute, it would be advisable to commence the examination of the question and study the report by the Committee of Jurists, which might be taken as the starting-point for the discussion. The Conference would remember that the report in question had been drawn up by M. Fromageot and M. Politis (Annex 2).

The first speaker down to address the Conference was M. d'Avila de Lima, delegate of Portugal, who desired to refer to certain points of a more or less general character.

M. D'AVILA DE LIMA (Portugal) said that, as a delegate coming for the first time to a League Conference, but representing one of the original Members of the League, he wished first of all to greet his colleagues. He hoped they would see nothing more in his remarks than a legitimate desire for information in one who was always ready to learn. His desire for information was allied with a sincere admiration for an institution which represented the most important progress, from an international standpoint, of which the modern world could boast.

In truth, the Permanent Court of International Justice—this could not be asserted too often since there were still persons who entertained doubts as to its efficacy—was beyond all question the material realisation of a great and generous desire of all the nations, which even the earliest precursors of the League had had in view.

That desire had, it was true, already been partly realised in the form of various analogous institutions, such as the Central American Tribunal, the International Prize Court, and also the Permanent International Court of Arbitration, though, of course, they differed as regarded their composition, jurisdiction, and the force of their judgments.

Those who made their membership of the Permanent Court of International Justice dependent upon absolute legal, or rather statutory, dissociation from the League of Nations, could neither forget nor deny that it was Article 14 of the Covenant which had made it possible to fulfil that long-cherished dream.

He wondered whether those whose ambition it was that the constitutional organisation of the League should reproduce the classic division of the three great governmental powers would have to experience the bitter disappointment of seeing the tie severed between the Covenant and the Permanent Court of International Justice—except, of course, as far as the purse was concerned.

If anyone should think he were criticising any of the wise decisions reached by the majority of the United States Senate, he wished to reply that that was not the case, since it was a well-known fact that often truth was stranger than fiction.

Nevertheless, he felt bound to give expression to certain doubts which he felt with regard to the draft for the revision of the Statute of the Permanent Court of International Justice, the provisions of which, though avowedly conditional, were alleged to have been rendered necessary by the number of litigious questions or requests for opinions submitted to the Permanent Court.

He had experienced some difficulty in collecting data concerning the average judicial output of the Permanent Court, which did not seem to him to be exceptionally high as compared with the work of certain national Supreme Courts. But since it was natural that the powers of the distinguished members of the Court should not be overtaxed, the above statement might be more readily accepted than others concerning the composition and working of the Court.

He proposed to examine those statements in order to throw light on the subject and not because he differed with the general trend of the proposed changes.

The first suggested alteration was that the number of ordinary judges should be increased. It would seem that the bench of the Permanent Court was to be enlarged in much the same way as the Council of the League had been enlarged, the only difference being that the increase was effected by altering the name of one of the constituent elements of the Court, or, rather, by abolishing or incorporating the deputy judges. This would, to a certain extent, lend to the Court a form of internal economy different from that of almost all similar national courts or even from that laid down in the statutes of private corporate bodies. But if the number of judges were increased, how was it that the same number was maintained for the constitution of a quorum ? He ventured to suggest that, instead of such an increase, and in view of the arguments advanced in favour of that increase, it would have been preferable to have introduced the division to be found in many bodies of procedural law—for instance, in the Portuguese Supreme Court, where the judges were divided into two groups which worked alternately or separately except in cases that called for hearing by the full Court.

He would now touch on another, at least for him, doubtful point, namely, the question of the disqualification of the judges from engaging in other occupations. In that connection, he thought the text did not go far enough. It seemed illogical to prohibit the judges of the Permanent Court of International Justice from engaging in any other occupation of a professional nature and yet to allow them to act as arbitrators in questions which might possibly, though contrary to expectation, come before the Permanent Court on appeal.

Why had it not been laid down that candidates for the post of judge should possess very high qualifications and university degrees ?

In terminating his remarks on that aspect of the text, he ventured to raise one last question with regard to the matter of incompatibility. Would it not be desirable to fix in the Statute—as was done in so many national laws—an age-limit, after which the person who had filled a post of such high responsibility would be entitled to a reasonable pension ?

Finally, he felt bound to express doubts of another kind which would cause him to hesitate in giving his vote. Would it not be preferable definitely to limit the consequences of an interpretation *a contrario sensu* of Article 17 by specifying that the prohibition expressed and implied in that article also applied to national cases and arbitration tribunals ? Would it not also be desirable to require assessors to submit a *curriculum vitæ* similar to that which the permanent judges were required to submit, naturally taking into account the special technical qualifications necessary in each case ? Should the intervention of the International Labour Office in labour disputes be obligatory *ex officio* as laid down, or merely optional after a request had been submitted by the parties and had been judged admissible by the Court, as was the case with committees of experts, in accordance with the rules of ordinary procedure ?

After expressing all those doubts, he earnestly hoped that the President would not regard him as invested with certain of the attributes of a devil's advocate in respect of the revered Permanent Court of International Justice.

The PRESIDENT said that all the members had listened to the Portuguese delegate's speech with interest. He thought the Portuguese delegate would agree that M. Fromageot and M. Politis should be asked to reply to the questions raised with regard to certain articles of the Committee's preliminary draft, when those articles came up for discussion.

M. D'AVILA DE LIMA (Portugal) agreed with the President's suggestion.

The PRESIDENT proposed that the Conference should consider what might be termed the first part of the preliminary draft, which did not call for the modification of any particular article of the Statute, but merely put forward a recommendation calculated to heighten the value of the Court.

" The Committee decides to advise the Assembly to adopt the following recommendation :

" ' The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications."

M. Fromageot had so definitely emphasised the importance of that recommendation that he felt it was unnecessary for him to comment on the text.

M. RAESTAD (Norway) said that, as a Norwegian delegate, he would not have many observations to make on the work in which he had participated as a member of the Committee of Experts. The Norwegian Government, however, did not think it necessary to recommend that candidates should possess recognised practical experience in international law. Briefly stated, its reasons were the following. The question had for many years been discussed in all its aspects, particularly the point whether the qualifications for international judges should expressly include practical experience in international law.

In 1907, the Hague Conference had adopted a proposal by M. Renault which was very similar to the text in the Statute and which only mentioned competence. In 1920, the subject had been very thoroughly discussed, particularly the point whether practical experience should be added as a necessary qualification. The decision had gone against such an addition. In point of fact, when it had been necessary to select an international judge, a whole host of qualities were asked for and were obviously necessary. It had been said in 1920 that to call for competence as the present Statute did was tantamount to requiring experience, which was included in " competence ". It would be better to say that practical experience was one of the sources of competence. There were, however, others—just as there were other qualities required of an international judge—and his Government did not see why, by adopting that recommendation, there should be instituted three kinds of sources for determining the qualities necessary for a judge : first, the Statute, which was obligatory ; secondly, the recommendation, which was not obligatory ; and, finally, general considerations which did not need to be stated, since they would always be taken into account.

He had also one comment to make, which related mainly to a matter of form. He thought that the procedure of putting forward a recommendation was rather out of place in that connection. Ordinarily, when a recommendation was put forward, every State was left free to take the necessary action within the framework of its own laws. In the present case, however, the point was how to determine the necessary qualifications for an international judge. He felt that such a decision should be based on only two sets of criteria : the conditions laid down in the Statute, and such conditions as the national groups themselves saw fit to impose.

There was still one further point of form : the whole text would subsequently be considered by another country which was not represented at the Conference, namely, the United States of America. The United States might or might not accept the amendments the Conference voted ; but it would be a rather novel procedure to reject or accept a recommendation. Recommendations were generally made at the end of the work, whereas, as the Cuban delegate had rightly pointed out, the work of the Conference was far from being completed.

That was why the Norwegian Government did not consider it necessary to make that recommendation.

M. FROMAGEOT (France) observed that the question had been discussed at great length by the Committee of Jurists, and the same arguments as those just put forward had been very carefully considered. The fact that a question had been previously raised had not been regarded as a reason for its exclusion. On the contrary, the Committee had felt that the moment had come to profit by experience and supply to a certain extent what might seem to be deficiencies in the Statute.

The Committee felt that it would be undesirable to embody any very rigid formula in the text of the Statute, and had therefore voted in favour of a recommendation. The result of that recommendation would be that the national groups would receive an invitation at the time of the elections, an invitation in which the Secretary-General would draw their attention to certain desiderata. That act would not in any way affect their independence. In actual fact, however, there was nothing more than a recommendation, so that other countries which might be called upon to participate in the election of judges in the future would be absolutely entitled to do what they liked.

He did not therefore see any sufficient reason for going back on a proposal put forward almost unanimously by the Committee of Jurists. He asked the Conference to adhere to the text submitted.

Baron MARKS VON WÜRTEMBERG (Sweden) said he agreed with the Norwegian delegate's observations. He did not think it necessary to emphasise practical experience in international law as a qualification. He was afraid that other qualities might be sacrificed and that misunderstandings might arise.

M. ROLIN (Belgium) said he wished to make two observations on points of form. The Conference was considering making a recommendation, but he noted that the text was worded thus :

" The Committee decides to advise the Assembly to adopt the following recommendation . . . "

The question was therefore not one for the Conference, but for the Assembly alone.

Moreover, the phraseology of the suggestion put forward by the Committee was not by any means that of a recommendation. It really constituted a resolution, or formal instructions, issued to the Secretary-General. The only hint of a " recommendation " was an indirect one to the national groups which would have to make proposals.

M. COHN (Denmark) said he agreed with his Norwegian colleague's observations.

The Danish Government attached great importance to a practical acquaintance with international law ; but it was necessary to take into account also practical experience on the Bench. Such qualities were rarely united in one and the same person outside the judges of the Court, and his Government felt that it would be dangerous to lay too much stress on a knowledge of international law alone. He thought it would be preferable simply to lay down that the Court should always include a number of persons who had already served as judges.

M. YOSHIDA (Japan) said that he would like to be enlightened on one point. He had heard an explanation of the qualifications that were desired. The document said " required qualification ". He would like to know whether that was to be made the rule. The French text said " *requise* ". He did not understand the meaning of " *requise* " in French ; " required " in English seemed to him to impose a duty.

Sir William Harrison MOORE (Australia) remarked that his difficulty with regard to the suggested recommendation was of rather a different kind from those which had been expressed by the various members who had addressed the Conference. The recommendation in question was one which had to be acted upon not by a Court but by a great number of groups differently constituted in different countries. He thought, therefore, that, even in passing a recommendation, the Conference ought to be sure that the recommendation would be understood. It had been said that the national groups would act upon it or not as they thought fit. Before deciding whether they would act on it or not he was sure that they would desire to know precisely what it meant. He himself had some difficulty in knowing what was meant by " recognised practical experience in international law ". It appeared to assume that there was something that was universally recognised as practical experience. He did not quite know what that was.

Did it mean that if, for instance, a man had been a very distinguished professor of international law, but had not acted in an official capacity outside his academic work, that he would be excluded ? Or, to take a case at the other extreme, a case which might present itself not at all uncommonly in Great Britain : the case of a man who had reached a very great eminence at the English Bar, the kind of man who might look for the highest judicial office in England. It might have devolved on him a few times in the course of his practice to be called on to advise clients in a matter involving a question of international law. He might occasionally have had to plead before the Courts in a matter which incidentally could, if it came before the Court of a particular country, be considered as a matter of international law. Was that type of experience in its turn to be regarded as " recognised practical experience in international law ", or was it intended to exclude all those who had not been primarily engaged, in the course of their professional work, in handling international legal questions ?

His remarks were not made in any controversial spirit ; he personally was really in doubt as to what was intended.

M. BOTELLA (Spain) said that, without making any criticism or expressing any opinion, he would like to know the reasons which had led the Committee of Jurists to specify one of the qualifications judges should possess, without mentioning the others.

M. POLITIS (Greece) gathered from the remarks of the previous speakers that the intentions of the Committee of Jurists in putting forward its draft recommendation had not been properly understood.

It should not be forgotten that Article 2 still remained. That article enumerated the qualifications necessary under the present Statute. The Committee of Jurists did not propose any modification in that text. It had, however, been asked whether it would not be desirable to amplify it. A preliminary proposal had been put forward ; but, after further consideration, the Committee decided that it would be preferable to leave the text as it stood, and invite the national committees to bear in mind not only the conditions laid down in Article 2—which still held good—but also to ascertain whether the candidates possessed recognised practical experience in international law.

The text of Article 2 merely said " recognised competence in international law." It was open to doubt whether the words " recognised competence " were sufficiently explicit to connote, beyond all doubt, both academic competence and practical experience.

The Norwegian, Swedish and Danish delegates had expressed an opinion that the word " competence " included both these things. But directly there was the slightest doubt on the point he thought there could be no objection to propounding, in the form of a recommendation, the idea that some did not think that the word " competence " included with sufficient clarity the idea of practical experience.

He thought it was the Danish delegate who had said that the execution of this recommendation might result in the exclusion of magistrates who had acquired their theoretical and practical knowledge of international law in the exercise of their judicial functions. On the contrary, several delegates, including himself, thought that such persons would be ideal candidates for the post of judge at the Permanent Court of International Justice.

But what was meant by " experience " ? Where could the line be drawn and at what point could it be said that a person had had no experience ? He thought it would be difficult to define such ideas with mathematical precision by means of words. But surely when it was said of a man that he was " experienced ", everyone knew what was meant. When it was said that a man was fairly conversant with a certain subject that meant that he knew enough to express an opinion or undertake some work in that connection.

With regard to the case suggested by one of his colleagues, of an expert who had devoted his life to the study of law, but who had never had occasion to see at first hand how matters worked out in practice, there could be no doubt that book-knowledge was not always an adequate preparation for the realities of international life, and the questions which came up, and would come up before the Court in increasing numbers, were definitely practical problems. To solve those problems it was necessary to be acquainted, to a certain extent, with the value of the facts on which an opinion had to be given. He did not think the Committee had had any particular cases in view ; it had merely been thought that there was some danger that theorists who lacked practical experience might make, he would not say bad judges, but judges not so good as those who combined practical experience with their academic knowledge.

With regard to the hypothesis of the practitioner who might aspire to the highest judicial office in his country and who had been called upon once or twice to deal with international questions, the point was, did that man possess practical experience ? He could not say. If the person in question had only dealt with these problems as a passing phase, he could not be said to have practical experience. If, however, he had had to deal with them often—and in every country there were lawyers who specialised in international questions—M. Politis would say that that man had experience of international law and was consequently also competent from a scientific point of view.

In other words, no textual formula could supply an adequate answer to such questions. The Committee had thought that the expression in Article 2 " recognised competence in international law " called for amplification in the form of a recommendation. The national committees were invited to take certain points into consideration, and that was all.

The authors of the proposal had never intended to attack any particular category of individuals—indeed, there was no question of individuals at all. Their only aim was to improve, if possible, the composition of the highest international tribunal. They therefore thought that it would be well to indicate all the conditions that might contribute to the choice of the best candidates. That was the object they had in view in proposing that text to the Conference.

M. YOSHIDA (Japan) said that he was very grateful for the explanation given by the delegate for Greece. He had understood the matter in that sense. But, although Article 5 had been mentioned in the draft recommendation, there was no reference to Article 2. That had been the cause of his doubt.

He ventured to make another observation. The recommendation said : " . . . will request the national groups to satisfy themselves that the candidates . . . " The Greek delegate had explained that the Committee had decided not to include any further requirements than those embodied in Article 2. It seemed to him however that " a request to . . . satisfy themselves " was a kind of requirement. He would like to be enlightened on that point too if possible.

The PRESIDENT thought that this was a question of drafting.

If no one else wished to speak, he would like to revert to the question of procedure raised by M. Rolin. The Belgian delegate had said that the Conference should not trespass on the prerogatives of the Assembly. In this connection he would point out that the Conference had been obliged to do so on several occasions, and so had the Committee of Jurists in the case of the financial clauses, seeing that the Statute expressly provided for a resolution by the Assembly. He had come to the conclusion that it would be desirable to draft the texts in provisional form without further delay. Those texts might later take the form of an Assembly resolution or recommendation.

As had already been pointed out, the Assembly could vote a recommendation only ; the decision itself would lie with the national groups. In that connection it would doubtless be desirable to adopt a slightly better wording than that of the original text, and M. Rolin had been good enough to make a new proposal which would be distributed later, but which he would doubtless be willing to read to the Conference immediately. The Conference would be asked to give its opinion after the text had been distributed.

M. ROLIN (Belgium) said that his only intention had been to emphasise the non-imperative character of the recommendation and to indicate the exact nature of such a resolution. The persons to whom he had shown it had not raised any objections to the text he was about to read, but the Conference would make up its mind when the text had been distributed.

In reply to M. Botella's remarks, he had pointed out that the Rapporteurs in no wise intended to supersede Article 2 of the Statute.

The text he proposed was as follows :

> " The Conference recommends that, independently of the requirements laid down by Article 2 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates showing them to possess the required qualifications.

" The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups."

It was in the best interests of the signatory groups that they should know that, within the countries called upon to vote upon the merits of the candidates, there existed a definite opinion that certain qualities were, if not indispensable, at any rate desirable. Such was the precise scope of the recommendation.

The PRESIDENT said that the document would be typed in both languages if possible and that the Conference would then be called upon to vote.

M. BOTELLA (Spain) wished merely to inform M. Rolin that he had not forgotten the existence of Article 2 of the Statute. He noted, however, that Article 2 mentioned " recognised competence in international law ". As he held that practical experience was one of the conditions which determined such recognised competence, he had been curious to know why certain conditions had been mentioned and not others.

The PRESIDENT asked M. Botella whether he wished to go into that point further.

M. BOTELLA (Spain) replied in the negative. He had merely wished to explain his desire for enlightenment.

1. *Composition of the Court.*

The revised text of Article 3 was read as follows :

" The Court shall consist of fifteen members."

The PRESIDENT pointed out that the Conference had next to consider the first of the amendments which referred to the composition of the Court. On that point he would merely remind the Conference of M. Fromageot's statement on the previous day explaining that it would be desirable to abolish the post of deputy-judge and raise the number of ordinary judges to fifteen. The total number of judges would therefore remain the same.

In that connection, the representative of Portugal had raised a question to which a reply would certainly be given during the discussion.

M. RUNDSTEIN (Poland) said that the new wording of Article 3 of the Statute led him to offer a few observations. As the Conference was aware, the second paragraph of Article 3 had been omitted in order to avoid the risk of an exaggeration which might occur if the possibility of further increasing the number of members were maintained. For his part, he did not see any disadvantage in maintaining such a possibility, the right of increasing the number of members of the Court being reserved to the Council and the Assembly. It must not be forgotten that, in the fairly near future possibly, the duties of the Permanent Court might increase. There had been, he would remind his colleagues, a marked tendency to accept and apply the optional Clause. Moreover, the General Act prepared by the Assembly at its ninth session would not be without effect in extending the jurisdiction of the Court. The Court might then become overworked and, if international justice were not in a position to settle international disputes rapidly, it might lose some of its value. Consequently, steps would have to be taken to remedy such long delays and it might become necessary to revise the Statute once more. It would be tiresome to go over the same ground again and again.

To avoid the difficulty to which he had referred, the rights conferred on the Council of the Assembly under the existing Article 3 should be confirmed. He did not say that it would be advisable to fix a definite number of judges. The maximum number at present was twenty-one ; but, in order to obviate possible sources of friction, it might be desirable to accord full powers to the Council and the Assembly, and not mention a maximum number. It would be sufficient to adopt for paragraph 2 of Article 3 the following wording:

" The number of judges may hereafter be increased by the Assembly upon the proposal of the Council of the League of Nations."

In this way no maximum would be fixed.

He quite understood the serious disadvantage of having too many judges. There might also be financial difficulties. But, possibly, it might become necessary to increase the number of judges from fifteen to seventeen, and the slow and complicated procedure of revision would be avoided if the Council and the Assembly possessed the necessary power.

He wished to draw the attention of the Conference to the fact that paragraph 2 of Article 3 of the Statute had been drafted on the proposal of Mr. Root, who had been a member of the Committee of Jurists in 1920. Mr. Root had very wisely remarked that the number of judges would increase progressively in accordance with the new requirements of international justice.

