LEAGUE OF NATIONS

COMMITTEE OF JURISTS ON THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

MINUTES

OF THE

Session held at Geneva, March 11th-19th, 1929.

Geneva, May 1st, 1929.

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FIRST MEETING.

Held on Monday, March 11th, 1929, at 11 a. m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

1. Opening of the Session by the Secretary-General of the League and Appointment of the Chairman and Vice-Chairman of the Committee.

The SECRETARY-GENERAL welcomed the members of the Committee and reminded them that their terms of reference included a revision, if necessary, of the Statute of the Permanent Court and, secondly, in conformity with the resolution adopted by the Council on Saturday, March 9th, 1929, the consideration of the present situation and of any suggestions which might be put forward as regarded the accession of the United States of America to the Protocol of Signature of the Statute of the Court (Annex 1).

The Secretary-General suggested that the Committee should elect its officers.

On the proposal of M. POLITIS and M. FROMAGEOT, supported by M. URRUTIA, M. SCIALOJA *was elected Chairman by acclamation.*

On the proposal of the CHAIRMAN, Jonkheer VAN EYSINGA *was elected Vice-Chairman.*

(The Secretary-General withdrew.)

2. Participation of the President and Vice-President of the Permanent Court of International Justice in the Work of the Committee : Declaration by M. Anzilotti.

M. ANZILOTTI asked permission, before the Committee opened the discussion, to read the following declaration in his own name and in that of M. Max Huber :

" Mr. Chairman, Gentlemen : — Before we take up the work that has been entrusted to this Committee, I think I ought to explain in a few words the conditions under which my colleague, M. Huber, and myself will take part in your work.

" On December 14th, 1928, the Council of the League adopted a resolution under which it invited us to take part, *inter alia*, in the work of the Committee set up to report ' what amendments appeared desirable in the various provisions of the Court's Statute '. These terms of reference were amplified the other day to include the consideration ' of the present situation as regards the accession of the United States of America to the Protocol of Signature of the Statute '.

" We are glad to be able to accept this invitation, since our presence will enable the Committee, in its proceedings, to take into account such experience as we have acquired, as successive Presidents of the Court, of the practical value of the Statute which was adopted in 1920 after careful and exhaustive preparation.

" Our attendance, however, should not be regarded as implying that we are of the opinion that a revision of the Statute is necessary. It is true that in many respects a system other than that which was set up by the Statute might obviously be considered, but, in view of the actual terms of the report relative to the resolution adopted by the Assembly of the League on September 20th, 1928, it is not a reform of this kind that is at present under consideration. All that is to be done is to re-examine the Statute with the object of correcting certain imperfections which may have come to light as a result of experience. It would appear to us to be certain that the majority of these imperfections might be overcome within the limits of the Statute as it was drafted in 1920, either by means of concurrent decisions by the Council and the Assembly or by the exercise by the Court itself of its regular powers. In this connection, I should like incidentally to take note of the declaration made to the Assembly by the Rapporteur according to which ' the Committee agreed unanimously, in the first place, that it could not interfere in any way in the question of the Rules of the Court. That is a matter for the Court itself and... the Rules cannot be affected by any examination of the Statute '.

" Nevertheless, the work of the examination of the Statute with a view to its revision having been started, we think it our duty, not only to give information on points of fact and to state our opinion on any proposals that may be made from other sources, but also, if necessary, to propose ourselves certain amendments.

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

The CHAIRMAN was sure that the Committee would unanimously thank M. Anzilotti and M. Max Huber for having been good enough to attend the meetings of the Committee.

COMPOSITION OF THE COMMITTEE OF JURISTS ON THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Chairman :

M. SCIALOJA.

Vice-Chairman :

Jonkheer VAN EYSINGA.

Members :

M. FROMAGEOT,

M. GAUS,

Sir Cecil J. B. HURST,

M. ITO,

M. PILOTTI,

M. POLITIS,

M. RAESTAD,

Mr. ROOT,

M. RUNDSTEIN,

M. URRUTIA.

Invited to participate in the work of the Committee :

M. ANZILOTTI, President of the Permanent Court of International Justice,

M. HUBER, Vice-President of the Permanent Court of International Justice,

M. OSUSKÝ, Chairman of the Supervisory Commission.

Secretary of the Committee :

M. Joseph NISOT, Member of the Legal Section of the Secretariat of the League of Nations.

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3. **Publicity of the Meetings.**

On the proposal of Sir Cecil HURST, supported by M. POLITIS, M. ANZILOTTI and M. FROMAGEOT, *the Committee decided* that its meetings would be held in private, with the exception possibly of the last meeting.

4. **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 : Letter from the United States Government and Proposals by Mr. Root.**

The CHAIRMAN, after reading the letter addressed on February 19th, 1929, to the Secretary-General by Mr. Frank B. Kellogg (Annex 2), referred to a semi-official note which had been received by the Secretary-General from Mr. Root.

M. POLITIS thought that, although the note was only semi-official, it might form the subject of an exchange of views.

Mr. ROOT said that he gladly accepted this procedure. He proposed that the text of his note, which was, however, of an entirely unofficial character, should be distributed as soon as possible. Meanwhile, he would make the following comments on it.

The note contained suggestions, which he was submitting in his own name, as to the way in which it might perhaps be possible to bring the provisions of the Final Act of the Conference of September 1926 — which Conference had been presided over so skilfully by M. van Eysinga — and adopted by the majority of States signatories of the Protocol of the Court, into line with the reservations made by the United States Senate (Annex 3) in regard to the accession of the United States to the Protocol of the Court. He thought that his suggestions, without injuring any of the parties, might be calculated to satisfy both the desires of the United States Senate, as expressed in the reservations that were known to all the members of the Committee, and at the same time the desires expressed by the 1926 Conference in its Final Act.

The note which he had handed to the Secretary-General contained purely personal suggestions ; he thought that they might form the subject of an exchange of views among the parties concerned, and might perhaps further the achievement of the purpose that all members had in mind.

Mr. Root's note for a " Suggested Redraft of Article 4 of the Protocol of 1926 " [1] was then read. The text of the note ran as follows :

" The Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is a party. — Final Act, under Res. V, para. B, 2.

" The Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is not a party but in which it claims an interest or touching any questions other than a dispute in which the United States claims an interest. — Final Act, under Res. V, para. B, 3, 4.

" The manner in which shall be made known whether the United States claims an interest and gives or withholds its consent shall be as follows : — Art. 4, para. I, of the Protocol and Final Act.

" Whenever, in contemplation of a request for an advisory opinion, it seems to them desirable, the Council or Assembly may invite an exchange of views with the United States and such exchange of views shall proceed with all convenient speed. — Final Act, under Res. IV, para. A, 3.

" 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. — Art. 73 of the Rules and Final Act, under Res. V, para. A.

" In case the United States shall, within the time fixed, advise the Court in writing that the request touches a dispute or question in which the United States has an interest and that the United States has not consented to the submission of the question, thereupon all proceedings upon the question shall be stayed to admit of an exchange of views between the United States and the proponents of the request, and such exchange of views shall proceed with all convenient speed. — Final Act, under Res. IV, para. A, 3.

" If after such an exchange of views, either while a question is in contemplation or after a question has gone to the Court, it shall appear : (1) that no agreement can be reached as to whether the question does touch an interest of the United States within the true meaning of the second paragraph of this article ; and (2) that the submission of the question is still insisted upon after attributing to the objections 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 either in the Assembly or in the Council ; and if it also appears that the United States has not been able to find the submission of the question so important for the general good as to call upon the United States to forgo its objection in that particular instance, leaving the request to be acted upon by the Court without in any way binding the United States ; then it shall be deemed that, owing to a material difference of view regarding the proper scope of the practice of requesting advisory opinions, the arrangement now agreed upon is not yielding satisfactory results and that the exercise of the powers of withdrawal provided in Article 7 hereof will follow naturally without any imputation of unfriendliness or of unwillingness to co-operate generally for peace and goodwill, " — Art. 4, para. 3, of the Protocol and Final Act. — Final Act, under Res. IV, para. A. 2.

[1] The text of the Final Act of the Conference of 1926, together with the annexed draft Protocol, is reproduced in Annex 4.

The CHAIRMAN, speaking in his capacity as President of the Council, said that the Council would be glad if the Committee could discover the means of satisfying the desiderata of the United States Government as expressed in Mr. Kellogg's letter, whilst safeguarding the dignity of the League.

Jonkheer VAN EYSINGA, without wishing to examine in detail Mr. Root's note, which he had not yet been able to study, desired to express the deep gratification which Mr. Kellogg's letter had caused him. He had observed, too, with keen pleasure the satisfaction felt by the Council at the presence on the Committee of Jurists of that eminent statesman and lawyer, Mr. Elihu Root.

When the question had come up before the last session of the Assembly, it had been thought that it would be desirable merely to consider whether there might not be certain modifications or *retouches* to be made in the Statute of the Court. Now, M. van Eysinga was under the impression that Mr. Kellogg's letter greatly extended the scope of the work assigned to the Committee. At the 1926 Conference, only the second part of the fifth reservation made by the United States had caused any difficulties. It seemed that the time spent in waiting had not been lost, and Mr. Root's note appeared to indicate a possible way out of the present difficulties. Personally, M. van Eysinga expressed the sincere hope that the United States would accede to the Statute of the Permanent Court.

M. POLITIS too thought that Mr. Root's note contained certain very valuable suggestions which would make it possible perhaps to reach a satisfactory solution, but he could not at the moment give more than his simple impression, since he had not yet had time to study the document.

Sir Cecil HURST having suggested that the meeting should be adjourned in order to enable the jurists to examine the personal suggestions made by Mr. Root, the CHAIRMAN said that, in his opinion, the Committee was in a position at once to examine various questions which were bound up with Mr. Kellogg's letter. That letter emphasised two difficulties, which it would, he thought, be easy to surmount. In the first place, there was the possibility of a modification to be made later in the Covenant. In the second place, was it possible to give an assurance to the United States that, in other cases, the Permanent Court would not follow any practice other than that which it had followed in the Eastern Karelian affair? If these two difficulties could not be overcome, it did not appear likely that any conclusion acceptable to the United States would be reached. The Chairman, however, thought that this was not the case.

M. PILOTTI, after referring to the two difficulties pointed out by the Chairman, thought that the second might be overcome if the Committee decided to suggest to the signatory States certain amendments in the Statute of the Permanent Court. From the award given in the Eastern Karelian case it would be possible to infer a principle which might be introduced into the Statute. In this way the United States would receive satisfaction, since the practice of the Permanent Court could not be modified further once the future Conference of signatory States had accepted that proposal.