That was why he proposed that paragraph 2 of Article 3 should be maintained without fixing any maximum.

M. CORNEJO (Peru) said he thought that the number of judges was a very essential point for a Court. To alter the number of the judges might be equivalent to altering the nature of the Court, which, instead of being a bench to lay down the law, would become a mere jury.

He thought it was a very good idea to abolish the post of deputy-judge and fix the number of judges at fifteen. Article 3 provided for fifteen judges and six deputy-judges, making twenty-one in all. He had not the necessary data to enable him to decide the number of judges required. That would depend on the number of cases the Court had to hear—and their importance. But he hoped that the Conference would definitely determine the number of judges, whether that number was fifteen or twenty. If the Council and the Assembly were allowed constantly to increase the number of judges according to circumstances, the position would cease to be compatible with the accepted opinion of such a tribunal as the Permanent Court of International Justice.

To sum up, experience had shown that it would be very desirable to abolish the post of deputy-judge. He also hoped that the Conference would, on the basis of the recommendation made by that great lawyer, Mr. Root, fix the number of judges definitely.

If, after technical enquiry, it was found that the number would have to be increased, a special conference could be summoned. But he did not think any general discretionary power should be accorded ; he felt, indeed, that such discretionary power would not be in keeping with the dignity of the first international tribunal that had been set up.

M. RAESTAD (Norway) said he ventured to recommend that the Committee's draft should be adopted as it stood. He would only quote one of the reasons which militated in favour of following that course, namely, the share which, it was hoped, the United States of America would take in organising the Court. The reservations of the United States Senate did not mention any possible increase in the number of judges, and he thought it would not be very desirable to re-invest the Council and the Assembly with power to increase that number.

There were other reasons besides, but he would merely mention that one.

M. DE BLANCK (Cuba) reminded the Conference that he had on the previous day stated the reasons for which his Government was opposed to increasing the number of judges. It had not been proved that the moment had come for such an increase ; the work of the Court did not warrant so many judges as were proposed.

He thought, therefore, that the present text of Article 3 should not be modified. Everyone recognised not only the merits of the Court but that it had done its duty—which he knew that no one had criticised. And now it was wished to change the composition of the Court ! M. de Blanck was in favour of maintaining Article 3 as it stood.

M. BRANDAO (Brazil) wished to ask one question. Was the Conference discussing the number fifteen, or the general desirability of increasing the number of judges ?

The PRESIDENT replied that, if he had rightly understood the previous speakers, the Conference was not opposed to abolishing the post of deputy-judge. That was the main object of the change ; as a result of the change the number of judges would remain the same—fifteen.

The only point on which the Conference was not yet agreed was whether the possibility of increasing the present number of judges should or should not be maintained. In that connection the Committee of Jurists, which had considered the matter, stated that there would be a risk of an exaggeration which might cause misconception if that possibility were maintained. His own opinion was that the fewer the judges the more efficient the Court. The Court could not work properly if there were too many judges, and that was why it had been said that fifteen was already a considerable number. Owing to other provisions which the Conference would consider subsequently and which occurred in Articles 23 and 25, the normal number of judges might be slightly decreased by the absence from time to time of certain members of the Court on leave and by other exemptions. It might therefore be said that, in practice, the actual number of judges would be about eleven.

He thought that in those circumstances the number should not be increased and that fifteen judges was already quite enough for a Court that must work efficiently.

Sir George FOSTER (Canada) said that, when the Court was instituted, it had been said that the expenditure for ten judges would be all that was necessary to maintain the Court in proper dignity and action. It had been said that there was no business to be done, and that it was problematical what amount of business would develop from year to year. It had been rather strongly objected in some countries that the League had gone ahead a little too rapidly, and that the expenditure in this respect had been perhaps greater than the necessities of the case demanded. It was an experimental affair. That experiment had lasted for ten years and, as far as he could gather, the Committee of Jurists had come to the conclusion that there was permanent work for a Court of Judges and that the development of that work had been such, during the past ten years, that it was quite possible to anticipate not a decrease, but an increase, for the ensuing period of years ; but to what extent it would actually develop nobody, not even the members of the Committee of Jurists, could give a definite opinion.

The period of review had now arrived. The Committee of Jurists had reviewed the situation, the past procedure, the past accumulation of cases, the progress and nature of the business and the greater importance of the business from year to year—in fact, the whole situation, and had come to the conclusion that, at the present time, a survey of the field justified the appointment of fifteen judges, making all judges equal. He thought that it would be fair to follow the result of that investigation, in which he had no doubt the opinions of the judges then acting had been at the disposal of the Jurists' Committee.

It had been said that the United States might join the Court, and then there would be more cases. He hoped that would be so. His objection, however, to making the number of judges indefinite was that this would impose upon the Council and the Assembly every year of their existence a canvass for more judges. He had had a somewhat extensive experience in politics and there were Courts of Justice in Canada. He knew from experience that, if the provision in question had existed there so that the Council or Cabinet could increase the number of judges in the Supreme Court as they thought fit, there would have been ten times as many judges as now existed, and those judges would not have been fully employed. He wanted to avoid for the Council and the Assembly what would, he feared, be a persistent canvass. It might be said, " Here is another little State ; it has done its duty, it has progressed, it is a real supporter of the League of Nations, but it has no judge on the Court. Put in a judge for it " : Then another equally deserving little State would want a judge, too. If one State could have a judge, why could not another ? Did not the Conference see that this would turn the Council and the Assembly into something very like a political machine ? He did not want this.

Let the fifteen judges be appointed, and let them set to work. Then, if in the course of ten more years it became apparent that new rules were required owing to developments and that there should be some amendment to the Rules of the Court, and if the business in the Court became clogged, another review of the whole situation could be made and it would be possible to proceed in an orderly fashion and within certain bounds, for even the League of Nations could not be accorded an entirely free hand.

M. DE BLANCK (Cuba) pointed out that the Assembly already possessed the right of increasing the number of judges and had not up till then misused its power.

The PRESIDENT observed that he only had before him the printed text of the report. Did anyone propose an amendment to that text ?

M. RUNDSTEIN (Poland) proposed to add to the text the following provision :

" The number of judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations."

The PRESIDENT put this amendment to the vote.

The amendment was rejected.

The PRESIDENT then put to the vote the text of the Committee of Jurists.

M. DE BLANCK (Cuba) said he voted against that text.

The Committee's text was adopted.

2. *Election of Judges.*

The revised text of Article 8 was read as follows :

" The Assembly and the Council shall proceed independently of one another to elect the members of the Court. "

The PRESIDENT pointed out that the change in this article was simply a result of the abolition of deputy-judges.

The revised text of Article 8 was adopted.

3. *Resignation of a Judge.*

The revised text of Article 13 with the addition of two new paragraphs at the end was read as follows :

" The members of the Court shall be elected for nine years.

" They may be re-elected.

" They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

" In the case of the resignation of a member of the Court the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

" This notification makes the place vacant. "

The PRESIDENT did not think that the reasons for the change proposed by the Committee had been explained. He would therefore venture to ask either M. Fromageot or M. Politis to be good enough to indicate the reasons for adding two new paragraphs to that article.

M. POLITIS (Greece) said he thought the report set out the reasons which had led the Committee to propose the addition. The article provided for the case of the resignation of a judge, which was not provided for in the existing text of the Statute. The question had, however, arisen in practice and doubts had been felt as to the procedure to be adopted in such cases. The Committee had considered that it would be desirable to supply the omission and to take the view that, once a resignation had been transmitted to the League of Nations, it must be

by the President of the Court, in order that he might, if desirable, be able to satisfy himself that the decision of the judge concerned was irrevocable. Consequently the Committee had proposed to add to Article 13 the two paragraphs in question.

Sir William Harrison MOORE (Australia) thought that it might be necessary to insert two or three words in the last paragraph. In the last paragraph but one it was stated, " In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations ". This text indicated two acts, one to follow on the other. In the last paragraph it was said, " This notification makes the place vacant ". Should it not be said that it was the notification to the Secretary-General which made the place vacant, and not the other ?

M. POLITIS (Greece) suggested the text " This latter notification makes the place vacant ".

The revised text of Article 13 *thus modified was adopted.*

4. *Filling of Occasional Vacancies.*

The revised text of Article 14 was read as follows :

" Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision : the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session."

The PRESIDENT observed that this modification was another lesson drawn from the experience of recent years. He thought it was a very wise and prudent proposal.

The revised text of Article 14 *was adopted.*

5. *New Article* 15.

The revised text of Article 15 was read as follows :

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

The PRESIDENT explained that the former Article 15 disappeared and would be replaced by part of the former Article 14. That was merely a drafting question.

The revised text of Article 15 *was adopted.*

6. *Functions and Occupations Incompatible with Membership of the Court.*

The revised text of Article 16 was read as follows :

" The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

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

The PRESIDENT pointed out that this matter had been commented on very fully on the previous day by M. Fromageot in his general statement. The President reminded the Conference that the proposal was to add to the disabilities already defined in Article 16 of the Statute, which dealt with political and administrative functions, a proviso to the effect that judges must not engage in any other occupation of a professional nature.

M. DE BLANCK (Cuba) said he did not see why a judge should be prevented from being a professor in a university.

Eminent men should be useful to youth, to humanity. If it were desired that the Court should consist of officials of merit, excellent ones would be found in every country, but he did not think that this was what was desired. The Court should be composed of an *élite*.

Sir William Harrison MOORE (Australia) observed that he had also proposed to put the same question. It was not a matter in which he had any vested interest, because he had ceased to be a professor in a university ; but, in the expression " political or administrative functions and other occupations of a professional nature ", did they include academic and judicial positions ?

M. FROMAGEOT (France) replied in the affirmative.

Sir William Harrison MOORE (Australia) said that he did not know whether the Committee of Jurists had taken into account the possibility of a judge engaging in a commercial or industrial occupation ; for instance, by becoming the director of a public company or anything of that kind. It was a possibility which could not altogether be ruled out of account.

M. POLITIS (Greece) said that the object of the addition to Article 16 was to place the highest tribunal in the world on at least the same footing as national tribunals. It was not feasible that a man entrusted with such high and important responsibilities—which, it was hoped, would in the future absorb the whole of his time—could have any other occupation. Even if a judge had time to do so or his work left him a certain amount of leisure, there would be something incongruous in the fact that a person who might be called upon to give a decision in some international dispute was—owing to his practical duties as the director of a company or member of a board of directors, or even as the result of administrative functions in his

own country—indirectly involved in the dispute, not in the manner indicated further on, which was a case of special exclusion, but in a more general sense, or even if the judge were distracted from his work and had acquired other than judicial habits. That which was not permitted in national courts should *a fortiori* be prohibited in the International Court.

The question had been raised whether judges should also be precluded from engaging in academic duties. In so far as that meant occupying a post, he thought the prohibition should be maintained. For the reasons already stated, it would not be fitting that a member of the Court should be able to continue teaching in a university or in an academy where he had previously been professor. It might certainly be agreed that he should retain the title of professor as an honorary title : it might even be admitted that he should be accorded extended leave so that he might resume his professorial work when, his term of office coming to an end, he ceased to be a judge. But, so long as anyone was a member of the Permanent Court of International Justice, it was absolutely necessary, for the prestige of the Court and in the interests of justice, that he should devote his whole time and energy to his judicial functions.

Sir William Harrison MOORE (Australia) said that he was not advocating that a judge of the Court should be free to exercise any of the functions to which he had referred. He would strongly deprecate it, and he considered the work of the Court likely to be such as to occupy a judge's time fairly fully. But, in relation particularly to what he had asked as to taking part in business or assuming the directorate of any public company, he had in mind the possibility of positions which perhaps did not make any great call upon the judge's time and were not intended to make any great call upon that time ; nevertheless, some industrial concerns might feel that the very nature of the judge's position and the distinction it implied made it desirable to have such a person on the directorate. It was no use, he thought, answering that possibility by saying that the distinction of the office itself would forbid a man lending his name or engaging in such occupations.

In Article 16, an attempt was being made to protect the Court from possible abuses, and the fact that provision of that kind was being made at all was an indication of the recognition of the Conference that undesirable, incompatible occupations were at any rate possible. He wondered whether, having gone so far in excluding occupations, in designating occupations which were inconsistent with the high office of Judge of the Court, the Committee ought not to have gone one degree further and mentioned the other matter as well.

The PRESIDENT thought that the text of the Article met all the points raised by Sir Harrison Moore. Doubtful cases were to be settled by the decision of the Court. Would that not meet his case ?

Sir William Harrison MOORE (Australia) replied that he did not think so. If those points were enumerated which had been enumerated, and if the matter to which he had called attention were omitted, there could be no doubt that the Court would be obliged to say : " You are excluded from professions or occupations, but you are not excluded from becoming the director of a manufactory or a banking concern ".

M. DE BLANCK (Cuba) proposed simply to say : " The members of the Court may not exercise any political function ".

M. D'AVILA DE LIMA (Portugal) desired to know the opinion of the Rapporteur and the Conference on the question of an age-limit.

M. RAESTAD (Norway) said he agreed with Sir Harrison Moore's opinion. He did not think the fact of being a member of a board of directors could be regarded as constituting " an occupation of a professional nature ". He thought it would be desirable to settle the point.

Sir William Harrison MOORE (Australia) asked whether the Conference would consider the insertion of the words " or business " after the word " professional ", so that the phrase would run " nor engage in any other occupation of a professional or business nature ". It might be a little difficult to render that in French.

The PRESIDENT replied that in French the term " *occupation professionelle* " included business.

M. POLITIS (Greece) asked the President's permission to leave the question of an age-limit on one side for the time being. The Conference could return to that later. At the present time the point was to ascertain what was the meaning of the words " *occupation professionelle* ".

He noted with pleasure that his Australian and Norwegian colleagues agreed with him that a permanent occupation should constitute a disability, whether it were purely professional in the strict sense of the term or were some sort of business occupation, as suggested by his Australian colleague.

He suggested that the terminology had been very carefully considered by the Committee of Jurists. It had had the good fortune to include among its numbers both English-speaking and French-speaking members, and his English-speaking colleagues had been satisfied with the expression which, in their opinion, covered all the cases to which reference had been made. He did not think it necessary to add anything to the text. It would, however, be quite feasible to give an interpretation of the expression in the report which would accompany the resolutions. As the Court was to decide in cases of doubt, the explanations given in the report would make it possible for the Court to interpret the text in the exact manner the Conference desired.

The PRESIDENT thought that these explanations would doubtless satisfy the Conference.

Would M. Politis be good enough to give a few explanations concerning the question of the age-limit referred to by the delegate of Portugal ?

M. POLITIS (Greece) observed that, although the question had no connection with disabilities, he would willingly reply. That question might be linked up with the requisite conditions for election if an age-limit were regarded as a minimum or maximum limit below or above which no person could be nominated as a judge. But the expression " age-limit " might have another sense such as it ordinarily possessed in administrative or other careers, namely, that, when a person reached a certain age, he should cease to occupy his post and should be retired.

With regard to the first possibility, he thought that no special provision was necessary. If it were possible to discover young men who fulfilled all the requisite conditions for nomination as judges, and if those men obtained the approval of the Assembly or the Council, there could not be any possible disadvantage in their bringing to the Court, together with their competence and other qualifications, the ardour of their youth. Consequently, he did not think that there need be any question of age-limit from the point of view of elections.

Nor did he think it necessary to make provision now for exclusion owing to advanced age or to say that a man over 70, 75 or 80 years of age could not be elected. It was certain that, if there were any disadvantage, the electors would take that point into consideration. If the Assembly and the Council held that, in spite of the candidate's age, he should be appointed, it would probably be because his qualifications were so high that, even if he were only likely to be a member of the Court for a few years, those few years would nevertheless be of high value. From the point of view of election, therefore, he thought there was no need to provide for an age-limit one way or the other.

Should an age-limit be provided for retirement ? The Committee had not felt called upon to propose any rule in that respect. It had thought that, in an institution like the Court, for which it would be difficult to find properly qualified judges and in which experience would be acquired mainly in carrying out the high duties attendant on office, it would be both undesirable and contrary to the general interest that the Court should be deprived of the services of a judge because he had reached an advanced age. There, again, it had been possible to profit by experience. The Court had included among its members a distinguished English lawyer who had lived to the age of 84 and who had, up to the last minute, fulfilled his duties in a truly remarkable manner. At present, the Court still included a number of members of advanced age, nearly 80 years old, who, according to all accounts, met with their colleagues' unqualified approval.

He did not therefore think it would be desirable to lay down any strict rule which might exclude a magistrate who, though aged, was still able to render service to the Court. Article 18 of the existing Statute made provision for the possibility of a judge being unable to fulfil his duties. That article was worded :

> " A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions."

That clause might cover the case of old age when old age resulted in such a weakening of the faculties that the person in question was no longer capable of fulfilling the duties entrusted to him. The precautions which the authors of the 1920 Statute had taken should be noted. The other members of the Court had to be unanimous ; in other words the case would have to be absolutely clear. It would have to be absolutely obvious that the person in question was thenceforth quite unable to fulfil his duties. M. Politis thought that that guarantee was sufficient and that it was unnecessary to go any further. If the Conference went further, it would have to lay down a rule ; the rule would be rigid and would assuredly possess more disadvantages than advantages.

The PRESIDENT observed that the Conference had received a very definite amendment from the Cuban delegation, to the effect that disqualifications should not be increased but decreased. It would first of all have to take a decision on that amendment, which had a very wide bearing on the question. The Cuban delegation proposed that the first paragraph of Article 16 should be worded as follows :

> " The members of the Court may not exercise any political function."

M. POLITIS (Greece) said that, unless he was mistaken, the effect of this proposal would be to abolish the disability to exercise an administrative function, as at present specified in the Statute. Would it be indiscreet to ask what were the reasons for putting forward such an amendment ?

M. DE BLANCK (Cuba) replied that he had merely been instructed to propose the amendment.

M. POLITIS (Greece) asked that mention should be made in the Minutes of the fact that the amendment had been put forward without any statement of reasons.

The vote was then taken on the Cuban proposal.

The Cuban proposal was rejected.

The PRESIDENT asked whether that vote meant that the Conference agreed to adopt Article 16 on the understanding that the words " occupation of a professional nature " were to be interpreted in the widest sense ; that was to say, to cover, for example, such an activity as being director of a company.

The revised text of Article 16 was adopted subject to the explanation of the President

7. *Article* 17.

The revised text of Article 17 was read as follows :

" No member of the Court may act as agent, counsel or advocate in any case of an international nature.

" No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

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

Sir William Harrison MOORE (Australia) said that he was sorry to have to intervene again but as regards the first paragraph of Article 17 his Government was, in the first place, not satisfied that it was necessary in view of the provisions of Article 16 ; and, in the second place, it considered that if it were inserted it would, in spite of what was said in the report, raise the implication—which his Government desired to avoid—that members of the Court might act as agents, counsel or advocates in a case of a national character. Briefly, his Government considered that this paragraph was superfluous. He was aware of the discussion which had taken place in the Committee of Jurists on the subject. He simply brought the matter forward to see if there were any opinions on it.

The PRESIDENT asked whether satisfaction would be given to the Australian delegate if the words " of an international nature " were deleted.

Sir William Harrison MOORE (Australia) said he would have preferred to have the paragraph deleted altogether, but in a spirit of conciliation he would accept the President's suggestion.

The PRESIDENT thanked the Australian delegate, and added that if no further observations were forthcoming he would regard the proposal of the Committee of Jurists as adopted.

The revised text of Article 17 was adopted with the omission of the words " of an international nature ".

(The meeting rose at 6.45 p.m.)

FOURTH MEETING (PUBLIC).

Held on Friday, September 6th, 1929, at 4 p.m.

President: Jonkheer W. J. M. VAN EYSINGA.

12. Revision of the Statute of the Permanent Court of International Justice (continuation).

Amendment Proposed by M. Rolin to the Text of the Recommendation proposed by the Committee of Jurists.

The PRESIDENT opened the discussion on M. Rolin's amendment to the text of the recommendation made by the Committee of Jurists (see Annex 2, document A.9.1929.V).