The first difficulty was more serious, since it was obvious that the Covenant could be amended by the Members of the League. The United States, however, was not a Member. The point would have to be considered whether, in concluding an arrangement with the United States with a view to its accession to the Permanent Court, it would not be possible to make such an arrangement contingent upon the condition that the article of the Covenant relating to advisory opinions would not be amended. The result would be, in practice, that, if a proposal for amendment were made to the Assembly at some future date, the arrangement would lapse; but no such proposal would probably ever be made to the Assembly, which had frequently manifested its wish that the United States should become and remain an adherent to the Statute of the Court.

There was another difficulty, one that was implicit in Mr. Kellogg's observations. If Mr. Kellogg's letter were to be interpreted in the sense that the United States was only asking that the Covenant should not be amended, its wishes could be met by making the arrangement with that country contingent on the condition that the Covenant should remain intact; but if the letter meant that the United States held unanimity to be necessary in regard to advisory opinions, a question which was still open, it would not be easy to find a way out of the difficulty.

M. Pilotti contemplated the adoption of the following system:

"The third paragraph of Article 4 of the draft Protocol approved by the 1926 Conference to be replaced by the two following paragraphs:

"3. *The Court will not give advisory opinions concerning a dispute to which the United States is a party unless the United States has consented to such a course.*

"4. 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,

(First Alternative)	(Second Alternative)
".... the Court	".... the Court
will attribute to such objection the same force and effect as, *according to the provisions of the Covenant of the League of Nations,*	*shall take a decision regarding this objection. If the Court agrees that the United States has an interest in the dispute or question, it*

these provisions are operative on the date of the signature of the present Protocol by the United States, attaches to a vote by a Member of the League of Nations either in the Assembly or in the Council against asking for an opinion. "

will declare that the advisory opinion should not be given without the consent of the United States. "

Sir Cecil HURST thought that it would not be very difficult to find means of giving satisfaction to the United States on the three points. If his memory was correct, these difficulties had already been considered at the 1926 Conference, but it was possible that they were not very clearly stated in the records of the Conference. In Article 2 of the preliminary draft of the Protocol, it was stated that " no amendment of the Statute annexed to the Protocol of December 16th, 1920, may be made without the consent of all the Contracting States ".

Secondly, in regard to the objection derived from a possible change in the practice of the Court, some people had thought that it would be well to insert in the Statute a provision based on the rule which had been adopted in the Eastern Karelian case. Other members of the Conference had considered that it would be inadvisable to bind the Permanent Court by introducing into the Statute itself the procedure which it had followed in a particular case. Sir Cecil Hurst thought he was right in stating also that, in the view of the Conference, the provisions appearing in Article 7 of the preliminary draft of the Protocol, under which the United States might at any time notify the Secretary-General that it withdrew its adherence to the Protocol of December 16th, 1920, might be considered as satisfactory. There would thus be conferred on the United States a right not possessed by the Members of the League.

Sir Cecil Hurst thought that the three objections which emerged from Mr. Kellogg's letter might be met satisfactorily by the introduction into the Protocol of an amendment according to the United States in very clear terms the right to withdraw, on the basis of the provisions of Article 7, if any change were made either in the Covenant, or in the Rules or practice of the Court, and he proposed to insert an additional provision in the preliminary draft of the Protocol on the following lines :

> " In the event of any modification being made in the Covenant of the League of Nations or in the Rules of the Court or in the practice of the Court which is calculated to prejudice the protection of the United States of America against demands for advisory opinions in cases in which the United States is interested, the Parties recognise the right of the United States to withdraw under Article 7 of the present Protocol. "

Jonkheer VAN EYSINGA believed that Mr. Root's suggestions were intended precisely to overcome the difficulties in question, but he thought it better not to continue the discussion on this subject until all the members of the Committee had had an opportunity of examining Mr. Root's note more closely.

The CHAIRMAN said that, before suspending the discussion, it would be well to ascertain whether there were not other difficulties to be foreseen, so that the Committee might hold its later discussions with a full knowledge of all the facts.

Mr. ROOT explained that his suggestions covered the most serious difficulty, namely, the second part of the fifth reservation of the United States. He had attempted to solve this difficulty in the spirit of the Final Act of 1926, and on the basis of Article 4 of the preliminary draft of the Protocol. His suggestion should be read with the actual text of the Final Act in mind. According to the general opinion of the members of the 1926 Conference, the chief difficulty resulting from the second part of the fifth reservation of the United States was due to the way in which that reservation had been drafted. Its terms were so general that they seemed to afford powers of general interference in the business of the Council and of the Assembly in regard to advisory opinions. What was required in order to reach the agreement proposed in the first paragraph of Article 4 of the preliminary draft of the Protocol ? The scope of this possible interference must be determined. The theoretical question raised by the second part of the fifth reservation could be discussed for ever and without any positive result. In his note, Mr. Root had tried to solve the difficulty in a practical way and to determine the scope of the United States' reservation.

Mr. Root added that his note bore only on the second part of the fifth reservation of the United States, and left entirely open the question dealt with in Sir Cecil Hurst's proposal or any other proposal that might be put forward.

5. Procedure for obtaining Advisory Opinions from the Permanent Court of International Justice.

M. POLITIS thought that the discussion would very largely bear on the procedure under which requests for advisory opinions were made. On this subject there were no rules, but it appeared that a certain practice had been established. The question had been discussed repeatedly and once again last September, but it was still open.

The CHAIRMAN thought he could sum up as follows the present position of the question. Was unanimity necessary or did a majority suffice for a request for an advisory opinion ? Up to the present, neither the Council nor the Assembly had been able to come to a decision,

Personally, the Chairman had always held the view that advisory opinions fell within the class of acts which, according to the Covenant, could be effected by a majority vote, but he realised that that opinion was not in conformity with practice. The Permanent Court held that its opinions were binding on the parties which had asked for them. Consequently, its opinions settled the question, and an act of that kind was one of those which, under the terms of the Covenant, should be effected by a unanimous vote.

In view of the fact that the absence of any rule had the effect that no request was made for an advisory opinion, the Chairman, while adhering to his first opinion, thought that if in this case the rule of the majority vote was calculated to prevent the recourse to advisory opinions, it would be better to establish the rule of unanimity. Instead of consulting the Permanent Court, the Council had made it a habit to consult groups of jurists, since it thus remained free not to follow their opinion if it thought fit. That procedure had on several occasions been substituted for that of asking for an advisory opinion from the Permanent Court. If the Council continued to follow that method in all cases in which it did not wish to be bound by an opinion, and if it consulted the Permanent Court only when it wished to be bound by such opinion as the Court might put forward, the question would fall to the ground and there would be no obstacle to the adoption of a system which would permit of the accession of the United States to the Court.

SECOND MEETING.

Held on Monday, March 11th, 1929, at 5 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

6. Death of Lord Finlay, Member of the Permanent Court of International Justice.

M. ANZILOTTI said that, before the Committee resumed its work, he had, to his regret, to announce a sad event. He had just received official confirmation of the death of Lord Finlay, who had been a member of the Court since its creation. Lord Finlay, who was the senior judge of the Court and was beloved and respected by all its members, had taken part in all its sessions with a single exception. The Court, whose work owed so much to his influence, had lost in him an enlightened, loyal and courageous collaborator, who had devoted to its service the last moments of a life of continuous activity. Lord Finlay had died owing to his having taken the risk of a painful operation in order that he might be able to take his seat once more with the Court. He was sure that the Chairman and the other members of the Committee would fully associate themselves with the deep regret which he now desired to express on behalf of himself, M. Huber and M. Hammarskjöld and also on behalf of the Court.

The CHAIRMAN said that it was with deep regret that the Committee learnt of the death of Lord Finlay. He had always regarded Lord Finlay as one of the leading jurists of the world. He had been a great lawyer and a great judge. His death left the impression that something of great value had ceased to be.

7. 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 : Letter from the United States Government and Proposals by Mr. Elihu Root (continuation).

M. GAUS said he was not sure that he fully understood the procedure suggested by the Chairman at the morning meeting. The Chairman had suggested that the Committee should consider the three points contained in the letter from Mr. Kellogg. The Committee, however, was also considering proposals of Mr. Root. Was it not a fact that Mr. Root's proposals covered the whole question under discussion and incidentally the three points in Mr. Kellogg's letter ? Was it therefore necessary to take the three points contained in that letter separately ? Mr. Root's proposals went to the heart of the problem.

The CHAIRMAN said that the Committee had before it an official document, namely, the letter from Mr. Kellogg, to which the Council was bound to reply, and the Council desired the advice of the Committee upon the answer to be made. The Committee had also before it proposals made by Mr. Root in his private capacity. Those proposals were extremely important but they were not official proposals. It was true that the Committee might report to the Council on the basis of Mr. Root's proposals, but, it would nevertheless, in his opinion, be necessary to reply to the Council separately on the three points to which he had referred.

He would point out, moreover, that, though the Committee might report to the Council on the basis of Mr. Root's proposals, the Council might not be disposed to accept them. The

M. GAUS said that he was not yet entirely convinced. The three points contained in Mr. Kellogg's letter were only of importance with reference to the fifth reservation contained in the memorandum of the United States. That memorandum was in fact a criticism of the findings of the Conference of 1926, and the Committee would have to find some way of meeting that criticism. Mr. Root's proposals went directly to the heart of the problem and, if accepted, would cover the whole ground.

The CHAIRMAN again pointed out that, though the Committee might accept the proposals of Mr. Root, the Council might not be ready to do so and would in that case be unable to reply to the letter of Mr. Kellogg upon the advice of the Committee.

Mr. ROOT said that he had no authority to interpret the letter from Mr. Kellogg, but he thought that he understood what that letter implied. Mr. Kellogg was unable to accept in its entirety the Protocol of 1926 and had in his letter given a number of reasons, by way of illustration, why the United States was unable to do so. One of the reasons was that the procedure followed in asking the Permanent Court for an advisory opinion might not be satisfactory to the United States. The Court had, in the Revised Rules of 1926, met the views of the United States, as expressed in the first part of the fifth reservation, by undertaking that notice should be given of any request for an advisory opinion and that the United States should be given an opportunity to be heard. Mr. Kellogg had stated, however, that this arrangement was not a sufficient protection for the interests of the United States as the Rules of the Court were liable to amendment at any time and the guarantee was not therefore permanent. The Covenant of the League itself, which regulated the powers of the Council to request an advisory opinion, might be altered, and the United States would have no opportunity of expressing its views upon any amendments which might be proposed. The guarantees laid down in the Final Act of 1926 were therefore uncertain and this made it impossible for the United States to accept them.

Mr. Kellogg had therefore proposed, in conclusion, that the interests of the United States might be safeguarded in some other way and had suggested that there might be an informal exchange of views which would lead to agreement upon some provision which, in an unobjectionable form, would protect the rights and interests of the United States as an adherent to the Court Statute. Mr. Kellogg had pointed out that such an expectation was strongly supported by the fact that there seemed to be but little difference regarding the substance of the rights and interests involved.

The uncertainty as to the permanence of the guarantees contained in the Protocol of 1926 was a problem which stood by itself and would have to be solved. It had been suggested by Sir Cecil Hurst that any modification in the Rules of Procedure of the Court or in the powers of the Council and the Assembly to the detriment of the United States should be regarded as a suitable ground for withdrawal. Such a suggestion might meet the objections expressed by Mr. Kellogg.

A further point remained, however, which was defined in the fifth reservation and dealt with in Mr. Root's own proposals. He was referring to the reservation in regard to the exercise and scope of the powers of the Council in requesting an advisory opinion. The Council might decide to request an advisory opinion without reference to the interests of the United States which might in certain cases be involved. This reservation was due to apprehensions in respect of possible infringement upon the rights and interests of the United States.

He had also in his proposals endeavoured to meet apprehensions of another kind, namely, that the reservation of the United States might be used to interfere with the Council or the Assembly in the discharge of its duties and to embarrass its procedure. There was no intention on the part of the United States to hamper the procedure of requesting advisory opinions upon unreal and unsubstantial grounds. It was difficult in an abstract formula to discriminate between the multitude of possible interests involved, and he had endeavoured in his proposals to allay apprehensions on both sides by dealing with the problem in a concrete form.

He had since been shown an alternative draft which, so far as he could see, fulfilled exactly the same purpose as his own. The essential point was that the United States should be promptly informed of the intentions of the Council in dealing with any matter in which the former might be interested, and that there should be some kind of informal conference in regard to any concrete case which might arise. Such a solution would make it possible to avoid discussing detailed questions of procedure, such as whether decisions to request an advisory opinion should be taken unanimously or by a majority vote. These proposals were inspired by a strong desire on the part of the United States to avoid interfering, in any way, with the procedure of the Council. The case might never arise for a full application of his proposal, which was intended to provide against a very rare and improbable contingency.

Jonkheer VAN EYSINGA thought that the general question raised in the letter of Mr. Kellogg had been met by the proposals of Mr. Root. Mr. Kellogg had stated that the Government of the United States desired to avoid as far as possible any proposal which would interfere with or embarrass the work of the Council of the League. Another merit of the proposals of Mr. Root was that they avoided going into the details of the internal constitutional law of the League. The problem had become a concrete one and the general and abstract question whether the

the proposals of Mr. Root, which might be regarded as a concrete development of that letter.

He had two observations to make on the text of Mr. Root's proposals. There was a reference in the second paragraph to the second half of the fifth reservation. Was it not desirable, in referring to the fifth reservation, to quote it *ipsis verbis*, instead of giving a paraphrase ?

Secondly, would it not be possible to simplify the procedure defined in the fifth paragraph ? A question might come before the Council regarding which the Council might desire to have an advisory opinion from the Court. Under the proposed procedure the Council might either discuss the question with the United States or, in urgent cases, ask the Court at once for an advisory opinion. The Court would then inform the United States, under Article 73 of the Rules of the Court, that it had been seized of the question ; the United States might then reply to the Court that it had objections to raise. This reply would go to Geneva by way of The Hague and be discussed by the Council. The letters would thus pass from Geneva to The Hague, from The Hague to Washington, from Washington to The Hague and from The Hague to Geneva. Would it not be simpler to provide that the Council when asking for an opinion from the Court, should at the same time notify the United States of its action, and that the United States should immediately communicate with Geneva ?

Sir Cecil HURST said that he was the author of the revised draft to which Mr. Root had referred. On studying Mr. Root's proposal, he had felt that, without in any way changing its substance, it was possible to render the scheme more acceptable by amending it in form and arrangement. He had not shown this revised draft to anyone but Mr. Root, but with Mr. Root's permission he would now have it distributed to the Committee.

Mr. ROOT said he would be very glad if the revised draft were circulated. He was not yet prepared to express a final opinion upon it, but was under the impression that it was an improvement upon his own. His own draft had suffered from his anxiety to avoid interfering in any way with the procedure and work of the Council. Sir Cecil Hurst, however, appeared to think that the Council might welcome such intervention, and that his own anxiety on the subject was groundless. He would also observe that the draft of Sir Cecil Hurst met the points which had been raised by M. van Eysinga.

M. RUNDSTEIN wondered whether the reference to the possible withdrawal of the United States made in the last paragraph of Mr. Root's proposal was really necessary. The right to withdraw from the Court belonged to every State, and it was perhaps superfluous to refer to it. The reference to withdrawal appeared to be all the more unnecessary as the United States would not be bound by an advisory opinion with which it had not concurred. Would it not be better simply to say that, if agreement were not reached between the United States and the Council regarding a request for an advisory opinion, that opinion could not be invoked against the United States in its relations with other countries ?

M. POLITIS said he did not feel ready to pass a final opinion upon Mr. Root's proposal. He had, however, been greatly impressed by the observation of Mr. Root to the effect that it was a matter of indifference to the United States what procedure was followed by the Council in deciding to ask for an advisory opinion, and that the United States had no desire to discuss the question whether the decision to request such opinions should be taken unanimously or by a majority vote. That was a very important declaration and appeared to open the way to an easy settlement of all the difficulties.

The question of procedure, so far as a non-Member of the League was concerned, was simple. Whenever the Council decided to ask for an advisory opinion, it would have to ask the United States whether it considered that the question to be put before the Court was of interest to it. There would be an exchange of views on the subject. If the United States were not interested, the procedure would go forward in the ordinary way. If the United States, on the contrary, claimed an interest and opposed the request for an advisory opinion, it was open to it to withdraw from the Court and the opinion would not be binding upon it.

M. OSUSKÝ represented that, if the fundamental idea underlying the proposals of Mr. Root were accepted, the procedure would have to be simplified. Under the procedure proposed, an intervention might be necessary after a question had been submitted to the Court, and during the proceedings before the Court. It was extremely undesirable that there should be any interference with the proceedings of the Court after the Court had actually been requested to act. The procedure would also have to be simplified in order to avoid loss of time.

He would suggest that the best procedure would be for a representative of the United States to be invited to attend the Council whenever the question of asking the Court for an advisory opinion was to be considered.

M. URRUTIA said that, as Sir Cecil Hurst had prepared a revised version of the proposals of Mr. Root, it would be better for the Committee to postpone any further consideration of the matter until the amended version had been distributed.

He would, however, draw attention to one important consideration. As M. Politis had said, the declaration of Mr. Root to the effect that it was a matter of indifference to the United States whether the Council took its decisions unanimously or by a majority vote contributed

the League it would be necessary to adopt the rule of unanimity. Otherwise the United States would have a power of veto for which there would be no equivalent in the rights enjoyed by Members of the League.

He would add, in support of the doctrine of unanimity, that when the Council requested an advisory opinion, it in effect surrendered to the Court its own power of decision, and in his view such a step could only be taken with the unanimous consent of all its Members.

He felt sure that the Committee was on the way to an agreement, and that that agreement would lead inexorably to the adoption of the rule of unanimity in order to secure equality as between all the parties concerned.

The CHAIRMAN again reminded the Committee that it would be necessary to advise the Council as to the reply to be addressed to Mr. Kellogg. The Committee, however, might discuss the question first from the general point of view. What exactly were the guarantees claimed by the United States ? The United States desired that the Court should not be asked for an advisory opinion which might be detrimental to its interests. Mr. Root's proposals provided a machinery of guarantees. It had been said that this machinery might be considered quite apart from the question whether a decision of the Council to request an advisory opinion should be taken unanimously or by a majority vote. It had, however, been pointed out that the question of unanimity was in effect involved, owing to the moral and practical results of Mr. Root's proposals.

He would himself point out that if, contrary to the wishes of the United States, the League of Nations requested the Court for an advisory opinion, the United States would thereupon exercise its right to withdraw from the Court. Such a step, however, was of so serious a character that it must be regarded as a species of sanction. It was to the interest of the Council to retain the participation of the United States in the Court, and the United States could, therefore, by the possibility of its withdrawal, exercise what would, in practice, be a kind of moral pressure on the Council. Moreover, the advantages of the system suggested by Mr. Root would almost certainly be claimed by other States which had not yet adhered to the Court. Russia, for example, would ask for similar treatment. Each time, therefore, that the Council desired to ask the Court for an advisory opinion, it would be necessary to apply a complicated procedure, and to conduct correspondence with the States which had a right to be consulted.

The practical effect of this method would be a tendency to abolish the whole system of advisory opinions. Personally, he would not greatly regret their disappearance. He would point out, however, that the object which the United States desired to secure might be attained much more simply, and without risking any of the complications to which he had referred. The aim of Mr. Root's proposals would be secured if the Council merely decided to apply the rule of unanimity whenever it proposed to request an advisory opinion. If it were laid down that all such requests must be decided by a unanimous vote, the problem at once became extremely simple. It would merely be necessary to provide at the same time that the United States, or any other State non-Member of the League, should have the same rights as the Members of the League in this particular matter. The adoption of such a system would involve no danger of withdrawal from the Court by a dissentient Power.

Unanimity might be difficult to secure but, in any case, requests for advisory opinions were becoming more and more rare. The Council, when confronted with a legal difficulty, preferred an informal consultation of jurists. The procedure of requesting an advisory opinion from the Court was complicated and had serious consequences, since the Court was unable to regard its opinions merely as simple legal opinions, and the expression of such opinions had, therefore, far-reaching effects.

The establishment of the rule of unanimity might be effected by an interpretation of Article 14. It was only necessary to interpret a decision of the Council to mean a decision of all the Members of the Council. If, however, amendment was necessary, such amendment could be effected by the introduction of the word " unanimously " after the word " Council " in Article 14.

An alternative solution would be the total abolition of the advisory opinion. That might seem a somewhat drastic solution and might shock public opinion. The advantage of solving the problem by adopting the rule of unanimity was that it enabled the whole question to be settled within the limits of the Covenant. If that solution, however, were inacceptable, the Committee might take up Mr. Root's proposals, as had been suggested, with such simplifications as might appear to be necessary.

Mr. ROOT said he did not wish to express any opinion as to the merits of the rule of unanimity. He would leave that question to other members of the Committee who had more experience of the working of the Council and its procedure.