The revised text of the recommendation read as follows :

" The Conference recommends that, independently of the requirements laid down by Article 2 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates showing them to possess the required qualifications.

" The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups."

M. YOSHIDA (Japan) said that the Conference had heard on the previous day an explanation of the meaning of " required qualifications ". He still thought, however, that the point was not quite clear. To make the recommendation absolutely clear he proposed that the words " to possess the required qualifications " should be replaced by the words " the qualifications required by the above-mentioned article ".

Prince VARNVAIDYA (Siam) observed that the qualification that candidates should possess recognised practical experience was not a new qualification, but was one to which particular attention should be called. In other words it was one of the qualifications included in the term " competence " which already existed in Article 2. The use of the words " independently of the requirements ", would not, he thought, be in keeping with the explanation given on the previous day. He would like some information on that point. He would suggest some such text as " having regard to " or even " in expansion of ".

M. RAESTAD (Norway) said he had no doubt that the text proposed by M. Rolin was an improvement from the technical point of view. It did not, however, take into account the objections which he (M. Raestad) had submitted to the Conference on the previous day.

He entirely agreed with the Siamese delegate's remarks. Obviously, the practical experience referred to in the amendment was not a condition independent of competence in international law. As the Spanish delegate had pointed out on the previous day, practical experience was one of the conditions or sources of competence in international law. The word " independently ", at any rate, was therefore unsuitable.

He wished to remind the Conference that the whole point of his Government's objection was that it should avoid laying undue emphasis on any one condition or source of competence in the matter of international law, to the detriment of other conditions or sources. Mr. Root's name had been mentioned on several occasions in the course of the discussions. He would therefore remind the Conference that, in the summer of 1920, at the Hague Conference, when defining the essential qualifications for a judge of the Permanent Court of International Justice, Mr. Root had stated that, in his opinion, " the most important question was that of the means by which it would be possible to obtain judges with great judicial experience, who were in the habit of thinking judicially, and who possessed that broadmindedness which experience alone could bring. The experience gained in courts such as those, for instance, in which Mr. Loder and Lord Phillimore sat would be a most admirable qualification for the position of an international judge ".

It would be a great pity to make any addition to the qualification specified in the Statute, an addition which, by laying emphasis on one single qualification, would overshadow certain other conditions which were of capital importance.

In the second place, he thought that a recommendation was out of place in that connection. In point of fact, who would make the recommendation ? The Governments met together in conference ? To whom would the recommendation be addressed ? To the national arbitration groups at The Hague—to persons nominated by the Governments ? As far back as 1920 one of the principles which had been admitted was that Governments should have no hand in the preparation of the lists of candidates. It might, of course, be argued that a recommendation made by a conference was not comparable with direct Government action. Nevertheless it was action of a sort.

Mr. Root had shared that view in 1920. He had also thought that the Governments would have their word to say when the Council and Assembly took their decision on the choice of judges. It would be prudent to leave the matter there.

Finally, if the Conference made the recommendation there and then, the United States would not be a party thereto. The recommendation would have been made by a body, a gathering of Government representatives, at which no representative of the United States of America was present. Who would then adopt the recommendation ? The Assembly, where, also, the United States was not represented ? To whom would the recommendation be addressed ? To certain persons, among others, nominated by the United States ? Was it really worth while creating such useless complications ? Whatever the Conference did it would arrive at the same result as in 1920—the conclusion that, if it sought to define " competence in international law ", it would soon find itself in a state of confusion.

M. FROMAGEOT (France) said that some had held that the words " recognised competence in international law " implied experience, while others did not. It would apparently be sufficient to say that recognised competence implied experience.

The PRESIDENT said he also thought that a slight modification on those lines would satisfy critics.

There would also be the small amendment proposed by the Japanese delegate.

M. POLITIS (Greece) declared that the proposed recommendation, namely, that the candidates should possess practical experience and some acquaintance with the languages, expressed an idea which was already implied in the present Statute.

The Conference would merely be interpreting Article 2 by stating that, in accordance with the spirit of that article, candidates should possess practical experience in international law. The same applied to the languages. Article 39 of the Statute provided that the Court should have two official languages. The judges of the Court were therefore bound to be, to a certain extent, acquainted with those languages. They must, as had been pointed out, be able to read both languages and have a practical working knowledge of at least one.

The Conference would therefore be within the limits of the interpretation of the existing Statute if it said : " The Conference recommends that, in conformity with the spirit of Articles 2 and 39 of the Statute of the Court, candidates nominated should, etc."

In order to meet the view expressed by the Japanese delegate the words " showing them to possess the required qualifications " might be replaced by the words " in support of their candidature ".

M. ROLIN (Belgium) stated that he accepted M. Politis' two proposals.

He would simply say one word in reply to M. Raestad, who had asked whether the Conference could, in the absence of the United States, make a recommendation on behalf of the States signatories. The recommendation was of some importance, and there should be no doubt as to its nature. It was being made in the name of the Conference. Diplomatic conferences were entitled to give such opinions. Nobody could be offended if the Conference expressed the opinion or recommendation that Article 2 of the Statute should be interpreted in the manner indicated.

M. PILOTTI (Italy) asked whether the word " recommends " was the most suitable. According to M. Politis, the recommendation was merely interpreting Articles 2 and 39 of the

Statute. If that were so why not say : " The Conference is of opinion that, in conformity with Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should, etc." ?

M. RAESTAD (Norway) said he did not quite see how the amendment suggested by M. Fromageot could improve the situation. The whole gist of the objection was that one point was emphasised to the obscuring of others. If it were expressly stated that the words of the Statute implied one thing, other things would be relegated to obscurity.

The national arbitration groups at The Hague knew—or if they did not know it before they would learn it on reading the Minutes of the Conference's discussions—that practical experience was one of the elements of competence. It was not necessary to state the fact in writing. By so doing a misunderstanding might be created.

He had never meant to say that the Conference could not make a recommendation, but he held that the situation was somewhat complicated by the fact that the recommendation would be transmitted to the national groups, including the group of the United States, whereas the United States Government would not have participated in the making of the reservation. That was perhaps not a very serious point. But why should such complications be created when it was possible to avoid them ?

M. ROLIN (Belgium) suggested that the discussion might be concluded, for the question was not of sufficient importance to warrant an indefinite prolongation of the debate.

He wished, however, to reply to M. Politis. He did not think that the expression " recommends " should be altered. The Conference was not giving an authoritative and binding interpretation ; it was merely expressing a recommendation that the articles, or rather the spirit of the articles—he would emphasise that word in M. Politis' new draft—should be interpreted in the manner indicated by the Conference. It was expressing a wish to be communicated to the national groups, a wish interpreting, as had not previously been the case, Articles 2 and 39 of the Statute. It was expressing a recommendation by saying : " In conformity with the spirit of these articles . . . "

Replying to M. Raestad, he added that, the expression being of a personal nature, and Mr. Root having participated in the work of the Committee and the drafting of that recommendation, nobody could be offended if the Conference confirmed it. The words " required qualifications " having been omitted, the Conference could not seem to be imposing, through the Secretariat, any given interpretation on the national groups. It was not making it obligatory for the latter to give information, in particular, with regard to the linguistic abilities and practical experience in international law possessed by the candidates. Indeed, it no longer said that it regarded these qualifications as requisite ; but, since it asked for a general statement of the careers of the candidates which justified their candidature, it was expressing a hope that the said qualifications would include practical experience and a knowledge of the languages.

If the national groups accepted this invitation, the statement of careers would include indications on that point. If not, nominations might be made without any statement of career and they would still be perfectly valid. Or they might include statements of career without any reference to Articles 2 and 39, in which case they would still be equally valid.

He thought that such was the juridical nature of the conclusions which the Conference was asked to adopt, and that it could adopt them without any fear of exceeding its powers.

The PRESIDENT agreed that the matter had in all probability been sufficiently discussed. If M. Pilotti did not insist further, a vote might be taken, if a vote were necessary.

M. RAESTAD (Norway) asked that a vote should be taken in order that he might have an opportunity of voting against the motion.

The recommendation was adopted, with the modifications proposed by M. Politis, the Danish, Norwegian and Swedish delegations voting against.

8. *Permanent Functioning of the Court.*

The revised text of Article 23 was read as follows :

" The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

" Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

" Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court."

The PRESIDENT pointed out that the new text of Article 23 had been explained by M. Fromageot very clearly at an earlier meeting. He therefore did not think it necessary to give any further explanations and he invited the members of the Conference to submit their views.

M. CHAO-CHU WU (China) pointed out that the latter part of the first paragraph of Article 23 said, in regard to the vacations, that the dates and duration were to be fixed by the Court at the end of each year for the following year. Did that refer to the calendar or to the judicial year ?

In the second place, and that was perhaps the more important point, why should the judicial vacations be fixed from year to year and not made permanent ? As he understood it, the whole purpose of the change was the idea of permanency. He therefore thought that the judicial vacations should be fixed, and only changed in exceptional circumstances. He was considering particularly the case of countries like his own which were very distant from The Hague. In the preparation of cases for submission to the Court, it was very important sometimes to know exactly when the Court would be in session and when it would be on vacation. He therefore sought enlightenment as to the reason for fixing the duration of these vacations from year to year.

M. RAESTAD (Norway) observed that his country had submitted an observation in connection with the same paragraph, but in the opposite sense to that of the Chinese delegate. His country thought that it might very well prove impossible to foresee the division of the Court's work for the ensuing year. There might be a great deal to do in one term and much less work in another term. It was for this reason that it had suggested the omission of the words " at the end of each year for the following year ". The sentence would then run : " The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court ". Such wording would allow greater freedom, even in the sense referred to by the delegate of China.

He did not wish to make a proposal but merely to draw the Conference's attention to the point. He thought the last words of the first paragraph might be omitted.

Sir William Ewart GREAVES (India) said he would like to offer one suggestion for the consideration of the Conference. He, too, like the honourable delegate for China, represented a country situated at a great distance from The Hague, and he wondered whether it would not be possible to add at the end of the second paragraph of Article 23 : " the time taken in travelling from The Hague to their homes by the quickest route ". In other words, whether it would not be possible, with regard to the six months' leave which anyone who lived at more than five days' distance from The Hague was entitled to take every three years, to add the time of journeying from The Hague by the quickest route to that person's home.

He hoped the day would come when an Indian would be invited to sit on the Court at The Hague, when an Indian judge would be appointed for nine years. He would be entitled every three years to six months' vacation ; in other words, he would be expatriated from India for nine years and would be entitled to eighteen months' leave during that period. But much of that time would be taken up in travelling from The Hague to any of the large centres in India from which such a judge would be chosen, and the six months' leave would be a good deal shortened if he were not granted the additional time necessary for travelling from The Hague to his home and back. The position was even more serious in the case of some other countries, for instance, New Zealand and Australia, and he supposed many of the South American States.

If his proposal commended itself to the Conference, it might be possible to add something to the second paragraph of Article 23, such as : " and to such additional leave as shall represent the time taken in proceeding by the quickest route from The Hague to their homes ".

Of course the day was coming, he supposed, when travelling by air to all parts of the world would be feasible, in which case people would not have to spend much time travelling. But matters had to be taken as they were at present, and he suggested—he did not want to press it on his colleagues—that the Conference might consider, in the interests of those who might be appointed from distant parts of the world, whether it would be possible to give an additional consideration so far as leave was concerned.

Sir Cecil HURST (British Empire) remarked that he had intended to say a word with reference to the point raised by his Chinese colleague. He thought the point was a good one and that the wording as at present proposed was not the best. He ventured to suggest, as an alternative : " the dates and duration of which shall be fixed in the Rules of Court ". He thought this text was a compromise between the two suggestions that had been made.

There was the following advantage in fixing the dates and duration of the vacation in the Rules of Court. The Rules of Court were printed in the volume that contained the Statute. It was, however, desirable for the practitioners and Governments who would be concerned with the preparation of cases that were coming before the Court that all the world should know the exact period and dates of the vacation. If the vacation were merely fixed by the Court, it would be published only in some separate document which it might not be so easy to see. If the text were included in the Rules of Court, it would be there for all the world to see. He thought this procedure better than including the text in the Statute ; this would mean that no change could be made without the elaborate process of a new Protocol which would have to be ratified by all the States. In the existing Statute which provided that the Court should meet on June 15th, there was a provision to the effect that that date could be changed by the Rules of Court. The addition of the words " Rules of Court " would mean that the text was being kept within the original framework of the Statute. His colleague, M. Wu, had authorised him to state that he would be content with that change.

The PRESIDENT was very glad to hear that the Chinese delegate was prepared to accept the compromise suggested by Sir Cecil Hurst. Was M. Raestad of the same opinion ?

Mr. RAESTAD (Norway) replied that he was.

M. POLITIS (Greece) thought that at that juncture in the discussion it was no longer necessary to reply to the Chinese delegate's question concerning the reasons for which the Committee had proposed the new draft. He thought the Conference would agree not to insert in the Statute either the date or the duration of the vacation and would leave the Court to fix both.

The only remaining difference of opinion was whether a definite provision should be inserted in the Rules of Court or whether the Court should be allowed greater freedom and enabled to fix for itself, whenever it thought necessary, the period of its vacation.

A decision in the Rules would certainly have some advantages, but it would also have certain disadvantages. Sir Cecil Hurst had pointed out the advantages. One of the disadvantages would be that the Rules could not easily be modified. A discussion on an alteration in the Rules might last for a long time, and any further change would lead to further discussion. In a period of nine years, the Court had only made two alterations in its original Rules.

He hoped that the business of the Court would continually increase. If at the present time the Court were able to accord itself a fairly long vacation either in the summer or at Christmas or Easter, a few years hence it might have so much work to do that it would be obliged to shorten its vacations. Possibly, also, experience might show that many of the Governments which would be its clients would prefer the summer to the winter period.

It would be very difficult to include a decision on that point not only in the Statute, on account of its immutability, but even in the Rules of Court, which themselves were not easy to alter. Possibly, before its vacation began each year, the Court might indicate the programme of its work for the following year. The question still remained as to how the Governments could be informed. He thought that would not be difficult. The decision would be public and would be reproduced in the Press, without prejudice of course, to the various forms of official notification.

He therefore proposed that the last words of the first paragraph of the new Article 23 should be omitted. The article would then read : " The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court ".

The PRESIDENT pointed out that, in practice, M. Politis' proposal and that of Sir Cecil Hurst would produce almost the same result. If it were decided that leave should be determined in the Rules, it would probably be arranged that there should be included in the Rules a general provision including the possibility of allowing for exceptions if the number of cases to be heard was too great or concentrated in some particular period of the year. On the other hand, if the text proposed by M. Politis were adopted, it would not constitute an obstacle, since the reference to the Court was to be taken in its widest sense. In those circumstances, he ventured to ask Sir Cecil Hurst whether he could agree to M. Politis' text, which would lead to practically the same result as his own.

Sir Cecil HURST (British Empire) said that, if that was the general opinion, he was prepared to accept M. Politis' suggestion. It was M. Wu, however, who had raised the point, and he hoped that, if he withdrew his amendment, it would be with M. Wu's concurrence.

M. CHAO-CHU WU (China) confessed that, when making up his mind on the point, he had thought his objection could be removed by omitting the last few words, namely, by adopting the formula endorsed by the President. But Sir Cecil Hurst had, in conversation, persuaded him to adopt his own point of view. However, he quite agreed that there was really not much difference between the two formulæ, and, if the majority of his colleagues thought M. Politis' formula the best, he was ready to accept it, particularly as it was his original suggestion.

The first paragraph of the revised text of Article 23, as amended by M. Politis, was adopted.

M. POLITIS (Greece) thought that the observation made by the delegate of India merited careful consideration. His suggestion might be met by slightly re-drafting the text of paragraph 2 ; it read :

> " Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling."

The PRESIDENT asked whether Sir William Greaves could agree to that text.

Sir William Ewart GREAVES (India) said that he could.

The PRESIDENT observed that everyone agreed to state that the duration of the journey would be the normal duration as specified in the second paragraph of the revised text.

The revised text of Paragraph 2 of Article 23, as amended by M. Politis, was adopted.

M. BOTELLA (Spain) said that, in order to avoid any misunderstanding, he thought it necessary to have an official interpretation of the exact meaning of the article. It was stated that " the Court shall remain permanently in session ". Did that mean that all the members of the Court would be obliged to have their residence at The Hague ? Or might they remain at home awaiting a summons to attend the Court ?

M. POLITIS (Greece) explained that, when it was stated that the Court should remain permanently in session and its members should be permanently at the disposal of the Court,

unless on regular leave, that meant that, if they foresaw there would be no business, they might leave The Hague. But they might only do so if they were absolutely certain that there would be no business during their contemplated absence, and if they did not go too far away, so that the President might recall them by telegram if he desired their presence.

When the draft had been prepared, an endeavour had been made to indicate a minimum —namely, that a judge must be at The Hague forty-eight hours after the President had summoned him. But, on reflection, it had been decided that it was impossible to fix too rigid a period. That a judge should be three days' journey away, from The Hague, for instance, would not be inadmissible. The judge must be at the disposal of the Court when the latter called upon him. But that did not imply compulsory residence at The Hague when there was nothing to do.

M. BOTELLA (Spain) said that the explanation given was satisfactory. He regretted, however, that the only result of that explanation for members of the Court whose homes were not quite near The Hague would be that they would have to stop at The Hague.

M. OSUSKY (Czechoslovakia) said that even further explanations than those just given by M. Politis would be found in paragraph 2. Provision was made for special leave for those whose homes were situated at more than five days' normal journey from The Hague. It might be deduced from that that judges whose homes were situated at a distance of less than five days' journey might go home practically whenever they liked.

The PRESIDENT asked, in connection with paragraph 3, what was meant exactly by " regular leave ".

M. FROMAGEOT (France) said that this was leave accorded in the regular course of events. It meant " ordinary " leave as opposed to " extraordinary " leave.

The PRESIDENT asked whether judges might be summoned during the judicial vacations.

M. FROMAGEOT (France) said that the regular leave might be six months ; but there might also be sick leave. Judicial vacations were not leave, and quite possibly during those vacations the Court might be called upon to give an advisory opinion on an urgent matter or have an urgent case laid before it. It would then be the duty of the judges to be present. The Court must be permanently at the disposal of the Governments. It was impossible to foresee what political or other circumstances might arise. At any moment the Court might be called upon to lend its services, pacify a dispute, or give an urgent opinion to the Council. It was to be hoped that the Court would thenceforth work on those lines, so that, in the future, months would not elapse before the Court could be convened.

The revised text of Article 23 as amended was adopted, the Cuban delegate voting against.

9. *Manner of forming the Court.*

The revised text of Article 25 was read as follows :

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

" Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

" Provided always that a quorum of nine judges shall suffice to constitute the Court."

The PRESIDENT observed that the revised text of Article 23 foreshadowed the possibility of the judges not all being present, and that the number eleven would be a normal number. On Mr. Root's proposal, the principle had been introduced that one or more judges might be dispensed from sitting, in order to prepare other cases. Thus the quorum of nine was reached. That was the reply to the question raised on the previous day by the Portuguese delegate.

The revised text of Article 25 was adopted.

10 and 11. *Special Chambers for Labour Cases and for Transit and Communications Cases.*

The revised texts of Articles 26 and 27 were read as follows :

Article 26. — " Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

" The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

" The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of ' Assessors for Labour Cases ', composed

of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

" Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present article, if the parties so request.

" In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings."

Article 27. — " Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

" The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

" The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of ' Assessors for Transit and Communications Cases ', composed of two persons nominated by each Member of the League of Nations.

" Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present article, if the parties so request."

M. D'AVILA DE LIMA (Portugal) said he did not wish to interfere with the structure of the report of the Committee of Jurists, but there was a point on which he wished to consult the Conference or the Rapporteur. He referred to the *ex-officio* intervention of the International Labour Office, which Office was authorised to acquaint itself with all the documents of the case. Those who had court experience were aware that in ordinary courts the calling of experts was never compulsory, but was left to the judge's discretion. In the present case, he thought it would also be preferable to say that the Court *might consult* the International Labour Office whenever it deemed such a course necessary.