His own proposal was based on the fact that no decision had been reached on the question of unanimity, and its terms were conditioned by the fact that the United States had no desire to influence the solution of that problem.

He had emphasised that his proposals were intended to cover exceptional and extremely improbable cases. The Protocol of 1926 had gone a long way towards meeting the wishes of the United States. An arrangement whereby the United States could have a vote in cases where it was proposed to request the Court for an advisory opinion might be a satisfactory

Hurst provided a satisfactory basis for the settlement of these points. Possibly, however, some other way would be found.

Only the last portion of the fifth reservation of the United States remained, and the difficulties to which attention was drawn in that reservation could, in his view, be settled by the process of dealing with concrete cases by means of an informal conference between the parties. On most of the cases which would arise the United States would not have to make any observations. The whole matter would be settled by question and answer between the Council and the representatives of the United States. If, however, any question on which an advisory opinion was desired touched in any way the interests of the United States, the points at issue might be settled in a friendly and normal manner in a friendly conference. There was a process at present du deweloping in Europe for the promotion and maintenance of peace which was somewhat novel in diplomacy. A good deal of business was being taken out of the hands of Foreign Offices and settled by means of informal and friendly conversations between Foreign Ministers. He thought that this was an admirable method of doing business. The United States had not at present adopted that method, but it seemed desirable, in some cases, to endeavour to bring about an adjustment between the two methods. His own proposals were intended in that sense. He desired to see a reasonable procedure adopted in cases where it was necessary to ascertain whether a particular question was of interest to the United States, and he was anxious to avoid impeding international business and the development of friendly relations between States by insisting on questions of form when there might in reality be no question of substance involved.

The continuation of the discussion was postponed to the next meeting.

THIRD MEETING.

Held on Tuesday, March 12th, 1929, at 10.30 *a.m.*

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

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 : Letter from the United States Government and Proposals by Mr. Root, Sir Cecil Hurst and M. Politis** (continuation).

The CHAIRMAN reminded the members of the Committee that Sir Cecil Hurst had submitted the following proposals for redrafting Article 4 of the Protocol of 1926 :

" (1) With a view to ensuring that the Court shall not, without the consent of the United States render an advisory opinion touching any dispute to which the United States is a party or in which it claims an interest, or touching any question other than a dispute in which it claims an interest, the Secretary-General shall inform any representative designated for that purpose by the United States of any proposal for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views between the Council or the Assembly of the League of Nations and the United States shall proceed with all convenient speed.

" (2) In deciding whether or not to request an advisory opinion of the Court in any case covered by the preceding paragraph, the Council or the Assembly will attribute 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 in the Council or in the Assembly.

" (3) If, after the exchange of views provided for in paragraph 1, it shall appear that no agreement can be reached as to whether an interest of the United States is affected, and the United States is not prepared to forego its objection, the exercise of the powers of withdrawal provided for in Article 7 will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

" (4) 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 the United States alleges that the question upon which the opinion of the Court is asked is one which affects the interests of the United States and that no information

M. POLITIS informed the Committee that he would ask the Secretariat to distribute a text which he had prepared with the object of simplifying and more clearly defining the text submitted by Sir Cecil Hurst.

M. RAESTAD thought that the Committee could hail as a good omen the Anglo-American collaboration as represented by the Root-Hurst draft. A similar occurrence had taken place in 1926 in connection with the Root-Phillimore draft. If the proposal of Mr. Root were examined, the Committee would note that it showed progress on the situation which existed in 1926, in so far as the following three points were concerned :

1. The United States formally abandoned all interest in the question whether unanimity or a mere majority was required when the Council or the Assembly requested an advisory opinion.

2. The United States would explain its point of view when it claimed that a particular question was of interest to it.

3. In case of disagreement, if the Council or the Assembly maintained its request for an advisory opinion, contrary to the wishes of the United States, the United States would not insist on exercising its right of veto and would withdraw from the Permanent Court.

In opposition to what had been said on the previous day by Mr. Root, M. Raestad did not think that, on two points at any rate, one of which raised a question of principle, the proposal of Sir Cecil Hurst was an improvement on that submitted by his United States colleague. Mr. Root's proposal was divided into two parts :

1. It covered cases when the United States was a party to a dispute. In this connection, there was only one provision — the first — in accordance with which the Permanent Court would not give an advisory opinion without the consent of the United States.

2. It covered the case in which the United States claimed that it had an interest at stake, though it was not a party to a dispute. All the rest of the Root proposals dealt only with cases of this kind.

In the text proposed by Sir Cecil Hurst these two ideas had been combined in one and the same formula. In the first paragraph it was stated : " With a view to ensuring that the Court shall not without the consent of the United States render an advisory opinion touching any dispute to which the United States is a party or in which it claims an interest . . . ". The second paragraph stated : " In deciding whether or not to request an advisory opinion of the Court in any case covered by the preceding paragraph, the Council or the Assembly will attribute 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 . . . ". It was not desirable to cover both these cases by the same formula. When the United States was a party to a dispute, according to the legal practice established by the Permanent Court, the Court was not competent, and there was no question of giving to the veto imposed by the United States the same force as a contrary vote by a Member of the Council or the Assembly.

Similarly, paragraphs 3 and 4 of the proposals of Sir Cecil Hurst only covered cases in which the United States claimed an interest, though it was not a party. On this point, too, the cases should be divided, and a return made to the formula proposed by Mr. Root.

Another change in the text proposed by Mr. Root was also to be found in the proposals of Sir Cecil Hurst. In paragraph 3 of his proposals it was stated : " whether an interest of the United States is affected ", while the following phrase was added in the text proposed by Mr. Root : " within the true meaning of the second paragraph of this article " (the new draft of Article 4 of the Protocol of 1926). These words were very useful, for they introduced a distinction between interests which would normally give rise to an objection on the part of the United States and other interests. It could always be admitted that, in a special case, the United States might have a distant and general interest, but the object of the discussions contemplated by Mr. Root and Sir Cecil Hurst would be to know whether such an interest was one which should normally be taken into account.

And now, how should the debates be divided between the Permanent Court on the one hand, and the Council or the Assembly on the other hand ? According to the scheme proposed by Mr. Root it would be for the Permanent Court to decide when the parties were divided on the question whether the United States would or would not be a party. In other cases, the whole discussion would take place before the Council or the Assembly. The following supposition, however, might occur. When it had been said that the Permanent Court would not give an advisory opinion if the United States were a party to the dispute, this argument had been based on the decision given in the Eastern Karelian affair. It might, however, be supposed that the Permanent Court, when continuing its work of identifying the procedure for requesting an advisory opinion with legal conflicts, would go further and say that it was incompetent even though a State were not a party to a dispute but only had legal interests at stake. When the procedure for requesting an advisory opinion was being put into operation, a State which was legally interested had not exactly the same right to intervene as that accorded to the contesting parties under Article 62 of the Statute. The only remedy which could be imagined in the case of a request for an advisory opinion would be for the Permanent Court to declare itself incompetent. As a rule, when a case had already been brought before a court, it was always clear who were the parties to the dispute. On the other hand, at what might be called the political stage, before the discussion had taken place before the Courts it might be very difficult

legal interest ; the Council or the Assembly might not recognise the validity of that claim and the United States would withdraw from the Permanent Court ; the Court, after the withdrawal of the United States, would all the same declare itself incompetent.

Two means could be used for remedying this defect. Either a phrase could be added to the first paragraph to the effect that the Court would not give any opinion when the United States was a party to the case, or had a legal interest, or by stating somewhere else that each of the parties would be allowed to submit the question of competence to the Court itself.

Continuing his argument, M. Raestad referred to the question of the procedure to be adopted. Among the Members of the League there were about fifteen that had not ratified the Statute. When an amendment of this kind was being dealt with, it was indispensable carefully to observe the same formalities as were used when the original Statute had been voted. Provision must therefore be made for a resolution of the Assembly. M. Raestad wondered whether it would be possible to transfer to that resolution part of the proposals of Mr. Root and Sir Cecil Hurst. From a legal point of view he was somewhat shocked to think that the States which had signed the Statute should deal with the question in the name of the Council or of the Assembly, as was contemplated in the text proposed by Mr. Root and Sir Cecil Hurst. It was preferable to embody in a resolution of the Assembly the provisions allowing for action by the Council or the Assembly. This would not prevent States signatory to the Statute from undertaking individually, in so far as the United States was concerned, to accept the procedure laid down by the resolution of the Assembly.

Finally, the letter from the International Labour Office (Annex 5) led M. Raestad to think that the question of a unanimous or a majority vote should not be dealt with. There were internal questions concerning the League just as there were purely American questions. The best plan would be for the United States to declare in cases which were purely of concern to the League that its right of veto would not be exercised. When such questions were being examined, it would perhaps be preferable to lay down that a majority vote was sufficient. For these reasons, M. Raestad still thought that the question of unanimity or of a majority vote should be left on one side, as had been the case during the Conference of 1926, and as Mr. Root had done.

M. Ito said that, before giving an opinion on the draft of Sir Cecil Hurst, he would like to have an explanation in regard to a small question of procedure dealt with in paragraph 4 of that draft. The fifth paragraph of Mr. Root's text contained a similar proposal which in that document was appropriate, since, in accordance with the fourth paragraph, an exchange of views between the Council or the Assembly and the United States would be entirely optional, a fact which made a provision such as that embodied in the fifth paragraph indispensable. In the text proposed by Sir Cecil Hurst it was laid down in the first paragraph that the Secretary-General " shall inform any representative designated for that purpose by the United States of any proposal for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views ".

It accordingly appeared that all proposals for obtaining an advisory opinion would give rise to a communication to the United States, so that it was not quite clear how the provision embodied in paragraph 4 of the proposal of Sir Cecil Hurst would take effect.

The Chairman, referring to the proposals of Sir Cecil Hurst and Mr. Root, said that he did not quite understand the scope of paragraph 2 of Sir Cecil Hurst's text. This paragraph dealt with cases coming under paragraph 1, in other words, cases in which the United States had declared that it had an interest. The value of a vote given by a Member of the League of Nations was as follows : If the question were one requiring unanimity, a single contrary vote constituted an absolute impediment without it being necessary for the State voting to give any reasons. In default of unanimity, the request for an advisory opinion could not go forward, and all the procedure which was intended to throw light on the motives which determined the action of the United States fell to the ground.

If, however, the question at issue was one for which a simple majority sufficed, and if the opposition to the request for an opinion were in a minority, the Council had the right to proceed with its request. It was then said that the United States would have the right to withdraw. The fact, however, of having given it the right embodied in paragraph 2 of the draft of Sir Cecil Hurst would not in any way have changed the position.

According to Mr. Root's proposals, whatever might be the nature of the dispute giving rise to a request for an advisory opinion, the United States reserved to itself the right to prevent any request being made for an opinion or to withdraw. The United States would thus have a right which was more extensive than that embodied in the draft of Sir Cecil Hurst, namely, the right to veto a request for an advisory opinion, whatever might be the size of the minority. If that interpretation were false, he would be delighted, as it would signify that the United States renounced its demand, at least in certain cases, but he did not think this was so.

M. Politis pointed out that the draft which he would have distributed to his colleagues met the various objections which had been made, and that a discussion of his note would probably accelerate the work of the Committee.

Sir Cecil Hurst presumed that the Chairman desired to go back to the remarks which he had made on the subject of paragraph 2 of his draft. The provisions of that paragraph, according to the Chairman, were ill-founded. He had, however, based those provisions on the [illegible] Covenant laid down that " any Member of the

League alone. It did not apply to non-Members. Furthermore, the Member concerned was in no way obliged to respond to the request to send a representative to the Council. Article 5, paragraph 1, of the Covenant laid down that "except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting". The unanimity rule did not, therefore, apply to the State whose representative was not present. As the United States was not a Member of the League, it had no right to appeal to paragraph 5 of Article 4.

It followed, however, from the proposals and observations of Mr. Root that for psychological and political reasons there were grounds for believing that the United States would not wish to send a representative to the Council. Account must be taken of that fact, and an appropriate method provided. For that reason it was suggested that there should be an exchange of views between the Council and the representative of the United States. If that representative did not attend a meeting of the Council and of the Assembly, the unanimity rule embodied in Article 5 of the Covenant would not apply. From the practical point of view, it was desirable to frame a provision which would enable the opposition of the representative of the United States who was not present at a meeting of the Council or the Assembly to be given the same value as the veto of a member of the Council or the Assembly present at the meeting.

There followed the case in which a decision might be taken by a majority vote. The problem was to put the representative of the United States in the same position as a Member of the League which might be in the minority.

In the third paragraph of Article 4 of the preliminary draft of the Protocol of 1926, it had been laid down that for questions in which unanimity was necessary, in the event of a veto on the part of the United States, the Permanent Court would have the right to consider that, owing to that veto, the request had not been unanimously presented. In his draft, the Council or the Assembly would give to the United States' veto the same effect as a contrary vote cast by a Member of the League.

M. Politis wished to present two observations in order to elucidate the discussion. Sir Cecil Hurst, in his proposal, achieved the same result, in fact, as if the United States were a Member of the Council. If unanimity were necessary, the veto of the United States would suffice to prevent the request for an opinion being made. If a majority sufficed, the negative vote of the United States would be inoperative. Such was the thesis, and it gave rise to two objections. It was not known what were the cases which required unanimity or a majority vote, and it was precisely this ambiguity which caused the United States some misgiving. This was a practical objection of great importance, which it was necessary to take into account.

Secondly, it was not true, in practice, to say that the proposed consultation between the Council and the United States would have the same effect as the presence of the United States at a meeting of the Council or the Assembly. In this connection, he would appeal to the authority of M. Raoul Fernandes, who, in a pamphlet entitled "The United States and the Permanent Court of International Justice", expressed himself as follows:

> ". . . It would be useless to deny that certain Members of the League of Nations enjoy sufficient prestige to hinder, if not the Assembly, at least the Council, from taking up and dealing with a question if it should seem to them inopportune. Even if they are at the outset in a minority, there is a considerable probability that the other Members will surrender to their arguments or prefer to temporise. Events in fact occur in this way, and it would be disastrous if it were otherwise. The Council is strong only when its Members are in agreement, and its utility consists precisely in facilitating such agreement by means of the personal contact and continuous conversations which are only possible at Geneva.
>
> "That being the case, the position in which it is proposed to place the United States in order to secure theoretical equality would be practically the following : The United States Government would from a distance impose useless vetoes upon proposals agreed upon at Geneva, whereas certain States near at hand would retain means of eliminating proposals, which seemed to them undesirable, before they took definite shape."

In the light of these practical considerations, therefore, the proposals under examination would not establish actual equality between the United States and the Members of the Council. The equality provided by Sir Cecil Hurst was theoretical. It was not a reality, and this second objection, in M. Politis' view, ruined the proposed scheme. The United States must not be regarded as a Member of the Council. A more radical solution was necessary, and he had himself proposed that solution in the document which was to be distributed to the members of the Committee.

Mr. Root said that the clause in the draft which he had proposed and the second clause in the draft of Sir Cecil Hurst was not in the nature of a suggestion but was an attempt to reproduce the decision of the Conference of 1926 communicated to the Government of the United States in the form of the Final Act of that Conference. The letter from Mr. Kellogg, the United States Secretary of State, was the reply to that communication. That letter had been referred to the Committee and explained the reasons why the proposal in the Final Act, which had been subscribed to by nearly all the signatories, could not be accepted in full by the United States of America. The letter had gone on to suggest that an informal exchange of views should take place in order to continue negotiations. The Final Act, therefore, was the basis of Mr. Kellogg's letter. Mr. Root would quote the following passage

claims an interest, the Conference understands the object of the United States to be to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to. But the fifth reservation appears to rest upon the presumption that the adoption of a request for an advisory opinion by the Council or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient. In any event, the United States should be guaranteed a position of equality in this respect ; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right."

He read also the opening statement of the preliminary draft of a Protocol annexed to that Final Act, which was as follows :

" The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States. "

Finally, he would draw the attention of the Committee to the final paragraph of Article 4 of that draft Protocol which was to the following effect :

" 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. "

The draft clause which Mr. Root had proposed and the alternative wording suggested by Sir Cecil Hurst were not contrary to Article 4 of the proposed Protocol. They were not designed as amendments to that article. On the contrary, they had been drafted with a view to obtaining the assent of the United States of America to that article. The proposals would, in fact, give concrete form to the consent of the United States Government to the proposed Protocol.

If Article 4 as drafted by the Conference of 1926 were to be withdrawn, the whole basis of the proposals made by Mr. Root and Sir Cecil Hurst disappeared and the letter from Mr. Kellogg was of no further significance. To withdraw Article 4, however, would be for the Committee to return to the wilderness for an indefinite period and would mark not progress but the reverse.

The CHAIRMAN said that, according to the proposal of Sir Cecil Hurst, the United States of America would have the right to veto a request made to the Court for an advisory opinion, if unanimity were necessary for such a request. The Chairman had made a similar proposal at the previous meeting but it had been rejected by the Committee because the members had felt that the possibility should be left open for the Council or the Assembly to submit a request for an advisory opinion which had not been adopted unanimously but only by a majority. In the latter case, however, the vote of the Government of the United States of America could not prevent the Assembly or the Council from making such a request. If the representative of the United States were satisfied with this solution, the Committee itself might rest content ; but the Chairman did not think this was the case To assimilate the position of the United States to that of a Member of the League of Nations in cases where a request for an opinion was adopted by a majority vote would not, he thought, satisfy the desires of that country, which really wished to be able in certain cases to veto recourse to the Court even when such recourse had been voted by the majority. This point, he thought, should be made clear.

Jonkheer VAN EYSINGA had listened with great interest to the observations made by the members of the Committee, especially those of the Chairman and Mr. Root. His view was that the second paragraph of Sir Cecil Hurst's proposals should be adopted and this for two reasons. In the first place, as Mr. Root had pointed out, it only reproduced an essential provision to which the United States of America had agreed and, in the second place, there were the legal reasons in favour of its adoption, as Sir Cecil Hurst had indicated.

There might be a section of public opinion in America which desired to claim the right of veto in cases where a request for an advisory opinion had not been unanimous. The Committee now learned that the United States would be content if it were allowed to withdraw in such circumstances. This being so, M. van Eysinga urged the adoption of the second paragraph of Sir Cecil Hurst's proposal.

M. Ito had enquired why the fourth paragraph was essential. M. van Eysinga understood that it covered the following cases. Very exceptional circumstances might arise in which the Council, because of the existing situation, found it necessary to ask for an immediate opinion from the Court which, in view of those exceptional circumstances, might be the only means

that the Council might incur certain penalties for doing so. M. van Eysinga, therefore, would prefer a somewhat different solution. In such circumstances, the Council, when asking the Permanent Court for an advisory opinion, would, at the same time, inform the Government of the United States of its action. If the United States did not object, the usual procedure would be followed. If, on the other hand, objections were raised, the proceedings of the Court would automatically be interrupted. The objections of the United States, however, would take from two to three weeks to reach the Council and, by that time, the political situation might not be so urgent and the exchange of views between the Council and the United States could take place. While in favour, therefore, of paragraph 4 he would like it to be redrafted.

As regards paragraph 3 of Sir Cecil Hurst's proposals, it seemed to M. van Eysinga that it might be supposed that, for other reasons than the one mentioned in this paragraph, an agreement would not be reached. In those circumstances, also, the United States must still possess the same right to withdraw. The paragraph should, he thought, therefore be reworded to read as follows :

> " If after the exchange of views provided for in paragraph 1 it shall appear that no agreement can be reached as to whether an advisory opinion should be asked for or not, the exercise of the powers of withdrawal provided for in Article 7 will follow ", and so on.

M. Politis submitted his new draft of Article 4, which read as follows :

> " 1. With a view to ensuring that the Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is a party or in which it claims an interest, or touching any question other than a dispute in which it claims an interest, the following procedure shall be applied :
>
> " 2. The Secretary-General of the League of Nations shall inform the representative appointed for this purpose by the United States of any proposal to the effect that the Court shall give an advisory opinion.
>
> " If such representative declares that the United States is not interested in the matter, the ordinary League of Nations procedure shall be followed without further modification.
>
> " If, on the contrary, the representative declares that the United States is interested in the question, an exchange of views shall take place with all convenient speed between a Committee of three members appointed *ad hoc* according to the circumstances by the Council or the Assembly and a plenipotentiary delegate of the United States Government with a view to reaching an agreement,
>
> *(a)* as to whether the question affects the interests of the United States, and
> *(b)* whether it would be desirable for the Court to give an advisory opinion.
>
> " 3. If no agreement is reached on these lines, the Government of the United States shall be free to exercise its powers of withdrawal as provided for in Article 7 without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill ".

He had thought it better both for reasons of form and of principle to make no attempt to settle the question whether unanimity must always be necessary for a request for an advisory opinion. It would never, in fact, be possible to induce the Assembly to endorse a suggestion that unanimity was always necessary. Further, account must be taken of the representations of the International Labour Office which had urged that no such suggestion should be made. That being so, it still remained to satisfy the desires of the United States of America, and it was with that object that the formula of the 1926 Conference, redrafted by Sir Cecil Hurst and approved by Mr. Root, had been submitted to the Committee.