M. COHN (Denmark) said that, without wishing to amend Article 27, he would like to put forward a recommendation which might perhaps be taken into consideration at some future date.

The Danish Government would have preferred the abolition of the special Chamber, for transit and communications cases referred to in Article 27. This Chamber had never sat up to the present, and the Danish Government would prefer that there should be constituted in its place a special Chamber for international commercial disputes ; for instance, questions connected with the most-favoured-nation clause, dumping, etc. Those questions were daily becoming more important. Such a Chamber would be of great use in guiding the trend of these affairs.

It was the custom of the Danish Government to insert as far as possible in all its commercial treaties a clause stipulating that the Permanent Court had jurisdiction, not only as regarded the interpretation, but also as regarded the execution of treaties and conventions.

M. POLITIS (Greece) pointed out to the Portuguese delegate that the Committee of Jurists had not in any way touched the existing provision in the Statute concerning the part to be played by the International Labour Office. It had thought that that was a minimum which might be maintained, since far wider claims had been submitted by the International Labour Office, claims which the Committee had not thought it advisable to admit. If the article in question were modified in any way without very imperative reasons, enormous difficulties would be encountered. It would consequently be wiser to leave the text as it stood.

The revised text of Articles 26 and 27 was adopted.

12. *Chamber for Summary Procedure.*

The revised text of Article 29 was adopted as follows :

" With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit."

13. *National Judges.*

The revised text of Article 31 was read as follows :

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

" If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably

from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

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

" The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

" Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

" Judges selected as laid down in paragraphs 2, 3 and 4 of this article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues."

The PRESIDENT observed that the Conference had read the reasons for which it was considered undesirable to reconsider the question of national judges. The Committee had maintained the existing provisions and had inserted a paragraph stating that the system also applied to the special Chambers.

M. COHN (Denmark) said that he had a short observation to offer with regard to this article. It was agreed that the object of the work of the Conference was not to change the essential structure of the Permanent Court of International Justice, but only to make such amendments as had been shown by experience to be necessary or desirable.

The Danish Government adhered to the drafts prepared by the Committee of Jurists with regard to the new Article 31. That did not mean, however, that the question was one for which a different solution could not be contemplated. He did not maintain the view that it would be desirable entirely to forego the co-operation of national judges. He was aware that more or less decisive arguments could be invoked in favour of such co-operation. But if it were desired to maintain the provision, the two parties to the dispute should be placed on an equal footing.

It could hardly be denied that a State which had a representative of its own nationality among the permanent members of the Court was in a much more advantageous position than the State which had appointed a national judge for an isolated case only. The latter's representative could not immediately acquire the same authority and influence in the Court nor be so fully acquainted with the Court's procedure. It would, therefore, perhaps be a more satisfactory system if the two parties to the dispute could appoint a national judge in each case, the permanent member, a national of one of the two parties, retiring from the Bench during the consideration of the dispute in question. That would only be a further application of the rule laid down in Article 31, paragraph 3, of the Statute with a view to ensuring absolute equality as between the parties to the dispute.

The PRESIDENT observed that the Danish delegate's statement would appear in the Minutes.

The revised text of Article 31 was adopted.

14. *Salaries of Judges.*

The revised text of Article 32 was read as follows :

" The members of the Court shall receive an annual salary.

" The President shall receive a special annual allowance.

" The Vice-President shall receive a special allowance for every day on which he acts as President.

" The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

" These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office

" The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

" Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

" The above salaries, indemnities and allowances shall be free of all taxation."

The PRESIDENT observed that this question was one to which M. Fromageot had already referred in his statement. All the members of the Conference were aware of the present system. That system had been modified as the result of amendments to previous articles. He did not think it would be necessary to call for a statement of the reasons for which the new text of Article 32 had been proposed.

The revised text of Article 32 was adopted.

The PRESIDENT thought that the Conference would agree that the question of the application of Article 32, in particular the Assembly resolution which would be necessary in a matter

connected with credits, should be dealt with by the Assembly itself—in the Fourth Committee in the first instance.

M. OSUSKY (Czechoslovakia) pointed out that the Council had, at its Madrid session, referred the question to the Supervisory Commission. The latter had prepared a report which would be submitted to the Assembly.

M. POLITIS (Greece) asked whether the report was favourable.

M. OSUSKY (Czechoslovakia) replied that it was.

The PRESIDENT added that certain rules had been adopted with regard to details.

M. OSUSKY (Czechoslovakia) said that the Commission had proposed that the Assembly should adopt the system, but that certain details had had to be brought into line with it.

15. *Contributions of States not Members of the League of Nations.*

The PRESIDENT pointed out that no modification was proposed to Article 35. He thought the Conference would accept the reasons put forward by the Committee of Jurists.

Agreed.

16. *Amendment to No. 4 of Article 38.*

The PRESIDENT said that there was only a small drafting change in the French text of No. 4 of Article 38, which read as follows :

" Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit."

The words " *différentes nations* " having been omitted from the French text, it was proposed that they should be re-inserted in order to bring that text into line with the English text.

The revised French text of No. 4 of Article 38 was adopted.

17. *Procedure.*

The revised text of Article 39, paragraph 3, was read as follows :

" The Court may, at the request of any party, authorise a language other than French or English to be used."

The PRESIDENT observed that in this case also a slight change had been inserted which was intended to make it quite clear that the Court could, at the request of any one party, authorise a language other than French or English to be used.

He thought that that was already the admitted procedure of the Court.

The revised text of Article 39, paragraph 3, was adopted.

18. *Communication of Applications.*

The revised text of Article 40, paragraph 3, was read as follows :

" He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court."

The PRESIDENT said the proposal was to add to Article 40—which defined the manner in which disputes were laid before the Court—that the States entitled to appear before the Court should also be notified.

The revised text of Article 40, paragraph 3, was adopted.

19. *Direction of the Hearing.*

The revised text of Article 45 was read as follows :

" The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge shall preside. "

The PRESIDENT pointed out that, in the present case, the proposal was to make an alteration in the English text of Article 45 to bring it into line with the French text.

The revised English text of Article 45 was adopted.

20. *Advisory opinions.*

The new Articles 65, 66, 67 and 68 were read as follows :

Article 65. — " Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

" The request shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all documents likely to throw light upon the question."

Article 66. — " 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

" The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

" Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

" 2. States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statement to States or Members having submitted similar statements."

Article 67. — " The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned."

Article 68. — " In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case."

The PRESIDENT said that it was necessary to supply another slight omission in the Statute. The existing Statute contained no reference to an extremely important part of the Court's work, namely, the giving of advisory opinions. Thus Article 14 of the Covenant was the only rule applying to that matter. The aim of the new Articles 65, 66, 67 and 68 was, so to speak, to consecrate the usage which had grown by introducing into the Statute a number of very important articles which the Court had found itself obliged to include in its Rules. There was a final provision to the effect that, in addition to the proposed articles, the Court should be guided by other articles of the Statute in connection with advisory opinions. He ventured to draw the attention to the letter sent by the Director of the International Labour Office to the Secretary-General of the League (Annex 7).

M. FROMAGEOT (France) asked to make a statement with regard to that document. The Conference would doubtless remember that Article 73 of the Rules of Court laid down that, in the matter of advisory opinions, the request should be communicated to all the Members of the League, to all States entitled to appear before the Court and to certain international organisations.

Those words were not to be found in the new text of Article 66. Rightly or wrongly, they had been deliberately omitted as a result of the observations submitted to the Committee by the President and Vice-President of the Court of Justice. The existing formula had seemed to be too comprehensive and liable to produce misunderstandings. Since, however, the International Labour Office might come to be disregarded, the Director of that Office had expressed his criticisms in the document to which the President of the Conference had just referred. The Director had drawn the attention of the Committee to the importance he attached to receiving notification of any admissible applications which might concern him. He therefore asked that the Registrar should send notification not only to every Member of the League and to every State entitled to appear before the Court, but also to the International Labour Office.

There did not seem to be any drawback in drafting the second paragraph of Article 66 thus : " also . . . notify any Member of the League or State admitted to appear before the Court, as also the International Labour Office, considered by the Court (or should it not be sitting, by the President) as likely to be able to furnish information on the question . . . ".

In this way the wishes of the International Labour Office would be met and the possibility of abuses which might arise if more comprehensive terms were used would be avoided.

M. ROLIN (Belgium) said he was rather surprised at M. Fromageot's communication. The Director of the International Labour Office had pointed out to the Committee that in labour questions the Court had not merely sought the opinion of the Labour Office but also of international trade union organisations. The present text would make it impossible for the Court to ask for such an opinion, and he would be astonished if the Director of the International Labour Office were so readily to renounce a procedure which had given every satisfaction.

He therefore asked for the addition to the words " as also the International Labour Office " of the words " and international organisations ".

Sir Cecil HURST (British Empire) ventured to suggest that M. Fromageot's proposal, in order to satisfy the demand of the International Labour Office, seemed to go rather far. Would it not be sufficient if a provision were inserted more on the lines of the last paragraph of Article 26 ? Was it really necessary that the International Labour Office should be

introduced as a recipient of documents in cases which might not have the faintest connection with the work of the International Labour Office or labour cases ?

The PRESIDENT pointed out that the Conference was considering only labour questions. He thought it was agreed that the International Labour Office did not require to receive documents on any matters other than labour matters.

M. FROMAGEOT (France) said that obviously that was so. If an advisory opinion were asked of the Court regarding a frontier question, the International Labour Office would not seem to be particularly interested.

The PRESIDENT noted that it was a matter of drafting.

M. DE PIMENTEL BRANDAO (Brazil) asked whether it would not be desirable to consult the Director of the International Labour Office.

The PRESIDENT replied that this representative was present.

It was necessary to ascertain whether the Conference really wished to go as far as M. Rolin proposed. Would it not be sufficient to specify in the Protocol that the fact that a certain number of international bodies, States, and the International Labour Office had been mentioned by name did not preclude the possibility of the Court hearing certain natural or juristic persons whose identity could not, at that moment, be foreseen ? The article should not be regarded as restricting the Court's possibility of hearing, which must be as extensive as possible. If this were said in the report it would meet M. Rolin's desire.

M. FROMAGEOT (France) asked the representative of the International Labour Office to give his views on this point.

M. MORELLET (International Labour Office) said that the Labour Office's chief desire was that there should be no change in the procedure followed up to the present. The Rules of Court had employed a somewhat vague expression, probably on purpose, " the international organisations ". Those included, on the one hand, an official organisation, the International Labour Organisation, and, on the other, unofficial organisations such as the international trade unions. The Court had already pronounced four times on labour questions, and on each occasion had consulted international organisations.

If the text proposed by the Committee of Jurists were adopted, the Court would not be prevented from consulting the international organisations.

At the same time, the proposed modification might be interpreted in a restrictive sense. The existing Rules of the Court provided for the consultation of international organisations, but the proposed text did not. That was what alarmed the International Labour Office, and at the meeting of its Governing Body both employers' and workers' delegates had expressed the hope that no change would be made in the procedure so far followed.

If the Minutes of the Conference mentioned that it was not the Conference's intention to preclude the consultation of international organisations or to modify the procedure hitherto followed, the International Labour Office would be satisfied.

M. FROMAGEOT (France) pointed out that, in the article under discussion, it was not a question of consulting any given organisation, but only of notifying a request, addressed to the Court, to one of those organisations.

The Court could always consult the International Labour Office under Article 26 and Article 68.

M. ROLIN (Belgium) said that he was more than ever convinced of the inexpediency of omitting the words " international organisations ". Even if it were necessary to transfer to the Statute certain articles originally in the Rules of Court which limited the bodies to whom requests for opinions might be communicated, he did not think that this could ever be taken to mean—even if it were stated in a Protocol—that the Court would still be free to communicate the request to other international organisations in addition to all the organisations named.

A second observation was that, contrary to what had just been said, Article 26 of the Rules of Court, which might be regarded as vaguely implied in Article 68, undoubtedly referred to the International Labour Office, but did not refer to the other labour organisations.

Those other international organisations were not merely the international trade unions. He ventured to point out that at present there was a very large number of international bodies ; for instance, the Red Cross, the Institute of Intellectual Co-operation and the Institute of Agriculture, which might be very directly concerned in a request for an advisory opinion or might even address one on their own account to the Council. It would be most regrettable if the proceedings were not regularly submitted to them at the outset so as to enable them to offer an opinion.

It must be realised that they were no longer dealing with a League of Nations which only comprised independent nations ; there was gradually being built up a veritable international administration, beginning with the Secretariat of the League. If a dispute in any way affected the Secretariat of the League of Nations as an administration, he considered that it, too, should be notified of the request for an advisory opinion and should be heard.

He added that that would chiefly be the case in regard to labour questions, and specially in regard to requests for advisory opinions, since the Labour Organisation had the characteristic feature of comprising not only States but delegates of the working classes and of the employers' organisations, and requests for opinions might often concern the organisations themselves more directly than the States.

Was it not absurd to endeavour to treat in a different manner the international organisations directly concerned and the States which very often were quite indifferent to the solution of those problems ?

He therefore urged the retention of the words " international organisations ". Moreover, a very important safeguard existed against any risk of abuse—none had yet occurred—which was that the Court itself could judge how far such a communication was necessary.

He therefore asked that the Court should be trusted to see that notice was only given to the international organisations directly concerned.

M. DUZMANS (Latvia) said that, apart from the restriction that had just been examined, the Committee of Jurists had introduced another referring to the States Members of the League of Nations. The text of the Rules provided that the Registrar should automatically notify all Members of the League and all the States admitted to appear before the Court, whereas the new draft stipulated that the Court should be entitled to decide itself to whom the communication should be made. He would be glad to know what were the reasons which had led the members of the Committee of Jurists to make that restriction.

M. POLITIS (Greece) said that it was indeed a very important point, and he had to admit that there was a drafting error. In the text of the Rules transferred to the new draft of the Statute, the mention of international organisations had been deleted ; but the Committee had failed to delete also the words " considered as likely to be able ", which, as a matter of fact, applied to the international organisations. There could be no doubt that any Member of the League of Nations and any State admitted to appear before the Court were fully entitled to take part in the advisory procedure. There now remained the question whether the Conference would maintain the omission of international organisations or whether, as M. Rolin asked—and he was prepared to accept that view—those organisations should be included ?

The PRESIDENT said that was a drafting question which had engaged the attention of the 1926 Conference for a long time. In the text of the second paragraph of Article 73 of the Rules of Court, as contained in the official edition of the Court, the word " *jugée* " occurred, but that might be a misprint for " *jugés* ". The word referred, of course, both to all Members of the League and to all States admitted to appear before the Court. That was, moreover, the interpretation which the Court had adopted.

M. ROLIN (Belgium) asked why, if that were so, the text had not been rectified.

The PRESIDENT replied that it was the 1926 Conference which had raised the question and he thought that the Members of the Court did not wish to change the Statute after it had been signed in that form.

M. ROLIN (Belgium) said that advisory opinions would always be communicated to the United States of America. Hence, on the principle of equality, it should be asked that advisory opinions should be notified to all States. He did not think it possible to maintain this difference of treatment.

M. POLITIS (Greece) reminded the Conference that the debates of the Committee of Jurists had been attended by the President and Vice-President of the Court. As far as he remembered, neither of them had pointed out that Article 73 of the Rules contained a misprint, and it was therefore " *jugée* " that they had read. Hence, in the absence of any evidence to the contrary, he was obliged to read the text as printed in the official documents of the Court.

M. FROMAGEOT (France), wished to remind the Conference exactly in what circumstances the question had been examined during the meeting of the previous spring, in the presence of the President of the Court. According to the present Rules :

> " The Registrar shall also, by means of a special and direct communication, notify any Member of the League or States admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President), as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements or to hear, at a public sitting to be held for the purpose, oral statements relating to the question."

On page 76 of the Minutes of the session held at Geneva in March 1929, however, it would be found that, in reply to M. Urrutia, who had asked him whether the Court interpreted the second paragraph of Article 73 and the first paragraph of Article 74 of the Rules of Court to mean that, in principle, international organisations could appear as parties before the Court, the President of the Court had pointed out " that international organisations of the kind referred to in Articles 73 and 74 could only be admitted in order to give information to the Court but not to plead. The cases of this kind which had so far arisen concerned a certain number of employers' and workers' organisations."

If, however, Article 73 as he had just read it were accepted, those international organisations appeared as genuine parties, since they were free to submit written statements within a certain time-limit or to make oral statements at a sitting of the Court. There was, therefore, an important and marked difference between that right given to international organisations to plead before the Court and the Court's right of asking them for information. While it was natural that the International Labour Office should be called upon to make oral statements, as had been done when advisory opinions had been asked of the Court in regard to labour questions, it was equally natural that, in view of the diversity, the large number and the very different character of those international organisations or trade unions, the Court should have some hesitation in allowing them to plead at a public sitting, and should prefer simply to reserve the right to ask them, if necessary, for information ; in a word, to apply to them as experts in order to have sufficient information on a technical point to be able to form an opinion.

M. MORELLET (International Labour Office), in reply to M. Fromageot, said that, in his opinion, when the President of the Court had replied to M. Urrutia that the international organisations had never been parties before the Court, he had meant that only States could be parties before the Court. But, in the case of an advisory opinion, it was sometimes rather difficult to distinguish who was a party and who was not. As the Court did not pass judgment, in principle, there were no parties. In practice, however, there were; and the Court had recognised that since it had allowed *ad hoc* judges to sit in certain cases.

As a matter of fact, the International Labour Office had never been a party before the Court, but it had sent in written observations. Certain international organisations had found themselves in the same situation and had submitted oral and written statements like the International Labour Office.

The International Labour Office's attitude on the subject was purely conservative. It simply asked that no change should be made in a procedure which had been found useful in the past.

M. FROMAGEOT (France) thought that the International Labour Office was particularly competent to guide the Conference in that very special branch, and, if it thought that the best solution was to maintain the existing position, he was quite prepared to accept this view.

Sir Cecil HURST (British Empire) thought that the Conference was becoming involved in a discussion which was too detailed for a Conference of that magnitude. It had before it a recommendation from the Committee of Jurists. He read on page 9 of the report of the Committee of Jurists under Section 20 : " The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character ". With that principle, he took it, all the Conference was content. Apparently the Committee had not, as it ought to have done, transferred or proposed to transfer to the Statute quite the whole of the important element.

The hour was growing late and he was beginning to doubt whether the Conference would finish its work that night. If that were the case, there would be a further meeting of the Conference, and he would propose that the two gentlemen who acted as Rapporteurs for the Committee of Jurists, should be invited to prepare, with the help of the representative of the International Labour Office, before the next meeting, a text for submission to the Conference, which they were satisfied would follow the lines of the existing Rules of Court and would have the effect of introducing into the Statute the essential elements of those Rules of Court, making no change in the substance.

Three or four divergent interpretations of the Rules of Court had been given. He would have thought that, if the whole of Article 73 were read, it would be perfectly plain. In any case, if his proposal were adopted, he felt sure that the Conference would have, at the next meeting, a text which would meet all the requirements of the situation and which all the delegates would be able to adopt.

The PRESIDENT said that, if there was no objection to Sir Cecil Hurst's proposal, he would regard it as adopted.

Adopted.

The PRESIDENT asked whether there were any other proposals concerning Article 68.

Sir Cecil HURST (British Empire) said he was in the President's hands. The small amendment that he wanted to move to Article 68 was merely a new wording for the purpose of making the intention of that article more clear. The wording of Article 68 as he understood it, and as he thought everyone would agree, was intended to mean that, in addition to the specific provisions of Articles 65, 66 and 67, the Court, in dealing with advisory opinions, should be guided by this procedure so far as it was laid down in the Statute in contentious cases—that is, in cases where the parties submitted a dispute to the Court. He thought that that was without doubt the intention of the Committee of Jurists, and he should also have thought that it was fairly clear from the text ; but he had had occasion to discuss at great length the whole of the question a few days previously with an enthusiastic gentleman from across the Atlantic, who had explained to him at length the anxieties which were felt in America with regard to the whole question of advisory opinions and the hope that was enter-

tained there that the procedure relating to advisory opinions would be assimilated, as much as possible, to the procedure in contentious cases. Sir Cecil Hurst had replied, " That is exactly what we have provided in the Statute ", and had read to him this article, and he had said : " We do not understand it ". So Sir Cecil Hurst had said : " Very well, I am quite prepared to ask that the Conference should make the text a little more clear ", and it was for that reason that he would suggest that it should read—he was reading the second sentence of Article 68 :

" It shall further be guided by the provisions of this Statute prescribing the procedure to be followed in contentious cases to the extent to which it recognises them to be applicable."