The Chairman, however, had already voiced the main objection to this formula which was that it did not cover the case in which an advisory opinion was sought for by a majority vote. If in such a case the United States of America would be content with one vote, which meant that she could not impose her veto on the majority, then M. Politis was prepared to withdraw his draft for he did not at all wish to be more American than the Americans themselves ; but if, as he thought probable, Mr. Root would bow to the force of the Chairman's objection, then the only solution which appeared to M. Politis to be possible was that embodied in his own draft, which contained provisions for an exchange of views between a Committee of three persons appointed by the Council or by the Assembly and a plenipotentiary of the Government of the United States. Their duty would be to reach agreement if possible : *(a)* in regard to the question whether the matter in dispute affected the interests of the United States, and *(b)* whether it was opportune to seek an advisory opinion from the Court.

In the view of M. Politis, this was a suitable solution, for he could not imagine it possible that in a case where the United States of America had clearly shown that it had a real interest at stake and could not agree to recourse to the Court, the Council would disagree. Similarly, in the opposite case ; if the Council were in the same position, it was impossible to believe that the United States would exercise its right of veto. The Committee should not draw up provisions to meet purely theoretical cases. The whole basis of the relations between the League and the United States of America in regard to the Permanent Court must be mutual confidence. So strong was the feeling in the United States of America in favour of international justice

M. Politis ventured to believe, therefore, that the solution which he proposed was the best in the circumstances. It left the United States free to withdraw, under the terms of paragraph 7, without any difficulty or any imputation of unfriendliness. There would be no necessity to amend the Covenant or the Statute of the Court, a matter which invariably gave rise to considerable difficulty.

Nor was there any necessity for a stipulation such as that contained in the fourth paragraph of Sir Cecil Hurst's proposal. A contract would have been concluded between the United States and the Members of the League signatories to the Statute of the Court. If the terms of that contract were not fulfilled by the Council for urgent political reasons, the United States would merely inform the Court that a preliminary exchange of views had not taken place and the Court would then automatically be bound to declare itself incompetent. There was no need, therefore, to make special mention of this case in the solution.

In conclusion, M. Politis said that if Mr. Root preferred the proposal of Sir Cecil Hurst, despite the interpretation put upon it by the Chairman, he would naturally withdraw his own proposal.

Mr. Root said that he would very carefully study the proposal of M. Politis. The terseness and brevity with which it had been drafted might have caused M. Politis to omit a point of importance. Mr. Root, however, was at first sight much in favour of the proposal that an *ad hoc* Committee should be set up for the purpose of an exchange of views between the Council and the Government of the United States. Such a proposal was a practical step and was a useful method of procedure.

The remainder of the discussion was postponed to the next meeting.

FOURTH MEETING.

Held on Tuesday, March 12th, 1929, at 5 p.m.

Chairman : M. Scialoja.

Present : All the members of the Committee.

9. 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 : Letter from the United States Government and Proposals by Mr. Root, Sir Cecil Hurst and M. Politis (continuation) : **Conclusions of the Sub-Committee of Four.**

M. Politis, reporting on behalf of the Sub-Committee of Four, said that the Sub-Committee had carefully examined the drafts submitted by Sir Cecil Hurst and by M. Politis himself, and had come to the conclusion that Sir Cecil Hurst's text was the closest to that of the preliminary draft of 1926, and as such conformed more nearly to the spirit of the United States Government's desiderata. The Sub-Committee further considered that Sir Cecil Hurst's draft was of a nature to satisfy all the Governments concerned and that it was therefore suitable for recommendation by the Committee with a view to the conclusion of an agreement. The Sub-Committee had thought that M. Politis' own proposal was calculated to confer various privileges on the United States and might thus give rise to objection on the part of the Members of the League, whereas Sir Cecil Hurst's draft placed the United States on the same footing of equality as the Members of the League since it gave the vote of the United States Government the same value as that of the other Governments. Sir Cecil Hurst's draft, therefore, would naturally find easier acceptance than any other.

The Sub-Committee had accepted without difficulty paragraphs 1, 2 and 3 of Sir Cecil Hurst's draft. It had been more difficult to come to an agreement on paragraph 4 in view of the criticisms which had been made at the morning meeting by M. van Eysinga. In order to meet M. van Eysinga's objections, an attempt had been made to combine with paragraph 4 as it stood in Sir Cecil Hurst's draft a text which would cover the point raised by M. van Eysinga. The purport of that text would be that, when the Council addressed an application to the Hague Court for an advisory opinion, it would notify the United States thereof at the same time and, if the United States considered that its interests were involved, the Council should invite the Court to hold up the procedure until the United States Government had given its consent. Mr. Root had desired that Sir Cecil Hurst's fourth paragraph should be maintained in its original form, but he had intimated that he would have no objection to the addition of M. van Eysinga's text in a condensed form, since the latter text appeared in certain points to overlap that of Sir Cecil Hurst.

M. FROMAGEOT said that he would like to have the proposal in writing before taking a decision.

M. POLITIS observed that the first three paragraphs of Sir Cecil Hurst's draft were to be maintained in their original form with the exception of the words " Where an interest of the United States is affected " in paragraph 3, which should be replaced by the words " whether an advisory opinion should be asked for ". In the fourth paragraph, the original text of Sir Cecil Hurst was to be retained *in toto* but allowance was to be made for the proposal of M. van Eysinga, which would be either added to or merged in Sir Cecil Hurst's text.

Jonkheer VAN EYSINGA observed that, according to his proposal, the point made in Sir Cecil Hurst's text with regard to Article 73 was to be maintained. He did not think, therefore, that it would be difficult to agree upon a final text.

Sir CECIL HURST suggested that, as there had been no formal appointment of a Drafting Committee, it would save both time and trouble if the Committee authorised him, in conjunction with M. van Eysinga and the Committee of Four, to redraft his text in accordance with their ideas.

M. RAESTAD said that he had only just learned that a Sub-Committee had been set up to consider the redrafting of Article 4 of the preliminary draft of the 1926 Protocol, and he congratulated the Sub-Committee on the rapidity with which it had worked. Taking into consideration, however, the various drafts that had been submitted and especially the last draft, M. Raestad wished to say that he preferred Mr. Root's original proposal to all the others, including the last. He would be glad if he could think that the successive drafts that had been proposed contained certain improvements in points of detail, but in his opinion the last draft submitted was, taking it as a whole, less satisfactory than the others.

He had at the morning meeting indicated two points regarding which he preferred Mr. Root's original draft. In the first paragraph of Mr. Root's draft it was laid down that " the Court shall not without the consent of the United States render an advisory opinion touching any dispute to which the United States is a party ". On the contrary, the corresponding provision in the last draft would have the effect of placing the negotiations on a more or less political basis.

The second reason for which M. Raestad preferred Mr. Root's original draft was that it contained the provision that " if . . . it shall appear (1) that no agreement can be reached as to whether the question does touch an interest of the United States within the true meaning of the second paragraph of this Article . . . it shall be deemed . . . that the exercise of the powers of withdrawal provided in Article 7 hereof will follow naturally . . . " The omission of that provision in Sir Cecil Hurst's draft was, in M. Raestad's opinion, a serious disadvantage.

There were two further reasons for preferring Mr. Root's original proposals. First, there was the difference to which M. Ito had drawn attention at the morning meeting. In Mr. Root's original draft it was laid down that, whenever it was proposed to submit a request for an advisory opinion, the Council or the Assembly might invite an exchange of views with the United States, and such exchange of views would proceed with all convenient speed. The provision in question conferred on the Council or the Assembly powers to open up negotiations with the United States which undertook to follow up the suggestion made. The obligation rested, therefore, with the United States. In Sir Cecil Hurst's draft, on the other hand, it was stated that the Secretary-General should inform a representative of the United States, that was to say, that the obligation now rested on the Council or the Assembly. This division of responsibility did not seem to be quite logical.

Lastly, in Sir Cecil Hurst's draft it was laid down that the Council or the Assembly would " attribute 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 in the Council or in the Assembly ". In Sir Cecil Hurst's draft this provision formed an essential portion of the text, while in Mr. Root's proposals it was put in parenthesis and referred only to cases where the Council or the Assembly maintained its resolution to ask for an advisory opinion, in spite of the opposition of the United States of America.

Sir Cecil Hurst's and Mr. Root's drafts differed fundamentally from the proposals made in 1926 under which it was for the International Court to attribute to an objection on the part of the United States the same force and effect as those attaching to a vote of a Member of the League. Sir Cecil Hurst's draft, therefore, imposed an obligation on the Council or the Assembly, without giving them the right to consult the Court. The fact that this provision was introduced in Mr. Root's draft only in a parenthesis gave it a less formal character than it had under Sir Cecil Hurst's draft.

Remembering that he was, in the present case, in the service of the Council of the League, M. Raestad was, for the foregoing reasons, unable to agree to the draft proposed by the Sub-Committee.

The CHAIRMAN suggested that the Committee should ask Sir Cecil Hurst and M. Politis, in consultation with Mr. Root and M. van Eysinga, to redraft paragraph 4 of Sir Cecil Hurst's proposal in accordance with M. Politis' report. The same members might also be requested to redraft the text of the preliminary draft of 1926 which contained certain terms which could

10. **Question of the Revision of the Statute of the Permanent Court of International Justice.**

M. FROMAGEOT thought that the simplest method of meeting the Council's desires would be to take the Statute article by article and, in regard to each article, to see whether it gave rise to any observations on the part of the members of the Committee. If, as a result of that examination, it appeared to the Committee that certain provisions of the Statute required modification or that certain recommendations should be made, the Committee would formulate them and transmit them to the Council which, if it approved them, would send them to the Assembly. A general discussion on the principles at the basis of the Statute would, he thought, go beyond the terms of reference of the Committee. It had been explained during the discussion in the Assembly that the Committee was not required to remodel the Statute entirely or to examine new bases on which it might be founded. It had merely to ascertain, in the light of experience gained during eight years, whether certain amendments might be introduced. M. Fromageot therefore proposed that the discussions of the Committee should remain within the limits he had outlined.

M. POLITIS regretted that he could not agree with M. Fromageot's suggestion. The Statute contained sixty-four articles, and it would be a waste of time to read them out and consider them one by one, since the great majority would require no alteration whatever. Those members of the Committee who had studied the question would most certainly have observations to make on some of the articles, and it would be more expeditious to enquire which articles gave rise to observations on the part of each member, so that the Committee could undertake the necessary preliminary studies with a view to the revision of the Statute.