That he believed to be exactly what was intended. He believed it also to be the only correct interpretation of those words ; and, therefore, if the sentence could be made a little plainer, and if by so doing the Conference could do good, he suggested it would be wise to make this small change.

M. RAESTAD (Norway) said he would like to have time to think over the proposal just made by the delegate of the British Empire, because the word " procedure " did not cover all that was indicated in the previous chapters.

The PRESIDENT said that the text proposed by Sir Cecil Hurst would be distributed and discussed at the next meeting.

M. FROMAGEOT (France) wished to second Sir Cecil Hurst's proposal. He had also had a conversation with the person mentioned by Sir Cecil Hurst. He thought that, if the Conference adopted the text proposed, it would reassure its friends across the Atlantic.

13. Question of the Appointment of a Drafting Committee.

The PRESIDENT said the Conference, having completed its first reading of the revised articles of the Statute, it would now be necessary to draw up a Protocol in which those articles would be ratified. In 1920, there had been an Assembly resolution, a Statute and a Protocol of Signature. That Protocol still remained to be drawn up. He did not think that that was the work of a large Conference like the present one. It would be preferable to set up a small Committee to prepare the document with the help of M. Fromageot and M. Politis. Did the Conference wish to appoint such a Committee or leave it to the General Committee to do so ?

The Conference agreed that its General Committee should appoint a Drafting Committee. [1]

(The meeting rose at 6.15 p.m.)

FIFTH MEETING (PUBLIC).

Held on Thursday, September 12th, 1929, at 10 a.m.

President: Jonkheer W. J. M. VAN EYSINGA.

14. Revision of the Statute of the Permanent Court of International Justice (continuation) : **Report of the Drafting Committee.**

The PRESIDENT said that the Conference would remember that, at the last plenary meeting, it had instructed the General Committee to appoint a Drafting Committee. The latter had met on several occasions and the Conference had before it the results of its work in document C.A.S.C.10 (Annex 8).

He proposed that the document should be read point by point, but before this was done the delegate of Norway wished to speak on a point of order.

M. RAESTAD (Norway) pointed out that the recommendation in regard to the qualifications required of the candidates proposed by the national groups had been adopted by the Conference at its fourth meeting, but that no mention had been made of this vote in the Minutes.

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[1] The delegates appointed by the Bureau to serve on the Drafting Committee were :

M. José LOBO D'AVILA DE LIMA (Portugal),
M. Guillermo DE BLANCK (Cuba),
Dr. GÖPPERT (Germany),
Sir Cecil HURST (British Empire),
Sir William Harrison MOORE (Australia),
M. PILOTTI (Italy),
M. RAESTAD (Norway),
M. ROLIN (Belgium),
M. YOSHIDA (Japan),

to whom were added MM. FROMAGEOT and POLITIS as Rapporteurs of the Committee of Jurists and Jonkheer VAN EYSINGA as President of the Conference.

M. de Blanck did not attend the meetings of the Drafting Committee.

On behalf of the delegations of Norway, Sweden and Denmark, he moved that a vote by roll-call should be taken.

The PRESIDENT reminded the Conference that it had voted by members rising in their places ; but, as this subject was again on the agenda, there was no objection to acting on M. Raestad's motion. If there was no objection, the Conference would therefore vote on this question by roll-call.

This proposal was adopted.

The PRESIDENT proposed that the Conference should now proceed to study the Drafting Committee's report. As would be seen, and in order to reproduce the existing provisions of the Rules of the Court, a slight modification had been proposed in the text adopted at the first reading concerning advisory opinions.

The new text of Articles 66, 67 and 68 as revised by the Drafting Committee were before the Conference.

The President drew attention to a slight modification in Article 68. The Conference would remember that an agreement had been reached on the substance of the question, and that all that was needed was to find a good formula. Sir Cecil Hurst had suggested one on which there had been some discussion, and the text proposed to the Conference was now the following:

> *Article* 68. — " In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the Statute prescribed to be followed in contentious cases to the extent to which it recognises them to be applicable."

M. FROMAGEOT (France) asked permission to give a few explanations regarding this matter.

When the Court or anyone else was asked for an advisory opinion, it was essential, if this opinion was to have any value, for the person consulted to have all the relevant documents and information at his disposal.

In contentious cases, when a decision had to be pronounced, the procedure naturally had to provide for both parties to be heard ; both parties stated their case, and the judges therefore had all the arguments before them. The same ought to be the case in advisory opinions.

When an advisory opinion was asked for, the latter could have no value unless the person consulted could know all the relevant facts of the case in the same way as in contentious cases ; he should know the arguments of both parties and both parties should adduce their evidence. It would be quite useless to give an advisory opinion after hearing only one side. For the opinion to be useful, both parties must be heard.

It was therefore quite natural to lay down in the Statute of the Court that, in regard to advisory opinions, the Court should proceed in all respects in the same way as in contentious cases.

He ventured to make this observation because he thought it was likely to allay certain apprehensions.

The PRESIDENT reminded the Conference that the Committee of Jurists had drafted the beginning of this article with the express object of pointing out that these were articles of the Statute which had to be observed, but that there was something further to be done. It thus wished to place greater emphasis on the second sentence. This, at any rate, was how he had understood it.

M. POLITIS (Greece) quite understood this point, but he thought it was expressed by the second part of Article 68. It was rather naïve to say that, in the exercise of its advisory functions, the Court should apply such and such articles. For example, Article 67, which, according to Article 68, had to be applied in connection with advisory opinions, read as follows :

> " The Court shall deliver its advisory opinion in open Court . . . "

What did the reference in Article 68 add to this ?

The PRESIDENT agreed that it added nothing.

M. POLITIS (Greece) thought that in that case it was unnecessary to say it. When a useless clause was inserted in a text, those who interpreted it always wanted to find some meaning for it.

The PRESIDENT agreed.

M. POLITIS (Greece) said that the first sentence was therefore useless and it would be sufficient to say, " In the exercise of its advisory functions the Court shall further be guided by the provisions of the Statute, etc."

It would further be understood and recorded in the Minutes that this Article 68 should definitely be taken in the sense just indicated by M. Fromageot.

The amendment proposed by M. Politis was adopted.

The PRESIDENT said that, no one having any objection to M. Fromageot's observation, and the latter having been entered in the Minutes, it would naturally be taken into account.

M. GÖPPERT (Germany) suggested that M. Fromageot's statement should not only be recorded in the Minutes but should be reproduced in the report to be submitted to the Assembly.

M. POLITIS (Greece) agreed.

The PRESIDENT said he did not know whether it would be possible to print a report and suggested that a letter, containing all the necessary information and in which M. Fromageot's idea might be inserted, would be sufficient.

Sir Cecil HURST (British Empire) desired, before proceeding to the next point, to go back to Articles 66 and 67. He wanted to ask that, at the end of the first paragraph of Article 66 and throughout the second paragraph of Article 66, and again in Article 67, the order of the words should be altered so as to put " members " before " States ". It would be more logical, because it would be seen in the middle of Article 66 that the Registrar was to notify any Member of the League or State admitted to appear before the Court. That, really, was another variant of the old point about non-member States, and the subsequent reversal of the order might be thought to give a different meaning. He had asked M. Fromageot about this, the latter being the author of these paragraphs, and he saw no objection. It was merely a reversal of the order of the words.

M. FROMAGEOT (France) agreed that he had no objection to make.

The amendment proposed by Sir Cecil Hurst was adopted.

Articles 66 *to* 68 *as amended were adopted.*

Proposal of the Delegate of Brazil.

The PRESIDENT said that he had received from the delegate of Brazil a letter which had been inserted in the report and which all the delegates had read (Annex 8, page 75). In that letter M. Brandao drew attention to the position in which his country was placed, and which might be that of certain other countries.

As stated in the Drafting Committee's report, the President had thought it necessary to refer this letter to the Committee in order to save time. It had been considered that it would be advisable to give the small group of States which had acceded to the Statute of the Court of Justice but were not Members of the League an opportunity of participating in the election of the judges, since, in the conditions laid down in Article 4, this right was given to the Assembly and the Council. The question was whether a formal article should be inserted in the Statute or whether it would not be better to allow a certain latitude as regards application, since the case might perhaps take on a somewhat different aspect according to the State concerned.

In these circumstances, the Drafting Committee had thought it would be well to insert in Article 4 a new paragraph which would be found in the report (page 76), and which stipulated that, in the absence of a special agreement on this point—and such an agreement it was hoped would be concluded with the United States—the Assembly, on the proposal of the Council, would lay down the conditions under which a State which was a party to the Protocol of Signature of the Statute of the Court of December 16th, 1920, but was not a Member of the League, might participate in electing the members of the Court. Thus the country in question was given an opportunity of participating in the election of judges ; but, in order that this clause might be applied with the greatest possible elasticity, the question was left to the Assembly on the proposal of the Council, which might meanwhile get into touch with the State concerned to settle the details of its participation.

The Brazilian delegation's idea had been very favourably received by the Drafting Committee, which had thought, moreover, that it did not refer to a single State but could apply to a category of States for which something had to be done, and it was in order to facilitate the Conference's task that the Drafting Committee had proposed the insertion of this new wording in Article 4.

At the same time, the Committee had considered the financial aspect of the question. In this connection it would be remembered that, in the United States reservation, it had already been mentioned that the United States, as on several other occasions when it had taken part in the League's work, was quite prepared to pay its share.

Brazil had acted in the same manner, and it did not seem necessary to have a special clause regarding this matter, any more than in the case of the United States. It was simply proposed to insert at the end of Article 35 a sentence stating that that clause—referring to the sharing of expenses by a State not a Member of the League but party to the case—would not apply if such a State was bearing a share of the expenses of the Court.

It was only fair, of course, not to make a State pay twice.

Such were the Drafting Committee's proposals to give satisfaction to States which were not Members of the League but were parties to the Statute of the Court.

M. FROMAGEOT (France) said that the last sentence of paragraph 3 of Article 35 perhaps did not quite solve the question before the Conference. The hypothesis was that of a State which, while a party to the Protocol of the Statute of the Court, was not a Member of the League. Was it not necessary to stipulate how and in what conditions the financial participation of this State in the activities of the Court should be regarded and settled ?

In this connection, the last sentence to which he referred would not suffice. It simply said, " This provision shall not apply if such State is bearing a share of the expenses of the Court ". It was not said how this State bore a share of the expenses of the Court or under what conditions. By whom would this be determined ?

He thought, therefore, that this sentence should be deleted and a new paragraph corresponding to paragraph 1 of Article 4 should be inserted, to read as follows :

" In the absence of any special agreement on the subject the Assembly, on the proposal of the Council, will lay down the conditions under which a State which is party to the Protocol of Signature of the Statute of the Court, but is not a Member of the League of Nations, shall share in the expenses of the Court."

The PRESIDENT said that this point had been discussed, and the question could, of course, be settled on the lines proposed by M. Fromageot. He desired to point out, however, that, in the case of the United States of America, it had been considered quite superfluous to say anything about it in the Protocol.

M. FROMAGEOT (France) said that this was why the words " In the absence of any special agreement " had been employed.

The PRESIDENT said that it had already frequently happened that a State not a Member of the League had co-operated not only with the Court but also in the technical organisations, for example, and matters had always gone quite smoothly. In this connection the Committee of Jurists, speaking of Article 35, had said that it was not necessary to modify the last sentence of that article. It was sufficient to say that, in the case of the United States, which wished to pay its share in the general expenses, the last paragraph of Article 35 naturally would not apply. The Drafting Committee had thought that it would be enough to say the same thing quite generally. As a matter of fact, this question of sharing in the general expenses never involved any difficulties.

M. COHN (Denmark) said he did not oppose the very natural wish expressed in the new wording of Article 4. He simply desired to draw attention to a certain contradiction which existed between this new rule and the principle enunciated in Point 2 of the Preamble of the Protocol which the members of the Conference were going to sign, viz., that the Protocol would only be open to signature by the signatories of the 1920 Protocol and by the United States of America.

In his opinion, the new Protocol, including the Statute of the Court, should be open to signature by all the countries of the world, whether signatories or not of the 1920 Protocol. If the Conference did not wish to modify the text of the Preamble on this occasion, he ventured to propose that the statement he had just made should be inserted in the report of the Conference.

He ventured at least to propose the omission of the reference to the 1920 Protocol, so that in the new Article 4, paragraph 2, the words: "A State which is a party to the Protocol of Signature of the Statute of the Court of December 16th, 1920 ", should be replaced by the following words : " which has acceded to the Statute of the Court ".

M. POLITIS (Greece) said, with regard to the drafting proposed for Article 4, that it seemed to him more logical to put the new text proposed for paragraph 2 in paragraph 3. In paragraph 2, which in principle referred to the method of election, the text, " in the absence of any special agreement on the subject ", occurred; this meant that an agreement had to be reached on the question of principle, which was not the case.

And when it was said at the end of the first paragraph of Article 4, " in accordance with the following provisions ", the reference was to the text of paragraph 2, which now figured as paragraph 3. He therefore thought it more logical to leave the text of Article 4 as it stood and to add a new paragraph 3 saying, " In the absence of any special agreement, the Assembly, on the proposal of the Council, etc."

He also proposed that no mention should be made of the date of December 16th, 1920, and that the words " on the subject " should be omitted from the text which would then form paragraph 3.

M. RAESTAD (Norway) preferred, as regards paragraph 2 of Article 4, M. Cohn's proposal, to say, " which has accepted the Statute of the Court but is not a Member of the League of Nations ".

In the wording proposed by M. Politis, there was also, he thought, some inaccuracy. He proposed to use the word " accepted " because this was the word employed in the Protocol.

M. POLITIS (Greece) accepted M. Raestad's observations, which he thought quite justified.

The PRESIDENT said that the text " which is a party to the Protocol " would be replaced by the words " which has accepted the Statute of the Court ".

Paragraph 2, which would become paragraph 3, was adopted with this amendment.

Article 4 as a whole was adopted.

The PRESIDENT, passing on to Article 35, asked M. Fromageot if he insisted on his observation.

M. FROMAGEOT (France) said that he did not.

The PRESIDENT said that Article 35 would then read as follows :

" The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

" The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

" When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court."

This text was adopted.

Draft Protocol relating to the Amendment of the Statute.

The PRESIDENT said that the Conference would now examine the draft Protocol relating to the amendment of the Statute, and would discuss the paragraphs one by one.

" 1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September . . . 1929."

The Conference would no doubt leave it to the President of the Assembly to fill in the date, which he hoped would be that of the following Saturday.

This text was adopted.

" 2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America."

M. ZUMETA (Venezuela) said that, when he had had the honour to announce his Government's accession to the Protocol, he had asked permission to submit certain supplementary considerations. With the President's permission he would now communicate them to the Conference.

He had had great pleasure in voting on behalf of his Government for the Protocol of accession to the Permanent Court of International Justice by the United States in accordance with the unanimous wishes of the signatory nations, because he was firmly convinced that, if the United States reservations were ever applied in connection with a dispute between American countries, the latter would always find a legal procedure for an agreement in conformity with law as well as a competent jurisdiction.

His was no blind optimism. The preoccupations inspired by the Monroe doctrine were in his continent every day losing some of the acuteness which they seemed to retain beyond the Atlantic. That doctrine had been, was and would be, at each stage of its development, only a variable factor made up of the resultant of two forces : the powerful unity of the United States as against the plurality of the other American republics. This factor was now affected by a new force, that of an inter-American spirit, public opinion and conscience, whose increasingly beneficent and effective influence was becoming supreme in both Americas and redounded to their credit from Washington to Buenos Aires and Santiago.

It was in that lofty sphere that a real continental agreement between their peoples could develop. It was in this inter-American spirit of loyal co-operation in the work of justice and peace on which the world was engaged that they hailed that Protocol, which created new ties of worldwide solidarity under the auspices of the League of Nations.

The PRESIDENT said that this declaration, which emphasised the great importance attached by Venezuela to the acceptance of the Statute by the United States, would naturally be recorded in the Minutes.

Paragraph 2 was adopted.

Paragraphs 3 to 7 and the last paragraph of the Protocol were adopted without discussion.

Annex to the Protocol of September . . . 1929.

The PRESIDENT said that on the first page of this annex the words " There is no change in the English text " should be in brackets.

M. POLITIS (Greece) pointed out that instead of " new article " the phrase " new wording of article . . . " should be adopted except as regards the articles which did not exist in the text of the 1920 Statute.

This was agreed to.

The text of the Annex was adopted with the changes indicated by the President and M. Politis.

The two paragraphs following the Annex were adopted with minor amendments.

Nature of the Resolution to be adopted by the Assembly.

The PRESIDENT said that the Drafting Committee had thought it well to prepare as completely as possible the various documents to be submitted to the Assembly. In that connection it had added a draft resolution.

(Chapter IV of the report and the draft resolution were read.)

The PRESIDENT presumed that there was no objection to the text and that the Drafting Committee's proposals were approved. He therefore asked the Conference to adopt the opening paragraphs of Chapter IV and the first paragraph of the draft resolution.

These texts were adopted.

The PRESIDENT said that the delegate of Norway had expressed a wish for a roll-call to be taken on the second part of the draft resolution.

M. RAESTAD (Norway) thought that it would be desirable to take a vote by roll-call, and said that he would move the insertion in that paragraph of the words " adopted by the Conference by a majority of . . . to . . . "

The PRESIDENT said that a vote by roll-call would be taken, members approving the proposed text saying " Yes " and members disapproving saying " No ".

A vote by roll-call was taken and the text proposed was adopted by twenty four votes. (Austria, Belgium, Brazil, British Empire, Canada, Chile, China, Czechoslovakia, France, Germany, Greece, Guatemala, Irish Free State, Italy, Liberia, Lithuania, Netherlands, Persia, Peru, Roumania, Siam, Spain, Uruguay, Venezuela) *to eight* (Denmark, Finland, Hungary, Japan, Luxemburg, Norway, Poland, Sweden), *with four abstentions* (Estonia, Latvia, Switzerland, Yugoslavia).

The PRESIDENT said that these figures would, of course, be recorded in the Minutes. The question now was whether they should also figure in the resolution, as proposed by M. Raestad. He thought that, as a rule, a resolution did not state the number of votes by which it had been adopted. He was therefore in favour of leaving the resolution as it stood, and of mentioning the result of the vote only in the Minutes.

M. RAESTAD (Norway), asked permission to say a few words in support of his proposal.

As emphasised by those in favour of the recommendation, it was an opinion—it had even been called a personal opinion—and not an obligation. This opinion, therefore, had a moral value and if no mention were made of the majority by which the text had been adopted, it would appear as if it had been adopted unanimously.

This did not matter in other cases, but it did in that particular case. As it was a question of vital importance to the Court, he thought that it was in the interests of the Conference's work and in the interests of truth to insert in the text the number of votes by which the recommendation had been adopted. Thus everyone's attention would be drawn to the fact that there had been dissent, and people would be induced to study the reasons for the various opinions expressed.

He agreed that it was not usual to state the majority secured, but he thought that it was necessary to do so in that particular case.

M. POLITIS (Greece) wished to state briefly the reasons for which he was definitely opposed to its being mentioned that this recommendation had been adopted by a majority vote.

In the first place, it was contrary to all established practice. When a Conference had a text submitted to it, it either accepted or rejected it. If the question was one of principle on which unanimity was necessary, and if such unanimity was not obtained—even if the members were practically unanimous, *i.e.*, if a very large majority were recorded—the proposal voted on by the Conference was rejected.

When, on the other hand, it was a question of an observation which could be adopted by a majority, of a question of procedure and *a fortiori* of a simple recommendation—for a recommendation meant that there was no obligation and that no one was obliged to base his conduct on the principles indicated—a majority was sufficient for its adoption, but it was not necessary to say what the majority was.

As regards the fear that failure to mention this majority in the resolution might give a false idea of the situation, there were two replies to be made.

First, the Minutes were there to explain, not only that there had been no unanimity, but especially—and he wished to emphasise this point very strongly—that there had been very long debates in the Committee of Jurists and in the Conference, that, as regards the substance of the question, there had been no objection of principle, and that both in the Committee of Jurists and in the Conference it had been a question of expediency.

The Committee of Jurists had begun with the idea that the judicial character of the Court should be strengthened, and a few of the members had proposed to add a formal reference to practical experience in the text of the Statute itself. But in certain quarters it had been said that it was better not to put that requirement in the Statute but to be content with a recommendation. The Committee of Jurists had finally agreed.

He was greatly surprised that the discussion had been re-opened now. The Conference had not insisted on modifying the Statute of the Court or even on giving this expression of its opinion a more imperative character. It had accepted the idea of a recommendation, and also that it should be incidentally stated that the Secretary-General would draw attention to this recommendation, and that the national committees should do what they liked.

The second answer was that, if, despite the very clear explanations given in the Minutes, there was any apprehension with regard to the interpretation of that recommendation, and if it might be thought that the recommendation had been adopted unanimously, nothing prevented the delegations who had such scruples on the point from making formal declaration before the Assembly.

He thought that it would be a breach of the established procedure, which was a very useful one, if what was after all the opinion of the minority were allowed to prevail over that of the majority by weakening the latter's position. Such would be the effect of mentioning that the decision had been taken by a majority, and the moral force of the recommendation which the great majority of the Conference desired to submit to the judgment of the Assembly would thus be weakened.

For all these reasons, he considered that it was expedient to say only that the recommendation had been adopted, without mentioning a majority or minority.

The PRESIDENT thought that the question could now be put to the vote. If no one asked for a vote by roll-call, the vote would be taken by delegations rising in their seats.

M. Raestad's proposal was rejected, only ten votes being given in its favour.

The PRESIDENT thought that it was not necessary to count the abstentions, for he did not think that any delegation would abstain on a question of this kind.

15. Procedure for submitting the Protocols to the Assembly and for their Signature.

The PRESIDENT said that the first part of the results of the work of the Conference—the Protocol on the adherence of the United States to the Statute of the Court—had been sent to the Assembly. It would now be possible do the same with this second draft Protocol.

The Secretary-General had informed him that the First Committee would meet on the following day, and he was going to ask the Chairman of that Committee to place at the beginning of the agenda all the questions relating to the Court.

He could also inform the Conference that the Fourth Committee had on the previous day adopted the three draft resolutions to be submitted to the Assembly regarding the financial aspect of their work.

It would therefore be possible, if the First Committee accepted the proposals of the Conference on the following day, for the Assembly in plenary session to deal with the various questions relating to the Permanent Court of International Justice on Saturday afternoon. He hoped that immediately afterwards the Protocols would be open for the signatures by those who were prepared to sign them.

In that connection, he might say that the Committee on the Verification of Credentials had examined the credentials submitted to it. It appeared from this examination that many of the representatives would be able to sign these two Protocols immediately. If everything went as expected, a large number of signatures might be affixed to this document on Saturday evening.

The question now was how the matter should be submitted to the First Committee and to the Assembly. He thought that, to save time, he might, if the Conference agreed, send a letter to the Assembly on behalf of the Conference relating all the points that had been discussed that morning and containing M. Fromageot's observations on advisory opinions. In that way the First Committee, and after it the Assembly, would have before them all the documentation of the Conference.

Naturally, the work of the Conference should have the best support before the First Committee and the full Assembly, and he thought that everyone would agree that this support would be ensured if the Rapporteurs of the Committee of Jurists—Sir Cecil Hurst as regards the question of the accession of the United States, and M. Fromageot and M. Politis as regards the other questions—would be responsible for acting as Rapporteurs on the different questions which were to be submitted to the Assembly.

He asked if he could count on the support of M. Fromageot and M. Politis. He had an idea that M. Fromageot was indicating his dissent.

M. FROMAGEOT (France) said that one Rapporteur was all very well but a second was superfluous.

The PRESIDENT said that perhaps it was generally so, but not in that case.

M. FROMAGEOT (France) said that M. Politis was such an excellent Rapporteur that both the speaker and the Conference would be grateful if he would assume this new task.

M. POLITIS (Greece) said that if M. Fromageot, for personal reasons, did not wish to continue this co-operation which he had found so pleasant, he would be obliged to do the work alone, and would respond to M. Fromageot's appeal by assuming the task which the Conference desired him to undertake. He was quite willing to do this, but he wondered whether the Conference would need a Rapporteur, since a sufficient account of its work would be given in the letter which the President was going to send to the Chairman of the First Committee. It would then be for that Committee to report to the Assembly.

The PRESIDENT said that M. Politis was the most suitable person for that purpose.

M. POLITIS (Greece) said that, if he was asked to represent the Conference before the First Committee on the question of the amendments, he was quite willing to do so ; but he thought that the task would be a very light one, since the Committee would have all the

documents before it. It would therefore not need many oral explanations, but he would be at its disposal to give any explanations it might require.

The PRESIDENT thanked M. Politis on behalf of the Conference and said that he would make the same request of Sir Cecil Hurst, who was not present.

Before the Conference broke up he still had two questions to put to it.

In the first place, he supposed that, after the draft had been examined by the Assembly, the Conference would not have to meet again to sign the Protocols. It would be much more practical to ask the Secretary-General to prepare instruments which they could sign individually.

M. POLITIS (Greece) thought that, from the practical point of view, the President was right, and he hoped that this was the course events would take. But, in order to leave full freedom to the bodies which would have to decide on this question after the Conference, it would perhaps be well to proceed on the same lines as the Court did when it closed a debate. It definitely closed the debate but requested the parties to remain at its disposal in the event of its still needing them.

He thought that the most correct formula would therefore be the following :

The Conference believes that it has concluded its work, it submits the results of that work to the Assembly, and holds itself in readiness to meet again if further explanations are required of it.

The PRESIDENT agreed with M. Politis's view and therefore would not say that the Conference had completely finished its work. It would simply adjourn, while remaining at the Assembly's disposal if the latter desired it to meet again.

Further, he requested the members of the Committee on Verification of Credentials to remain behind so as to settle certain points of procedure still outstanding (See Annex 9).

16. Close of the Session.

The PRESIDENT thought that the Conference could consider that it had made a fresh step forward in a very important and delicate branch of international political and legal evolution.

He thanked all the members for their assistance, as well as the members of the Secretariat, who, as usual, had worked with great zeal and competence.

M. BOTELLA (Spain) thought he would be speaking for all the members of the Conference in thanking their distinguished President and in paying a deserved tribute to the intelligence, impartiality and tact with which he had guided the discussions.

The meeting rose at 11.45 *a.m.*

NOTE.

In accordance with the decision of the Conference, a letter setting out the results of its work in regard to the Revision of the Statute of the Permanent Court of International Justice was addressed by the President, on September 12th, 1929, to the President of the Assembly and to the Chairman of the First Committee (see Annex 10).

The text of the draft Protocol adopted by the Conference regarding the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice is reproduced in Annex 11.

The text of the draft Protocol adopted by the Conference on the Revision of the Statute of the Permanent Court is reproduced in Annex 12.

ANNEX 1.

NOTE BY THE SECRETARIAT RELATING TO THE PROVISIONAL AGENDA OF THE CONFERENCE.

Revision of the Statute of the Permanent Court.

At its session of June last, the Council of the League of Nations adopted, on the proposal of its Rapporteur, the representative of Italy, the following resolution, in virtue of which the present Conference was convened :

" The Council adopts the considerations and suggestions put forward by its Rapporteur. In view of the report which the Committee of Jurists has submitted to it on the question of the revision of the Statute of the Permanent Court of International Justice,

" The Council decides :

" 1. To instruct the Secretary-General to communicate the report of the Committee to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant ;

" 2. To convoke a Conference of States parties to the Statute of the Permanent Court of International Justice to meet at Geneva on Wednesday, September 4th, 1929, with a view to examining the amendments to the Statute and recommendations formulated by the Committee of Jurists ;

" 3. To request the Supervisory Commission to present to the Assembly at its next ordinary session its opinion as to the measures proposed in paragraph 14 of the report of the Committee of Jurists."

The First Committee of the Assembly, to which the Jurists' report has been referred by the Assembly, decided, on September 3rd, not to take up that part of its work until the present Conference had examined the proposed amendments to the Court's Statute and to invite the Conference to communicate the results of its labours to the Committee.

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

On June 12th, 1929, the Council had before it the report of the Committee of Jurists on the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice and adopted, on the proposal of its Rapporteur, the representative of Italy, the following resolution :

" The Council adopts, together with the draft Protocol annexed thereto, the report submitted to it by the Committee of Jurists on the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

" Accordingly, it instructs the Secretary-General :

" (1) To reply to Mr. Kellogg's note of February 19th, 1929, and communicate to the United States Government, together with the present Council resolution, the text of the said report and of the said draft Protocol ;

" (2) To make the same communication to the States signatories of the Protocol of December 16th, 1920, and to transmit also to those States the text of the resolution of the Senate of the United States, dated January 27th, 1926, embodying the latter's reservations.

" In order that the Assembly, being, like the Council, a body whose procedure in regard to the method of seeking advisory opinions from the Court would be affected by the adoption of the Protocol proposed by the Committee of Jurists, may have an opportunity of expressing its opinion thereon, the Council decides to instruct the Secretary-General to transmit to the Assembly the report of the Committee and the draft Protocol and to place the question on the supplementary agenda of the tenth session of the Assembly."

On August 31st, 1929 the Council of the League of Nations decided, for the reasons set forth in the report presented to it by its Rapporteur, the representative of Italy, to invite the Conference convoked for the purpose of considering the question of the amendment of the Statute of the Permanent Court, to take also into consideration the report and draft Protocol drawn up by the Committee of Jurists on the subject of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

The resolution on the subject adopted by the Council reads as follows :

" The Council approves the report of the representative of Italy. It decides to invite the Conference convened in virtue of its resolution of June 12th, 1929, to take also into consideration the report and draft Protocol drawn up by the Committee of Jurists on the subject of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice, if the recommendations

of the Jurists are approved by the Assembly. By this method, if the Conference is also in agreement with those recommendations, the Protocol necessary to give effect to them will be able to be drawn up and opened for signature as soon as possible."

On September 3rd the Assembly, on the proposal of its First Committee, decided to request the Conference to take up the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court before this question was discussed by the First Committee and the Assembly.

Official No.: A.9.1929.V.
[C.A.S.C. 1.]
Geneva, June 26th, 1929.

ANNEX 2.

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE REVISION OF THE STATUTE OF THE COURT[1].

On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

" The Assembly :

" Considering the ever-increasing number of matters referred to the Permanent Court of International Justice ;

" Deeming it advisable that, before the renewal of the term of office of the members of the Court in 1930, the present provisions of the Statute of the Court should be examined with a view to the introduction of any amendments which experience may show to be necessary ;

" Draws the Council's attention to the advisability of proceeding, before the renewal of the term of office of the members of the Permanent Court of International Justice, to the examination of the Statute of the Court with a view to the introduction of such amendments as may be judged desirable and to submitting the necessary proposals to the next ordinary session of the Assembly."

In pursuance of this resolution, the Council decided on December 13th and 14th, 1928, to set up a Committee consisting of Jonkheer VAN EYSINGA, M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected Mr. Elihu ROOT. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKY, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference, namely, " to report what amendments appear desirable in the various provisions of the Court's Statute ". He further stated " that the Committee would, of course, be competent to examine such suggestions as may reach it, during its work, from authoritative sources " and " that it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ".

As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court ; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

It is in this spirit that the Committee, which met at Geneva on March 11th, 1929, under the chairmanship of M. SCIALOJA, has pursued its work, which was completed on March 19th under the chairmanship of Jonkheer VAN EYSINGA, the Vice-Chairman.

In the proposals which the Committee has the honour to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.

It would appear that effect can be given to some of the Committee's proposals by means of *vœux* or recommendations ; other proposals would appear to call for an amendment of the existing text of the Statute.

In the first place, the Committee examined the qualifications which members of the Court should possess in order to satisfy the expectations of Governments in regard to the Permanent Court of International Justice. These conditions will be found in Article 2 of the Statute. The Committee has thought that it would be desirable to mention, in addition to recognised competence in international law which is mentioned in Article 2 of the Statute, the requirement of practical experience in this sphere.

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[1] Rapporteurs: M. FROMAGEOT and M. POLITIS.

Similarly, the national groups, when nominating their candidates in accordance with Article 5, should attach to each nomination a statement of the career of the person nominated, showing that he possesses the required qualifications.

Further, as the official languages of the Court are French and English, it appears essential that the judges should be at least able to read these languages and to speak one of them. Though this may be self-evident, the Committee has thought that it would be desirable to draw the special attention of the national groups to the point.

The Committee is of opinion that, despite their importance, none of these three questions necessitates a modification of the existing texts, and that it would be sufficient to proceed by way of a recommendation, as follows :

" *The Committee decides to advise the Assembly to adopt the following recommendation :*

" ' *The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.* ' "

On the other hand, it appeared necessary to deal with the following questions by means of amendments :

1. Composition of the Court.

Experience has shown that deputy-judges have been called upon almost constantly to sit on the Court, the reason being that the majority of them are resident in Europe and were consequently more readily available than judges belonging to other continents ; this has tended to give the Europeans a privileged position. On the other hand, as the deputy-judges have in fact been placed on a footing of equality with the ordinary judges in regard to the work performed, without being subject to the same disabilities, the difference in treatment in this latter respect has not been without its disadvantages. Finally, a further difference between the two classes of judges—that relating to their emoluments—has actually disappeared, since the allowances granted to deputy-judges have placed them in a situation almost equal to that of the ordinary judges.

Practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges.

The Committee proposes, therefore, to increase the number of ordinary judges from eleven to fifteen and to omit all mention of deputy-judges in Article 3. The disappearance of the deputy-judges naturally involves consequential amendment of various articles in the Statute in which they are mentioned. These changes will be indicated below in connection with Articles 8, 15, 16, 17, 25, 31 and 32. To avoid the risk of an exaggeration which might cause misconception, it also appeared desirable to omit in the new text of Article 3 the reference to a possible increase of the members of the Court above the number of fifteen.

As a result, the new text of Article 3 would be as follows :

" *The Court shall consist of fifteen members.*"

2. Election of Judges.

As already stated, the text of Article 8 will, as a result of the disappearance of the deputy-judges, read as follows :

" *The Assembly and the Council shall proceed independently of one another to elect the members of the Court.*"

3. Resignation of a Judge.

The resignation of a judge is not provided for in the present existing text of the Statute. The question has, however, arisen in practice, and doubts have been felt as to the procedure to be adopted in such cases. The Committee considered that it would be desirable to supply the omission and to take the view that, once a resignation has been transmitted to the League of Nations, it must be regarded as final ; but that, nevertheless, the resignation should be transmitted to the League by the President of the Court in order that he may, if desirable, be able to satisfy himself that the decision of the judge concerned is irrevocable.

Consequently, the Committee proposes to add two paragraphs to Article 13, which would read as follows :

" *The members of the Court shall be elected for nine years.*

" *They may be re-elected.*

" *They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.*

" *In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.*

" *This notification makes the place vacant.*"

4. Filling of Occasional Vacancies.

Article 14 of the Statute merely provides that vacancies which may occur shall be filled by the same method as that laid down for the renewal of the entire Court. Experience has shown that there is a serious disadvantage in waiting for the annual meeting of the Assembly before filling a vacancy, as this may cause a delay of as much as fifteen months. During this period, the Court might be deprived of its essential characteristic—that of a body representative of the various juridical systems—while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

To remedy this defect, the Committee has thought it desirable to establish a somewhat elastic system which, especially in cases deemed by the Council of the League of Nations to be urgent, would allow of the filling even of a single vacancy within the shortest possible space of time. Under this system, the Secretary-General of the League of Nations would address the prescribed request, within one month after the occurrence of any vacancy, to the national groups, in accordance with Article 5, and the Council would be in a position at its next session to decide whether the election was of a sufficiently urgent character to necessitate the convening of the Assembly in extraordinary session before its ordinary September session.

The system would be embodied in the following new draft of Article 14 :

" *Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article* 5, *and the date of the election shall be fixed by the Council at its next session.*"

5. New Article 15.

As Article 15 of the Statute disappears with the disappearance of the deputy-judges, the Committee proposes to make a new Article 15 out of the unaltered part of Article 14, reading as follows :

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

6. Functions and Occupations incompatible with Membership of the Court.

In accordance with the guiding idea of the Committee's work, namely, that the Court, by its composition and its operation, should inspire in the States the highest possible degree of confidence, the Committee has thought that it would be necessary to amplify the rules of Article 16 as to what functions and occupations are incompatible with membership of the Court, and for this purpose to indicate clearly that the members of the Court must not only refrain from exercising any political or administrative function, but also may not engage in any other occupation of a professional nature. Naturally, it would be permissible for members of the Court to be included on the list of members of the Permanent Court of Arbitration and to exercise, if their duties on the Court allowed them the necessary leisure, the functions of arbitrators or conciliators, provided always that the instrument under which they were appointed did not provide for a reference to the Court following upon the arbitration or upon the failure of the conciliation proceedings.

With the disappearance of the deputy-judges, the second sentence of paragraph 1 of Article 16 naturally disappears as well.

Article 16 would thus read as follows :

" *The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.*

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

7. Article 17.

The second sentence of the first paragraph of Article 17 referring to deputy-judges becomes meaningless and is to be omitted.

At this point, the Committee feels it should observe that, while it is stated that no member of the Court can act as agent, counsel or advocate in any case of an international nature, it will not henceforth, in view of the new Article 16, be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. It has not seemed necessary to redraft the text of the second paragraph.

The same consideration applies to the end of the second paragraph, which states that no member of the Court may participate personally in any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Obviously, the same would hold good as to their participation in a commission of conciliation ; this appeared to be indicated clearly enough in the expression " or in any other capacity ".

Article 17 would therefore read as follows :

" *No member of the Court may act as agent, counsel or advocate in any case of an international nature.*

" *No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.*

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

8. Permanent Functioning of the Court.

Under the system at present laid down, the Court holds one session annually, beginning on June 15th, and it is convened, in exceptional cases, in extraordinary session when circumstances so require.

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally encountered serious practical difficulties. The repeated holding of extraordinary sessions has, in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

The Committee accordingly considers that it is desirable to bring the written rules into harmony with the facts and to indicate, in a new draft of Article 23, a more regular working of the Court by providing, in imitation of national courts, for a real international judicial year. It therefore proposes to state that the Court shall, in principle, remain constantly in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

On the other hand, in order to enable members of the Court whose ordinary residence is in a country at a considerable distance from its seat to return occasionally to their homes during their term of office, it is suggested that they should be granted the right to six months' leave every three years in addition to the ordinary vacations.

Apart from exceptional cases, such as that of illness or other good reason for absence, the judges must be permanently at the disposal of the Court.

It is to be understood that this principle applies even during the judicial vacations, in the sense that it will be for the Court, when fixing the length of the vacation, to provide for the possibility of convening at The Hague, in an urgent case, such a number of judges as would be necessary to allow it to discharge its duties.

It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which a full meeting of the Court would not be necessary.

Article 23 would accordingly be redrafted as follows :

> " *The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.*
>
> " *Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.*
>
> " *Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.*"

9. Manner of forming the Court.

As a result of the disappearance of the deputy-judges, the present paragraph 2 of Article 25 must be deleted.

The Committee proposes to replace it by a provision which would enable judges, when there is a heavy cause-list, to sit in turn in order to ensure the prompt despatch of business and would at the same time make it possible to remove the disadvantages that might arise from the co-operation in one and the same case of fifteen members of the Court.

Under this provision, the Court would have the power to provide in its Rules that, according to circumstances and in rotation, a judge or judges might be dispensed from sitting.