The CHAIRMAN thought that some members might have proposals to make which would refer to more than one article, and that it would therefore be difficult to consider the Statute article by article.

M. FROMAGEOT feared that he had expressed himself badly. He had merely intended to propose that the Committee should follow the order of the articles, stopping successively at those which gave rise to observations. Moreover, it was evident that a proposal with regard to one article might make it necessary to reconsider some other article. His intention was merely to avoid any general discussion of the Statute, which might take the Committee too far and lead to a waste of time.

M. POLITIS agreed with M. Fromageot's observation.

Article 1.

M. FROMAGEOT said that he personally had no observations to make on Article 1.

Article 2.

M. FROMAGEOT suggested that after the words " of recognised competence " there should be added the words " and experience ", since competence did not necessarily involve experience. The Court of Justice was a judicial body, and its task was not to attempt the scientific solution of legal questions, but to judge disputes between States and decide upon their cases and claims. It would be for the experts in doctrine, by a study and analysis of the judicial decisions, to extract from them general principles, and subsequently, by a synthetic study, to elaborate universal rules of international law. With these ideas in mind he had proposed his addition to Article 2, since a person might possess all the qualities necessary to fill the highest posts in the judicial administrative or educational departments in his own country and yet not have any experience of the international affairs which divided States and, therefore, might not be in a position usefully to fulfil the duties which he would have to perform on the Permanent Court of International Justice.

M. Fromageot added that it might possibly be found unnecessary here to make any alteration in the Statute itself and that it might be sufficient to submit a recommendation to the Assembly, which recommendation should in future be taken into consideration in the election of the judges. That was a question of method which M. Fromageot would prefer to reserve till later, but he would like to see the principle of his proposal ratified and adopted.

The CHAIRMAN observed that it was understood that any amendments which might be voted by the Committee would not come into application before the next election of judges by the Assembly.

M. URRUTIA raised a point of order. Was it proposed that each member of the Committee should make certain observations and suggestions on the various articles of the Statute, but that the Committee should not come to any decision on those observations and suggestions, which would be merely recorded in the Minutes ?

M. POLITIS thought that the Council did not expect individual proposals from each member of the Committee, but recommendations from the Committee as a whole. If the Committee rejected a proposal made by any member, that proposal would fall. If, on the other hand, it accepted a proposal, the Committee would endorse it and pass it on as its own.

law but who could easily have been eliminated if it had been clearly laid down that experience was a necessary qualification. It would be well to point out that judgeships in the Permanent Court were not open to all barristers throughout the world.

M. FROMAGEOT said that he had another proposal to make which was related to the previous one and affected Article 5. It would be useful that, when a candidate was put forward by a national group, the latter should indicate what offices he had filled which justified him in considering that he satisfied the requirements of Article 2. It might be laid down that the nomination of candidates must be accompanied by a kind of statement of offices they had held which qualified them for election. The effect of this would be to eliminate candidates who were disposed to look upon the duties of the judges as a means of shining in the international sphere.

M. RAESTAD recalled that the question of adding practical experience to competence as a necessary quality for election as a judge had been discussed at great length in 1920 and a proposal in that sense had been rejected. He agreed with the idea put forward by M. Fromageot, but the point of view which had predominated in 1920 had been that competence implied experience, or, to put it otherwise, that experience was one of the sources of competence. M. Raestad thought it necessary to be extremely prudent in changing the principles on which the Statute was founded, and he therefore would be obliged to vote against M. Fromageot's proposal in regard to Articles 2 and 5.

M. ANZILOTTI said that he agreed with M. Fromageot. Indeed, it would be difficult not to agree with him. It could, it was true, be argued that competence implied experience. Was it, however, necessary to amend the Statute merely to give effect to that proposal ?

M. Anzilotti thought that the Committee should first consider whether it was desirable to make a change in the Statute or merely to submit a recommendation to the Assembly. Any addition to the Statute would have the effect of restricting the powers of those who had to apply it. Was it worth while making this slight change in the Statute if it were felt that a recommendation to the Assembly would be sufficient to draw the attention of the national groups to the necessity of candidates having the requisite experience and to the importance of receiving a written statement of their qualifications ?

M. FROMAGEOT thought M. Anzilotti's observations premature. The Committee should begin by ascertaining what improvements it thought necessary and should then decide to what extent those improvements called for amendments in the text of the Statute. It seemed useless to modify the Statute as regards some insignificant points but it might be that the Committee would conclude, as a result of its discussions that there were really important points on which the Statute required amendment.

In regard to the objection raised by certain members to the effect that the term " competence " might be taken to include "experience ", M. Fromageot could not agree with that view, Experience in international affairs was one thing and legal competence another. Both were necessary.

The CHAIRMAN requested the Committee to vote on M. Fromageot's amendment to Article 2. If the amendment were adopted, it would be held over pending the subsequent adoption of amendments to other articles.

Sir Cecil HURST enquired whether he was at liberty to vote provisionally in favour of M. Fromageot's amendment on the understanding that he was only in favour of the idea but was against inserting it in the Statute.

The CHAIRMAN thought that Sir Cecil Hurst would be obliged to vote against the amendment.

M. Ito thought that, if the amendment could be accepted provisionally, he could vote for it provisionally.

The CHAIRMAN replied that if M. Fromageot's proposal were the only amendment accepted by the Committee, the Committee would not be justified in inserting it in the Statute since it was not of sufficient importance. If, however, other amendments were adopted later and M. Fromageot's amendment had been accepted provisionally, it would be open to the Committee to decide later whether it should be introduced into the Statute.

M. ANZILOTTI asked whether it would not be desirable for him and for M. Huber to abstain from voting on the proposals which had been or would be submitted to the Committee of which they were not members, though they had been invited to participate in its work.

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

M. Fromageot's proposal in regard to Article 2 was adopted by seven votes to one.

Article 5.

M. [illegible] submitted the following amendment to Article 5 :

M. POLITIS had a similar amendment to propose in regard to Article 8. He had attended several elections held by the Assembly and the impression he had gained was that the Assembly as an electoral body was far from perfect. Candidates for the Court were elected without any statement of their qualifications being laid before the electors. To say the least, this was a somewhat curious procedure which M. Politis thought should be rectified. He would accordingly propose that a statement of the qualifications of each candidate should be submitted to the Assembly and that delegates should have an opportunity of speaking in support of a particular candidate. It was essential for the Assembly to be given as much information as possible in regard to the qualities of candidates in order that all suspicion of political influences might be removed.

The CHAIRMAN was unable to agree with M. Politis. Such a proposal was, he was convinced, dangerous both in regard to the Court and to the Assembly.

While he agreed that no Assembly could be said to be the best conceivable electoral body, the position would not be improved if a statement of the qualifications of each candidate were laid before it. Who would provide such a statement ? Presumably, the groups proposing each particular candidate. That meant, however, that an inevitable confusion of ideas would arise, for what appeared admirable qualifications to a particular group coming, for example, from a European State, might be regarded in an entirely different light by the representatives of, for example, an American or an Asiatic State.

But there was a further objection of greater force. If a delegate to the Assembly were given the opportunity of recommending a particular candidate, should the delegate in question be possessed, like M. Politis for example, of great influence, the candidate which he recommended would have a very strong chance of being elected. His election, however, would, in reality, be due not to his qualifications, but to the eloquence and influence of the person supporting him.

Further, how would it be possible to define the necessary qualifications ? They differed widely according to country. Supposing a particular candidate was an expert in regard to a dispute between, for example, Chile and Peru. The delegate in the Assembly supporting him might urge his claims and he might therefore be elected regardless of the fact that expert knowledge of a dispute between two States was not necessarily a very high qualification for membership of the Permanent Court.

The Chairman was therefore in favour only of circulating the qualifications of candidates among delegates to the Assembly and of making no change in the articles of the Statute of the Court. Under the present rules of procedure there was nothing to prevent a delegate of the Assembly from speaking in support of a particular candidate if he desired to do so.

M. FROMAGEOT thought that a further objection to the proposal of M. Politis might be raised, namely, the large number of candidates submitted for election.

M. POLITIS did not regard this to be a matter of any great difficulty. The Assembly could refer the list of candidates and their qualifications to one of its Committees which would make a report.

The CHAIRMAN agreed that such a procedure was possible, but saw no necessity for amending the Statute of the Court to that effect.

M. HUBER thought it dangerous to discuss the qualifications of candidates in public.

The CHAIRMAN pointed out that members of the Court were elected both by the Council and by the Assembly. This procedure was in itself a safeguard, especially as the Council was a smaller body than the Assembly and less subject to political influence.

Sir Cecil HURST enquired what would be the effect of the adoption of M. Fromageot's proposal in the event of a national group submitting a list of candidates not accompanied by an adequate statement of their qualifications. Would the omission of their qualifications automatically debar those candidates ?

M. FROMAGEOT thought that Sir Cecil Hurst wished to know whether it was desirable to make it compulsory to submit a statement of the qualifications of candidates, or whether it would be sufficient to recommend that one should be supplied. The Committee could either make the validity of a list of candidates depend on the submission of a statement of their qualifications, or else it could merely recommend that such a statement should be made, in which case all candidates submitted without a statement of their technical qualifications would none the less be qualified to stand for election though they would not have so good a chance of election. M. Fromageot ventured, however, to urge most strongly on his colleagues the utility of this guarantee as regards the particular value of the candidates, a guarantee which was calculated to enance the authority of the Court.

Sir Cecil HURST thought that the amendment proposed by M. Fromageot was admirable in the form of a recommendation for adoption by the Assembly, but that it should not be made

M. FROMAGEOT agreed. If the utility of Article 6 of the Statute — recommending that scientific bodies should be consulted — were admitted, the practical value of the recommendation he now proposed was certainly not less. The proposal might be modified as follows :

" Each national group is recommended to attach to their nominations of candidates a statement of their career showing that they possess the qualifications required under Article 2. "

What seemed to him useful was to be in a position to ascertain the experience of each candidate, and of the work he had done from an international point of view, that was to say, work connected with arbitration, conciliation committees, committees of enquiry, etc. Candidates who had successfully performed work of this kind, and who, at the same time, possessed a wide knowledge of law were obviously the most suitable. Candidates who had merely held legal posts in their own countries, however high they might have been, possessed thereby only experience of national affairs.

Mr. ROOT suggested a middle course. Could not the proposal of M. Fromageot be better enforced if it were included in the written request, mentioned in Article 5 of the Statute, which was sent by the Secretary-General to the members of the Court of Arbitration and to persons appointed under the terms of Article 4, inviting them to nominate candidates ? If, in the written requests to the national groups, the Secretary-General asked for a statement of the qualifications of the candidates, a much greater effect would be obtained, and such a procedure would relieve national groups of a certain amount of embarrassment, especially when they nominated persons of foreign nationality.