The intention of the Committee has of course been that the right just mentioned should in no case be so exercised as to give grounds for any suspicion that the Court has in a given case been specially composed for the purpose of affecting the decision of the case.

The deletion of paragraph 2 of Article 25 necessarily involves the redrafting of paragraph 3. There is no longer any point in providing that a certain number of judges must be available since, as previously stated, all the judges are in principle constantly at the disposal of the Court. It is therefore sufficient to retain the essential sentence in the third paragraph relating to the quorum.

The new Article 25 would be worded as follows :

> " *The full Court shall sit except when it is expressly provided otherwise.*
>
> " *Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.*
>
> " *Provided always that a quorum of nine judges shall suffice to constitute the Court.*"

10. Special Chamber for Labour Cases.

The redrafting of Article 25 involves a change in paragraph 2 of Article 26, which states that the Court will sit with the number of judges provided for in Article 25. It should now be said that the full Court will sit.

In the next sentence of the same paragraph, the Committee is of opinion that, for the sake of clearness, it is necessary to read " In both cases," that is to say, the cases which are referred to, instead of " on all occasions ", because, as is suggested later on, the summary procedure without the assistance of the technical assessors becomes possible in labour cases.

Paragraph 3 of Article 26 should be deleted in consequence of the modification proposed later in Article 31 in regard to national judges.

The Committee would suggest replacing this paragraph by inserting, as the last paragraph but one of Article 26, a stipulation allowing the parties, should they so desire, to resort to the summary procedure provided for in Article 29.

It is the Committee's intention that, whenever resort is had to this right, the Court constituted as a Chamber for summary procedure should consist of five judges only, as will be stated later in connection with Article 29, without the presence of technical assessors.

Article 26 would accordingly be drafted as follows :

" *Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:*

" *The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.*

" *The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of " Assessors for Labour Cases ", composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.*

" *Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.*

" *In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.*"

11. Special Chamber for Transit and Communications Cases.

The Committee considered whether it might not be well to delete Article 27, seeing that no application has yet been received and that in the opinion of certain persons it is unlikely that any will ever be received. Nevertheless, the Committee thought it preferable to retain the Article, modifying it, however, in the same way as Article 26 : *i.e.*, by substituting in paragraph 2 the words " the full Court will sit " for the present text " the Court will sit with the number of judges provided for under Article 25 " ; by omitting paragraph 3 ; and, finally, by inserting as the last paragraph of Article 27 the same new provision as is contained in the previous article with regard to summary procedure.

The new draft of Article 27 would therefore be as follows :

" *Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:*

" *The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.*

" *The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases ", composed of two persons nominated by each Member of the League of Nations.*

" *Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.*"

12. Chamber for Summary Procedure.

As indicated below in connection with Article 31, the Committee considered that, as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well as to any other form of the Court. It will therefore be necessary to bring Article 29 into harmony with the new draft of Article 31 and for this purpose to make the Chamber for

Summary Procedure consist of five judges instead of three. Provision must also be made, as in the case of the other special Chambers (Articles 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit.

Article 29 would therefore read as follows :

" *With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.*"

13. National Judges.

The Committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain States as one of the essential principles of the organisation of the Court.

It also considered that, in view of the importance which certain States attach to this system, its application should not be limited, as is at present done in Article 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the Committee proposes to insert as a fourth paragraph in Article 31 a provision making the system of national judges apply to the Special Chambers for Labour, for Communications and Transit and for Summary Procedure (Articles 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting paragraph 2 of Article 31. There must be a slight change in paragraph 2 and changes of minor importance in paragraphs 3 and 5 of Article 31.

The new Article 31 would read as follows :

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

" *If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.*

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

" *The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.*

" *Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.*

" *Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.*"

14. Salaries of Judges.

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which, in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the Committee proposes to redraft Article 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18th, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the travelling expenses of members attending the Court or their travelling expenses while on duty.

In the Committee's view, it is for the Assembly to lay down special regulations on this point. The Committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Article 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision ; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the Committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting paragraph 5 of Article 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Article 32 and the accompanying draft resolutions, referred to above, would be as follows :

" *The members of the Court shall receive an annual salary.*

" *The President shall receive a special annual allowance.*

" *The Vice-President shall receive a special allowance for every day on which he acts as President.*

" *The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.*

" *These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.*

" *The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.*

" *Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.*

" *The above salaries, indemnities and allowances shall be free of all taxation.*"

Draft Resolution concerning Salaries.

" *In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :*

	Dutch florins	
" *President :*		
Annual salary	45,000	
Special indemnity	15,000	
" *Vice-President :*		
Annual salary	45,000	
Allowance for each day on duty (100 × 100)	10,000	(maximum)
" *Members :*		
Annual salary	45,000	
" *Judges referred to in Article 31 of the Statute :*		
Indemnity for each day on duty	100	
Allowance for each day of attendance. . .	50."	

Draft Resolution amending Paragraph 5 of Article 1 of the Regulations regarding Pensions.

" *The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.*"

15. CONTRIBUTIONS OF STATES NOT MEMBERS OF THE LEAGUE OF NATIONS.

The Committee does not propose any amendment to Article 35, but thinks that an observation is called for on paragraph 3 of that Article.

In view of the third reservation attached by the United States of America to their accession to the Protocol of Signature, paragraph 3 of Article 35 should not apply to the special case of the United States if they accede to the Court Statute.

16. AMENDMENT TO NO. 4 OF ARTICLE 38.

The Committee has only a very slight and purely formal amendment to propose to No. 4 of Article 38. It consists in restoring in the French text a few words which appear in the English text. In the said No. 4 of Article 38, after the words " la doctrine des publicistes les plus qualifiés ", the words " *des différentes nations* " should be added.

Article 38, No. 4, would then read in the French text as follows :

" *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*"

17. PROCEDURE.

In the final paragraph of Article 39, where reference is made to the power of the Court to authorise, at the request of the parties, the use of a language other than French or English, the Committee thinks it should be more clearly stated that such authorisation may be granted without agreement between the parties, provided one of them so requests. Experience has shown that it might be desirable to make this clearer.

Article 39, paragraph 3, would then read as follows :

" *The Court may, at the request of any party, authorise a language other than French or English to be used.*"

18. COMMUNICATION OF APPLICATIONS.

In paragraph 3 of Article 40, the Committee thinks it would be desirable to bring the text of the Statute into line with Article 73 of the present Rules of Court, which latter provision, as will be seen, the Committee proposes to embody in the new draft of the Statute.

Article 40, paragraph 3, would then read as follows :

" *He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.*"

19. DIRECTION OF THE HEARING.

The English text of Article 45 does not quite correspond to the French text, which here is better.

In order to bring the two texts into concordance, the Committee proposes to replace the words " in his absence " by the words " if he is unable to preside ", and the words " if both are absent " by the words " if neither is able to preside ".

The English text of this Article would then read as follows :

" *The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge shall preside.*"

20. ADVISORY OPINIONS.

The present Statute contains no explicit reference to advisory opinions. The Court has been compelled by circumstances to remedy this omission to a certain extent in Articles 71, 72, 73 and 74 of the Rules of Court.

The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character, which seems particularly desirable to-day in view of the special circumstances attending the possible accession of the United States to the Protocol of Signature of the Statute of the Court.

The Committee therefore proposes to add at the end of the present Statute a new chapter numbered IV and headed " Advisory Opinions ", the first three Articles of which, numbered 65, 66 and 67, would reproduce the substance of Articles 72, 73 and 74 of the present Rules of Court.

It also proposes that a final Article numbered 68 should be added to this chapter in order to take account of the fact that the Court may be called upon to give advisory opinions both in contentious and in non-contentious matters. The effect would be that, in the former case, the Court would apply the provisions relating to contentious procedure referred to in the previous chapters of the Statute, whereas those provisions would not always be applicable when the Court gave an opinion on a non-contentious matter. Thus, for example, Articles 57 and 58 should apply in all cases, but Article 31 would only apply when an advisory opinion was asked on a question relating to a dispute which had already arisen.

The new Articles 65, 66, 67 and 68 would be worded as follows :

" CHAPTER IV. — ADVISORY OPINIONS.

" Article 65.

" *Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.*

" *The request shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all documents likely to throw light upon the question.*

" Article 66.

1. " *The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.*

" *The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.*

" *Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.*

2. " *States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.*

" Article 67.

" *The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.*

" Article 68.

" *In the exercise of its advisory functions, the Court shall apply Articles* 65, 66 *and* 67. *It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.*"

* * *

Such are the proposals which the Committee has the honour to submit for the Council's consideration.

The Committee has to observe that, in the course of its work, it has found somewhat inappropriate expressions used in the French and in the English texts of several articles of the Statute ; it has, however, felt it unnecessary to propose corrections, as it does not wish to encumber the present report with suggestions which are not clearly of practical value.

Finally, the Committee has considered what would be the appropriate procedure for bringing into force the amendments proposed in the present report.

On this subject, the Committee ventures to make the following suggestions :

If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the States mentioned in the Annex to the Covenant and to transmit them to the Assembly ; it would be desirable that, if the amendments secure general approval, the Protocol accepting them which must be concluded between the parties which have ratified the 1920 Statute should be made in the course of next Assembly.

On this point, the Committee must call the attention of the Council to the necessity for taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership.

Appendix

TEXTS PROPOSED BY THE COMMITTEE.

A. Provisions of the Statute of the Court.

New Article 3.

The Court shall consist of fifteen members.

New Article 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

New Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This notification makes the place vacant.

New Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, *and the date of the election shall be fixed by the Council at its next session.*

New Article 15.

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

New Article 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

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

New Article 17.

No member of the Court may act as agent, counsel or advocate in any case of an international nature.

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

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

New Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

New Article 25.

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

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

New Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of " Assessors for Labour Cases " composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request,

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

New Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of " Assessors for Transit and Communications Cases " composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

New Article 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

New Article 31.

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

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

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

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

New Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

New Article 38, No. 4.

The amendment only affects the French text which is altered to read as follows :

4. *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*

New Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers ; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

New Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

New Article 45.

The amendment only affects the English text which is altered to read as follows :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge shall preside.

CHAPTER IV. — ADVISORY OPINIONS.[1]

New Article 65.

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

New Article 66.

1. *The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.*

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

2. *States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.*

New Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

New Article 68.

In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.

B. RECOMMENDATIONS AND DRAFT RESOLUTIONS.

1. The Committee decided to suggest that the Assembly should adopt the following recommendation :

The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.

2. In connection with the new text of Article 32 of the Statute, the Committee drew up the following draft resolutions :

Draft Resolution concerning Salaries.

In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :

	Dutch florins
President :	
Annual salary	45,000
Special indemnity	15,000
Vice-President :	
Annual salary	45,000
Allowance for each day on duty (100 × 100) . .	10,000 (maximum)
Members :	
Annual salary	45,000
Judges referred to in Article 31 of the Statute :	
Indemnity for each day on duty	100
Allowance for each day of attendance . . .	50

Draft Resolution amending Paragraph 5 of Article I of the Regulation regarding Pensions

The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.

[1] This subdivision (Chapter IV) is entirely new.

ANNEX 3.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE COURT.

RESOLUTION ADOPTED BY THE SENATE OF THE UNITED STATES OF AMERICA ON JANUARY 27TH, 1926.

Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923, asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

Therefore be it

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely :

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

5. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said Protocol shall not be affixed until the Powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

Resolved further, As a part of this act of ratification, that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute ; and

Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State ; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

Agreed to, January 16th (Calendar day, January 27th), 1926.

ANNEX 4.

LETTER FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE SECRETARY-GENERAL OF THE LEAGUE.

Washington, February 19th, 1929.

I have the honour to refer to the communication of this Department dated March 2nd, 1926, informing you of the resolution of the Senate of the United States setting forth the understandings on which this Government might become a signatory to the

Protocol of Signature of the Statute of the Permanent Court of International Justice, and to inform you that I am to-day transmitting to each of the signatories of the Protocol a communication which, after referring to my previous communication on the subject, reads as follows :

" Five Governments unconditionally accepted the Senate reservations and understandings ; three indicated that they would accept but have not formally notified my Government of their acceptance ; fifteen simply acknowledged the receipt of my Government's note of February 12th, 1926 ; while twenty-four have communicated to my Government replies as hereinafter indicated.

" At a Conference held in Geneva in September 1926 by a large number of the States signatories to the Protocol of Signature of the Statute of the Permanent Court of International Justice, a Final Act was adopted in which were set forth certain conclusions and recommendations regarding the proposal of the United States, together with a preliminary draft of a Protocol regarding the adherence of the United States, which the Conference recommended that all the signatories of the Protocol of Signature of December 16th, 1920, should adopt in replying to the proposal of the United States. Twenty-four of the Governments adopted the recommendations of the Conference of 1926 and communicated to the Government of the United States in the manner suggested by the Conference. By these replies and the proposed Protocol attached thereto, the first four reservations adopted by the Senate of the United States were accepted. The fifth reservation was not accepted in full, but so much of the first part thereof as required the Court to render advisory opinions in public session was accepted, and the attention of my Government was called to the amended Rules of the Court requiring notice and an opportunity to be heard.

" The second part of the fifth reservation therefore raised the only question on which there is any substantial difference of opinion. That part of the reservation reads as follows :

> " ... Nor shall it (the Court) without the consent of the United States entertain any request for any advisory opinion touching any dispute or question in which the United States has or claims an interest."

" It was observed in the Final Act of the Conference that, as regards disputes to which the United States is a party, the Court had already pronounced upon the matter of disputes between a Member of the League of Nations and a State not a Member, and reference was made to Advisory Opinion No. 5 in the Eastern Karelia case in which the Court held that it would not pass on such a dispute without the consent of the non-Member of the League. The view was expressed that this would meet the desire of the United States.

" As regards disputes to which the United States is not a party but in which it claims an interest, the view was expressed in the Final Act that this part of the fifth reservation rests upon the presumption that the adoption of a request for an advisory opinion by the Council or the Assembly requires a unanimous vote. It was stated that, since this has not been decided to be the case, it cannot be said with certainty whether in some or all cases a decision by a majority may not be sufficient but that, in any case where a State represented on the Council or in the Assembly would have a right to prevent by opposition in either of these bodies the adoption of a proposal to request an advisory opinion from the Court, the United States should enjoy an equal right. Article 4 of the draft Protocol states that " should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council ", and that " the manner in which the consent provided for in the second part of the fifth reservation is to be given " should be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

" The Government of the United States desires to avoid in so far as may be possible any proposal which would interfere with or embarrass the work of the Council of the League of Nations, doubtless often perplexing and difficult, and it would be glad if it could dispose of the subject by a simple acceptance of the suggestions embodied in the Final Act and draft Protocol adopted at Geneva on September 23rd, 1926. There are, however, some elements of uncertainty in the bases of these suggestions which seem to require further discussion. The powers of the Council and its modes of procedure depend upon the Covenant of the League of Nations, which may be amended at any time. The ruling of the Court in the Eastern Karelia case and the Rules of the Court are also subject to change at any time. For these reasons, without further enquiry into the practicability of the suggestions, it appears that the Protocol submitted by the twenty-four Governments in relation to the fifth reservation of the United States Senate would not furnish adequate protection to the United States. It is gratifying to learn from the proceedings of the Conference at Geneva that the considerations inducing the adoption of that part of Reservation 5 giving rise to differences of opinion are appreciated by the Powers participating in that Conference. Possibly the interest of the United States thus attempted to be safeguarded may be fully protected in some other way or by some other formula. The Government of the United States feels that such an informal exchange of views as is contemplated by the twenty-four Governments should, as herein suggested, lead to

agreement upon some provision which in unobjectionable form would protect the rights and interests of the United States as an adherent to the Court Statute, and this expectation is strongly supported by the fact that there seems to be but little difference regarding the substance of these rights and interests."

(*Signed*) Frank B. KELLOGG.

ANNEX 5.

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE COURT. [1]

On February 19th, 1929, the Secretary of State of the United States of America addressed to each of the Governments which had signed the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and also to the Secretary-General of the League of Nations a note suggesting that an exchange of views might lead to an agreement with regard to the acceptance of the stipulation set forth in the resolution adopted by the Senate of the United States on January 27th, 1926, as the conditions upon which the United States would adhere to the said Protocol. This note was considered by the Council of the League of Nations at its meeting on March 9th, 1929, and cordial satisfaction was expressed at the prospect which the note held out that a solution might be found for the difficulties which had prevented the adherence of the United States in 1926. On the same date, a resolution was adopted by the Council, requesting the Committee of Jurists, which had been appointed by the Council at its meeting on December 14th, 1928, to consider the revision of the Statute of the Permanent Court of International Justice, to deal with this question as well as those with which it was already charged and to make any suggestions which it felt able to offer with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It has been of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Honourable Elihu Root, formerly Secretary of State of the United States, and one of the members of the Committee which in 1920 framed the original draft of the Statute of the Court. His presence on the Committee has enabled it to re-examine with good results the work accomplished by the Special Conference which was convoked by the Council in 1926 after the receipt of the letter of March 2nd of that year from the then Secretary of State of the United States informing the Secretary-General of the League that the United States was disposed to adhere to the Protocol of December 16th, 1920, on certain conditions enumerated in that letter. The United States did not see its way to participate, as it was invited to do, in the Special Conference of 1926, and, unfortunately, the proposals which emanated from that Conference were found not to be acceptable to the United States. Nevertheless, as is shown by the note of February 19th, 1929, from Mr. Kellogg, the margin of difference between the requirements of the United States and the recommendations made by the Special Conference to the Powers which had signed the Protocol of December 16th, 1920, is not great. For this reason, the Committee adopted as the basis of its discussions the Preliminary Draft of a Protocol annexed to the Final Act of that Conference and has introduced into the text the changes which it believes to be necessary to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties. This revised text is now submitted to the Council of the League.

The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved. Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure. The task of the Committee has been to discover some method of ensuring that neither on the one side nor on the other should these apprehensions prove to be well founded.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States except in so far as they relate to advisory opinions, and the task of the Committee would have been simplified if its members had felt able to recommend that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. The Committee, however, is of opinion that it cannot recommend any such drastic solution. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled parties to a dispute to ask for the submission of their difference to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit it in the form of international litigation.

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[1] Rapporteur : Sir Cecil HURST.

The Committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. All that is possible is to guarantee to the United States a position of equality in this matter with the States which are represented in the Council or the Assembly of the League.

Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America (see Appendix, page 72).

The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering upon unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article 1 of the draft now submitted.

The next three Articles reproduce without substantial change the corresponding articles of the draft of 1926.

The fifth Article provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interest of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this Article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions as the circumstances may require, in order to ensure that the intentions of the Article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be despatched with a request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the Article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this Article should in practice afford protection to all parties in all cases, but if they do not, it must be recognised that the solution embodied in the present proposal will not have achieved the success that was hoped, and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the Article. It may be hoped that, should any such withdrawal by the United States materialise, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

In order to ensure so far as possible that the parties to the Protocol of 1920 shall be identical with the parties to the new Protocol, Article 6 provides that any State which in future signs the Protocol of 1920 shall be deemed to accept the new Protocol.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

It is necessary to consider what steps will be required to bring the Protocol, of which the text is now submitted, into force in the event of the recommendations of the Committee being accepted.

If the terms of the Protocol are approved by the Council it will be advisable that the Secretary-General should be directed, when answering Mr. Kellogg's note of February 19th, 1929, to communicate the draft to the Government of the United States. Since the Protocol,

if approved, covers the entire ground of Mr. Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should at the same time be communicated to all the States which signed the Protocol of December 16th, 1920, together with a copy of the resolution of the Senate of the United States, dated January 27th, 1926, containing the reservations of the United States.

It should also be communicated to the Assembly, in which the proposal for the appointment of this Committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action taken by the Assembly should be communicated to the signatory States which are called upon to determine whether or not to sign the new Protocol now proposed.

If the replies from the various Governments indicate a desire for a further exchange of views with regard to the nature of the proposed arrangement with the United States or to the terms of the draft Protocol, it will be for the Council to decide whether such exchange of views should proceed through the diplomatic channel or whether it is necessary to convoke a further special conference for the purpose, at which States not Members of the League might be represented. In any event, such exchange of views should, if possible, be completed before the conclusion of the Assembly, in order that the approval by the Assembly may be obtained in 1929. A copy of the Protocol in the terms approved will then be prepared for signature and every effort should be made to secure that delegates to the meeting of the Assembly or of the special conference, if there should be one, should be authorised to sign the instrument and should actually sign it before they leave Geneva. The signature of representatives of States not Members of the League should be obtained at the same time.

As provided in Article 7 of the draft, the Protocol will come into force as soon as it has been ratified by the States which have ratified the Protocol of December 16th, 1920, and by the United States, and, as soon as it has come into force, it will be possible for the United States to take the necessary steps to become a party to the Protocol of December 16th, 1920, and to any further protocol which may have been concluded for introducing amendments into the Statute of the Court.

When that happy result has been achieved, it will be possible to feel that further progress has been made in establishing the reign of law among the nations of the world and in diminishing the risk that there may be a resort to force for the solution of their conflicts.

Appendix.

Draft Protocol.

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol, subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court on International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraph 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and good will.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

DONE at....., the..... day of....., 19....., in a single copy, of which the French and English texts shall both be authoritative.

ANNEX 6.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

LETTER DATED SEPTEMBER 5TH, 1929, FROM THE PRESIDENT OF THE CONFERENCE TO THE PRESIDENT OF THE ASSEMBLY AND TO THE CHAIRMAN OF THE FIRST COMMITTEE.

[*Translation.*]

The Conference which has been invited to deal, among other questions, with the question of the accession of the United States of America to the Statute of the Premanent Court of International Justice, has accepted unanimously and without alteration the draft Protocol on this matter drawn up by the Committee of Jurists which met last March (see Annex 5, Appendix).

I have the honour to inform you that the Conference has decided to refer the said Protocol to the First Committee of the Assembly in order that the latter may be in a position to take the concurrent action of itself finally adopting this Instrument.

(*Signed*) VAN EYSINGA,
President of the Conference.

Official No: A. 22. 1929. V.
[C.A.S.C.2.]

ANNEX 7.

LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS CONCERNING THE QUESTION OF THE REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

[*Translation.*]

At its fifty-fifth session, held in June last, the Council of the League of Nations adopted a resolution convening for September 10th, 1929, a Conference of States parties to the Statute of the Permanent Court of International Justice. This Conference, which is to consider the revision of the Statute of the Court, will examine the report drawn up for that purpose by the Committee of Jurists which the Council instructed to study the Statute of the Court.

As I have pointed out in a number of communications to you, Article 423 of the Treaty of Versailles gives the Permanent Court of International Justice general powers to deal with all questions or difficulties arising out of the working of the International Labour Organisation, and for that reason the revision of the Statute of the Court is clearly a matter of interest to the Labour Organisation. Moreover, the report submitted on this question by the Committee of Jurists leads me to make an observation to which I feel bound to draw particular attention.

The Committee of Jurists rightly considers that it would be desirable to include in the Statute certain terms providing for the exercise of the advisory powers granted to the Court by Article 14 of the Covenant. It therefore proposes that Articles 72 to 74 of the Rules of the Court, which deal with the procedure for advisory opinions, should be embodied in the Statute. Unfortunately, the Committee of Jurists suggests making a change in the wording of these provisions, no explanation of which is contained in its report. Articles 73 and 74 of the Rules adopted by the Court provide for the participation in the advisory procedure of the international organisations concerned, but the draft Articles 66 and 67 of the Statute proposed by the Committee of Jurists contain no reference at all to any consultation of these organisations.

This omission seems somewhat unfortunate. The Court has already been asked on four occasions to give advisory opinions on questions relating to the working of the International Labour Organisation. On each occasion it has requested or accepted observations both from representatives of the International Labour Organisation itself and from representatives of international trade union organisations. This procedure has always worked quite satisfactorily and it might prove inexpedient to change it.

The Standing Orders Committee of the Governing Body of the International Labour Office has considered the change which the Committee of Jurists proposes to introduce in the provisions relating to the advisory procedure of the Court, and has asked me to approach the competent organs of the League of Nations with a request that the text of Articles 73 and 74 of the Rules of the Court should be reproduced in the Statute unchanged, or that, at all events, the reference to the consultation of international organisations should not be omitted.

I should therefore be very grateful if you would be good enough to bring the above considerations to the knowledge of the Governments which have been invited to take part in the Conference of States parties to the Statute of the Court. I have also the honour to inform you that I should be glad to attend or be represented at that Conference with a view to submitting to it any observations by the International Labour Office on the questions which the Conference has been asked to consider.

(*Signed*) Albert THOMAS.

ANNEX 8.

REPORT OF THE DRAFTING COMMITTEE ON THE QUESTION OF THE REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

I. Proposed New Chapter IV. Advisory Opinions : New Articles 65 to 68.

The Conference has still to consider two questions, namely :

(*a*) The question raised by the International Labour Office.

After discussion with the representative of this Office, M. Fromageot, who was asked to examine this question, proposed the following amended text for the new Articles 66 and 67 :

New Article 66.

" 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

" The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court *or international organisation* considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

" Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

" 2. States Members *and organisations* having presented written or oral statements or both shall be admitted to comment on the statements made by other States, Members *or organisations*, in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States, Members *and organisations* having submitted similar statements."

New Article 67.

" The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States, *of* Members of the League *and of international organisations* immediately concerned."

The effect is to reproduce the provisions of the existing Rules of Court (Articles 73 and 74). The French text of the former article is brought into conformity with the English text, which is that followed by the jurisprudence of the Court. This had already been done in the text annexed to the Jurists' report.

(*b*) Sir Cecil Hurst's proposal to give the new Article 68 the following form :

New Article 68.

" In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the Statute prescribed to be followed in contentious cases to the extent to which it recognises them to be applicable."

II. Proposal of the Delegate of Brazil.

The President has received the following letter from the delegate of Brazil, dated September 10th, 1929 :

" My Government, which is taking part in the Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, would be glad that this opportunity should be taken to regularise, in a clear and precise manner, the situation of Brazil in regard to the Permanent Court of International Justice.

" I have already informed the Secretary-General of the League of Nations of my Government's desire to contribute to the expenses of the Court in a proportion to be agreed. On the other hand, however, important elections are due to take place next year and it seems equitable that Brazil should be able to participate in them on a footing of equality with the other signatory States, whether Members of the League or non-members.

" The existing text of the Statute seems, however, not to contemplate such participation. I would be grateful if you would be so good as to ask the Conference whether it would not be appropriate to elucidate the Statute in such manner as to remedy this situation.

(*Signed*) M. de Pimentel Brandao,
Delegate of Brazil."

In order to expedite the work of the Conference, the President ventured to submit the above letter to the Drafting Committee, in order that the latter might examine in what form it might be possible for the Conference to give satisfaction to the very natural desires of Brazil.

The Committee considers that this object could be attained by making the following amendments in the Statute of the Court.

Article 4 would be amended so as to read as follows :

" 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.

" *The conditions under which a State which is a party to the Protocol of Signature of the Statute of the Court of December 16th, 1920, but is not a Member of the League of Nations may participate in electing the members of the Court shall, in the absence of any special agreement on the subject, be laid down by the Assembly on the proposal of the Council.*

" In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes."

Article 35 would be amended so as to read as follows :

" The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

" The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

" When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. *This provision shall not apply if such State is bearing a share of the expenses of the Court.*

This change in Article 35 is in conformity with the observation made by the Committee of Jurists in Section 15 of its report (document A.9.1929.V, page 9).

III. Draft Protocol relating to the Amendments to be made in the Statute.

The Drafting Committee proposes the following text for this instrument :

" 1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September . . . 1929.

" 2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

" 3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible, before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the members of the League of Nations and the States mentioned in the Annex to the Covenant.

" 4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

" 5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

" 6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

" 7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

" Done at Geneva, the..... day of September nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant."

Annex to the Draft Protocol of September . . . . . 1929.

AMENDMENTS TO THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New Article 3.

. . . . . .

New Article 4.

. . . . . .

etc.

The French text of Article 38, No. 4, is replaced by the following provision :

. . . . . .

(There is no change in the English text.)

Articles 39 and 40 are replaced by the following provisions :

New Article 39.

. . . . . .

New Article 40.

. . . . . .

The English text of Article 45 is replaced by the following provision :

. . . . . .

(There is no change in the French text.)

The following new chapter is added to the Statute of the Court :

Chapter IV — *Advisory Opinions.*

New Article 65.

. . . . . .

etc.

(End of Annex.)

* * *

As regards the special position of the United States, it may perhaps prevent misunderstanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that State, namely :

The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court ;
The Protocol of Signature of 1920, and
The new Protocol relating to the amendment of the Statute.

There could, of course, be no question of the United States being a party to the unamended Statute while the other States concerned were parties to the Statute in its amended form ; but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments ; and, while it is, of course, not within the province of the Drafting Committee or the Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States at the moment when it signs the Protocol dealing with its reservations to sign also the Protocol of Signature of 1920 and that relating to the amendments subject to the eventual entry into force of the first-mentioned agreement.

IV. NATURE OF THE RESOLUTION TO BE ADOPTED BY THE ASSEMBLY.

The draft Protocol could hardly be drawn up without considering what action the Assembly would be called upon to take.

Accordingly, while recognising that it is for the First Committee of the Assembly, and not for the Conference, to formulate a resolution for adoption by the Assembly, the Drafting Committee found it convenient to prepare the text of a resolution in conformity with the

provisions of the draft Protocol which would indicate what, in the opinion of the Conference, is the relation between its action and that of the Assembly. It is in this sense that the following draft resolution might perhaps be transmitted by the Conference to the Assembly :

" 1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly, in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court.

" 2. The Assembly takes note of the following recommendation adopted by the Conference :

" The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature."

ANNEX 9.

WORK OF THE CREDENTIALS COMMITTEE.

NOTE BY THE SECRETARIAT.

No report to the Conference was made by the Credentials Committee, which, in accordance with the special mandate given it (see the observations made by the President when proposing the appointment of the Committee, pages 7-8 and 23) devoted its attention to verifying the powers of the various delegations to sign the agreements to be drawn up by the Conference. On the suggestion of the Committee, the President of the Conference called the attention of the delegations not possessing the necessary full powers to the desirability of obtaining such full powers before the close of the session of the Assembly.

The Protocols adopted by the Conference regarding the accession of the United States of America to the Statute of the Permanent Court and regarding the revision of that Statute received respectively fifty and forty-eight signatures before the close of the Assembly's session.

ANNEX 10.

REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

LETTER DATED SEPTEMBER 12TH, 1929, FROM THE PRESIDENT OF THE CONFERENCE TO THE PRESIDENT OF THE ASSEMBLY AND TO THE CHAIRMAN OF THE FIRST COMMITTEE.

I have the honour to inform you that the Conference convened in accordance with the Council's resolution of June 12th, 1929, has examined the report of the Jurists regarding the revision of the Statute of the Permanent Court of International Justice. It has also taken into consideration a suggestion made by the delegate of Brazil in the letter of which a copy is enclosed that it should be made possible for any State which has accepted the Statute of the Court but is not a Member of the League to participate in the election of the members of the Court.

As a result of this examination, the Conference has adopted, with the modifications indicated below, the proposals of the Jurists for amending the Court's Statute, as set out on page 11 of document A.9.1929.V.

The new text of *Articles* 3 *and* 8 has been adopted as proposed by the Committee of Jurists.

New text of *Article* 13. The last line is to read : " This *last* notification makes the place vacant ".

The new text of *Articles* 14 *and* 15 has been adopted as proposed by the Committee of Jurists.

New text of *Article* 16. Adopted as proposed by the Jurists, on the understanding that the words " occupation of a professional nature " are to be interpreted in the widest sense, *i.e.*, cover, for example, such an activity as being director of a company.

New text of *Article* 17. Adopted as proposed by the Jurists, with the omission in the first paragraph of the words " of an international nature ".

New text of *Article* 23. Adopted as proposed by the Jurists with the following changes :

The words " at the end of each year for the following year " at the end of the first paragraph are omitted.

In the second paragraph, the words " not including the time spent in travelling " are added at the end of a paragraph.

The new text of *Articles* 25, 26, 27, 29, 31, 32, the change in the French text of *Article* 38, the new text of *Articles* 39 *and* 40 and the change in the English text of *Article* 45 are adopted as proposed by the Jurists.

The new Chapter IV of the Statute—Advisory Opinions—new Articles 65 to 68, has been adopted in the following form :

New Article 65.

" Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

" The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question."

New Article 66.

" 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

" The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

" Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard ; and the Court will decide.

" 2. Members, States and organisations having presented written or oral statements, or both, shall be admitted to comment on the statements made by other Members, States or organisations, in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States and organisations having submitted similar statements."

New Article 67.

" The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organisations immediately concerned."

New Article 68.

" In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases, to the extent to which it recognises them to be applicable."

The Conference associated itself with the following observations formulated in the course of its discussion with reference to the new Article 68 :

" In contentious cases, where a decision has to be given, the procedure naturally involves hearing both parties ; the two parties set out their arguments and observations, and the judges are thus provided with all the material necessary for reaching a conclusion. It must be the same in the case of advisory opinions.

" When an advisory opinion is asked, it is really indispensable, if the opinion is to carry any weight, if it is to be truly useful, that, in the same manner as in a contentious case, all the material necessary for reaching a conclusion should be placed before the person consulted ; he requires to know the arguments of both parties.

" This is the reason for providing that the procedure with regard to advisory opinions shall be the same as in contentious cases."

As the result of the suggestion of the Brazilian delegate, the Conference has adopted amendments to Articles 4 and 35 of the Statute of the Court, as the result of which these articles will assume the following form :

New text of Article 4.

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

" In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

" The conditions under which a State which has accepted the Statute of the Court, but is not a Member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council."

New text of Article 35.

" The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

" The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council ; but in no case shall such provisions place the parties in a position of inequality before the Court.

" When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court."

In addition to the amendments proposed by the Jurists, the Conference considered their proposal for the adoption of a recommendation regarding the nomination of candidates by the national groups. On this subject it adopted the following resolution :

" The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.

" The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups."

For the purpose of bringing the amendments into force, the Conference has adopted the enclosed draft Protocol, which will be completed by an Annex setting out the text of the amendments in the manner shown in the skeleton Annex attached to the draft.

The Conference associates itself with the following observations made by its Drafting Committee upon the Draft Protocol :

" As regards the special position of the United States, it may perhaps prevent misundertanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that Power, namely :

" The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court ; and

" The Protocol of Signature of 1920 ;

" The new Protocol relating to the amendment of the Statute.

" There could, of course, be no question of the United States being a party to the unamended Statute while the other States concerned were parties to the Statute in its amended form ; but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments (see paragraph 7 of the Protocol) ; and, while it is, of course, not within the province of the Drafting Committee or the Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States at the moment when it signs the Protocol dealing with its reservations to sign also the Protocol of Signature of 1920 and that relating to the amendments subject to the eventual entry into force of the first-mentioned agreement."

While recognising that it is not formally within its province to make any proposals as to the action to be taken by the Assembly, the Conference has necessarily been obliged to ask itself what form the Assembly's action will take. It has found it convenient to give a precise shape to its ideas on this subject by drawing up a draft resolution in conformity with the terms of the draft Protocol which it has adopted. It has requested me to transmit this text also to you in the hope that it may serve to facilitate the consideration of the question by the Assembly.

The Conference anticipates that the Assembly, if it is in agreement with the results of the work of the Conference, will, by a suitable resolution, adopt for its part the amendments to the Statute of the Court and the draft Protocol relating thereto.

In this event, there will be no obstacle to the opening of the Protocol for signature so soon as it can be prepared in the proper form.

The same will be the case with regard to the Protocol relating to the accession of the United States of America to the Statute of the Court, if that Protocol is adopted by the Assembly.

The Conference has closed its session, subject to its being possible for it to be convened again by its President if need arises. It is understood that, if the draft Protocols are adopted by the Assembly in the form given to them by the Conference, the Secretary-General will proceed without delay to present them to the delegates for their signature.

I am addressing an identical letter to the President of the Assembly.

(*Signed*) W. J. M. VAN EYSINGA,
President of the Conference.

Appendix I.

LETTER OF SEPTEMBER 10TH, 1929, FROM M. M. DE PIMENTEL BRANDAO, DELEGATE OF BRAZIL, TO THE PRESIDENT OF THE CONFERENCE.

My Government, which is taking part in the Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, would be glad that this opportunity should be taken to regularise, in a clear and precise manner, the situation of Brazil in regard to the Permanent Court of International Justice.

I have already informed the Secretary-General of the League of Nations of my Government's desire to contribute to the expenses of the Court in a proportion to be agreed. On the other hand, however, important elections are due to take place next year, and it seems equitable that Brazil should be able to participate in them on a footing of equality with the other signatory States, whether Members of the League or non-members.

The existing text of the Statute seems, however, not to contemplate such participation. I would be grateful if you would be so good as to ask the Conference whether it would not be appropriate to elucidate the Statute in such manner as to remedy this situation.

(*Signed*) M. de PIMENTEL BRANDAO,
Delegate of Brazil.

Appendix II.

DRAFT PROTOCOL RELATING TO THE AMENDMENTS TO BE MADE IN THE STATUTE OF THE PERMANENT COURT.

1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September..... 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible, before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

DONE at Geneva, the..... day of September, nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

Annex to the Protocol of September ..... 1929.

AMENDMENTS TO THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New text of Article 3.

. . . . . .

New text of Article 4.

. . . . . .

etc.

The French text of Article 38, No. 4, is replaced by the following provision :

. . . . . .

(There is no change in the English text.)

Articles 39 and 40 are replaced by the following provisions :

New text of Article 39.

. . . . . .

New text of Article 40.

. . . . . .

The English text of Article 45 is replaced by the following provisions :

. . . . . .

(There is no change in the French text.)

The following new chapter is added to the Statute of the Court :

Chapter IV — Advisory Opinions.

New Article 65.

. . . . . .

etc.

Appendix III.

DRAFT RESOLUTION.

1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly, and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly, in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court.

2. The Assembly takes note of the following recommendation adopted by the Conference :

" The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature."

Official No.: A. 49 (Annex). 1929. V.
[C.A.S.C. 11 — Annex]

ANNEX 11.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

DRAFT PROTOCOL.

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraphs 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

DONE at Geneva, the fourteenth day of September, nineteen hundred and twenty-nine, in a single copy, of which the French and English texts shall both be authoritative.

Official No.: A. 50 (Annex). 1929. V.
[C.A.S.C. 12 — Annex.]

ANNEX 12.

REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

DRAFT PROTOCOL.

1. The undersigned, duly authorised, agree, on behalf of the Governments which they represent, to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September ..... 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible, before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

DONE at Geneva, ..., nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

Annex to the Protocol of September .., 1929.

AMENDMENTS TO THE
STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New text of Article 3.

The Court shall consist of fifteen members.

New text of Article 4.

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

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of the Hague of 1907 for the pacific settlement of international disputes.

The conditions under which a State which has accepted the Statute of the Court but is not a member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

New text of Article 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

New text of Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This last notification makes the place vacant.

New text of Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

New text of Article 15.

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

New text of Article 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

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

New text of Article 17.

No member of the Court may act as agent, counsel or advocate in any case.

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

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

New text of Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

New text of Article 25.

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

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

New text of Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions.

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

New text of Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

New text of Article 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

New text of Article 31.

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

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

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

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

New text of Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

New text of Article 35.

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

The French text of Article 38, No. 4, is replaced by the following provision :

4. *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*

[There is no change in the English text.]

Articles 39 and 40 are replaced by the following provisions :

New text of Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

New text of Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

The English text of Article 45 is replaced by the following provision :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

[There is no change in the French text.]

The following new chapter is added to the Statute of the Court :

CHAPTER IV. — ADVISORY OPINIONS.

New Article 65.

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

New Article 66.

1. *The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.*

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. *Members, States, and organisations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States, or organisations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organisations having submitted similar statements.*

New Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organisations immediately concerned.

New Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognises them to be applicable.