M. FROMAGEOT said he was fully prepared to agree to Mr. Root's suggestion.

In reply to M. Anzilotti, he said that the statement of qualifications should be made both in regard to the candidates of the same nationality as the group proposing them and in regard to candidates of foreign nationality. Groups should be able to give their reasons for presenting a candidate, even if he were a foreigner.

The amendment of M. Fromageot was adopted in the following form :

" ...each nomination being accompanied by a statement of the career of the person nominated showing that the possesses the qualifications required under Article 2 ".

The remainder of the discussion was postponed to the next meeting.

FIFTH MEETING.

Held on Wednesday, March 13th, 1929, at 10 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

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

Article 3.

M. FROMAGEOT reminded the Committee that the Court consisted of fifteen members, of whom four were deputy-judges. The institution of deputy-judges had given rise to certain criticisms. The system had in fact its advantages and disadvantages. The rule presented the advantage that the deputy-judges were at the disposal of the President of the Court to take their seats in the absence of the ordinary judges. Its disadvantages were of various kinds.

(1) If a deputy-judge was to take a really useful part, he must be at the disposal of the President, and for this purpose reside within a sufficiently short radius of The Hague, at any rate in Europe. This requirement, in fact, excluded the appointment of non-European deputy-judges and created a privileged situation in favour of Europeans.

(2) Certain disabilities were very rightly placed upon the ordinary judges. The same conditions could not be imposed on the deputy-judges, who might not be called to The Hague for many months. The Statute of course prohibited their engaging upon any other work during the period for which they took their seat; this was an elementary truth. It was none the less true that the ordinary judges and the deputy-judges who sat on the same bench were not on an equal footing. The fact that deputy-judges could, in the exercise of their normal professsion, enjoy certain advantages conferred upon them by their duties at the Court was perfectly

He might finally point out another disadvantage due to the existence of deputy-judges. Obviously, all judges made and must make the greatest possible effort to take their seats and to discharge the duties assigned to them, but some allowance must be made for human nature. If a judge were aware that there was a deputy prepared to take his place, he might be tempted to be less particular in his attendance at the Court.

It had therefore been asked whether there was not some means of remedying this situation. Many people had thought that perhaps the deputy-judges might be abolished and that the number of ordinary judges, which was at present eleven, might be increased to, say, thirteen or fifteen. The disadvantage of conferring on the present deputy-judges the status of ordinary judges would be an increase in the number of ordinary judges. A court of law worked better, its discussions showed fewer divergencies of opinion, and its work was more rapidly conducted in proportion as its numbers were smaller.

The suggestion had then been made that the judges should be given periods of leave. That suggestion would be justified, not only on the foregoing grounds, but above all in view of the actual composition of the Permanent Court. The Court must consist of judges belonging to different civilisations. It had, therefore, been thrown open to judges from overseas countries. It was quite natural that judges from the American or Asiatic continent should wish to pass some of their time in their own homes. If, as the Court was entitled to do, they were required to attend on all occasions on which the Court sat, judges belonging to overseas countries would find themselves obliged to be away from their homes for long periods. Such would not be the case in regard to the European judges. It would, therefore, be legitimate and logical to establish, as between the judges, a kind of roster which would assure them a fixed period of leave, thus permitting all alike to spend a certain period of time in their homes. Supposing there were fifteen ordinary judges, of whom four were always on leave, or supposing there were thirteen judges, of whom two were always on leave. the figure eleven laid down in the Statute would be retained. It was useful to maintain that figure, since it was further laid down that there must be a quorum of nine members, and to secure that quorum a margin of two would not be excessive.

The foregoing solution, or any other of the same kind that might be conceived, would eliminate the disadvantages to which attention had been drawn in regard to the existence of deputy-judges. The members of the Permanent Court present at the meeting might perhaps give their opinion on the practical consequences of the suggestions which had just been put forward.

M. Anzilotti wished to call the Committee's attention to the connection existing between the appointment of deputy-judges and the requirement that ordinary judges should stay at The Hague or in the neighbourhood. The present situation, like all human arrangements, offered certain disadvantages and certain advantages. Both advantages and disadvantages had been very closely examined in 1920, and it was not without hesitation that the present system had been adopted. It must not be overlooked that the advantages and disadvantages of the present state of affairs had an absolutely different bearing according to whether the standpoint from which the question was regarded was that of a Permanent Court comprising members who were always at the President's disposal and engaged solely on their duties as judges of the Court, or of judges who could normally stay at home and undertake other work. The importance of the question might differ very greatly according to the point of view from which the Committee considered it. Even under the present Statute the judges were unquestionably obliged to be at the disposal of the Permanent Court. In what way was this obligation to be fulfilled in practice ? The question of the deputy-judges would lose its importance if the Committee thought that the presence of ordinary judges at The Hague or in the neighbourhood and in sufficient numbers and always at the disposal of the President could be assured.

What was the origin of the disadvantages of the position ? Quite frankly, if the composition of the Court had varied so much hitherto, it was because certain judges had only come to The Hague for the ordinary session. It had been believed at the beginning that the Permanent Court would have little work to do. The truth was quite the reverse, so that the Permanent Court had been composed in one way during the ordinary sessions and in quite a different way during the extraordinary sessions. These disadvantages would have been far less serious if the deputy-judges had only been convened as an exceptional measure.

M. Fromageot noted that M. Anzilotti had very properly linked up the question mith that of attendance at the Permanent Court. He himself wished to draw the Committee's attention to Article 16 of the Statute regarding the disabilities of judges (which he then read). It appeared to him essential to lay down the principle that the members of the Permanent Court must confine their activities exclusively to the discharge of their high functions, outside which they could not hold any post. Nevertheless, the post of member of the Permanent Court of Arbitration under the 1907 Convention or the right to sit in accordance with the terms of a private agreement or special convention was not incompatible with the duties of the judges.

Furthermore, in regard to Article 23 it would be well to provide that, at any time and outside the regular periods of leave or apart from other legitimate reasons for absence, the members of the Court were required to be able to attend at The Hague. This question was very closely bound up with that of the number of the judges.

If the Committee agreed to the disabilities that had been suggested and that it was an absolute obligation on the part of the judges to attend the Court, it would then have to consider whether it would be desirable to continue the arrangement of deputy-judges which, as M.

experience of the Permanent Court of Arbitration, whose work had been by no means considerable. In organising the Court a similar conjecture had been made as regards the future and it was on that basis that the judges designated had accepted their duties ; it would therefore be a breach of loyalty to make any sudden change in their position. As a matter of fact the conditions had been quite otherwise and would be still more so in the future.

If the Court's business were considered, it would be seen that in 1922 it had sat for about four months, in 1923 for about five months, and since 1925 for about six months. At the moment the Court had at least four cases on its register. Moreover, if the increase in the number of arbitration treaties for some years past were taken into consideration, it would be seen how different the Court's position was at the present time from what had been anticipated in 1920. In these circumstances, was it not really necessary to adapt the Court's organisation to present circumstances ?

M. RUNDSTEIN wished to submit an observation on the question of the residence of the judges at The Hague. That question appeared to him to be linked up not with Article 23 but with the second paragraph of Article 22, in which it was stated that " the President and Registrar shall reside at the seat of the Court ". The question of leave, on the other hand, on which M. Rundstein agreed with M. Fromageot, fell within the scope of the Rules rather than of the Statute of the Court.

In reply to a question by the Chairman, M. FROMAGEOT said that he was ready to prepare any draft which the Committee might ask him to draw up. If the Committee considered that the deputy-judges should be abolished, Article 3 would have to be re-drafted accordingly, and must contain a provision as to the number of ordinary judges thought desirable.

In reply to M. Rundstein's observation, M. Fromageot said that he had not in mind compulsory residence on the part of the judges at The Hague, but that when the business of the Court did not keep them there, they should be able to reach The Hague within twenty-four or forty-eight hours of a summons. This did not mean that it was essential to oblige a member of the Court to set up his home at The Hague. The granting of certain vacations must obviously be settled by the Court in its Rules, but the important thing was the principle of the permanency of the Court. It was bound up with the question of the number of judges. It was necessary that the Court should be at all times at the disposal of States and ready to carry out its duties.

M. URRUTIA appreciated the great importance of M. Fromageot's remarks. While recognising the desirability of making attendance on the part of the judges at The Hague compulsory in all cases when necessary, he drew attention to the possibility that it might be difficult to find American judges. Theoretically, the ideal would be to have judges who would be ready at all times to discharge their duties in the Permanent Court, but in view of the generally admitted desirability of having some American judges, it would be difficult to find people with the necessary capacity and authority who would agree to make their homes in Europe for the whole period of their service. If the Committee decided to propose any reform, it would have at the same time to find some means of facilitating acceptance on the part of judges from the American countries.

Sir Cecil HURST asked the President and Vice-President of the Permanent Court to be good enough to give certain information based on the practical experience of the Court. In M. Fromageot's view it should be compulsory for a judge to be in a position to attend at The Hague twenty-four or forty-eight hours after receiving a summons. Was it really necessary to make the notice so short as that, and did the experience of the Court show that it was necessary to convene the judges with such rapidity ? If the notice were to be as short as that suggested, the situation would indeed become far more difficult than M. Fromageot seemed to think.

As M. Urrutia had said, the problem was one of great importance. Hitherto the Court had had the privilege of having among its judges such high authorities as Mr. Moore and Mr. Hughes. If the condition were to be laid down that the judges must be able to attend within forty-eight hours, that would mean that an American judge or a judge from any other overseas country would have to live in Europe, and the danger might be that in this way the Court would lose the assistance of those people whose training and authority most fitted them to sit on it. Would it not be better to stipulate a notice not of forty-eight hours, but of, say, ten days ? Did M. Anzilotti and M. Huber think that such a period would cause any appreciable change in the present situation ?

M. ANZILOTTI replied that obviously the Permanent Court had never been obliged to meet at such short notice. Its procedure even prevented it from doing so. He thought, however, that if M. Fromageot had mentioned a notice of twenty-four or forty-eight hours, it was only as an indirect method of ensuring that the judges would be at the disposal of the Court. Experience showed that there had been no case in which such short notice had been necessary.

M. FROMAGEOT said that such had been his idea.

M. ANZILOTTI drew attention to another aspect of the problem. M. Fromageot had quite correctly linked up the question of residence at The Hague with that of the disabilities of judges. It was obvious that if a judge were to be always at the disposal of the Court, it would be very difficult for him to follow any other occupation. But account must also be taken of other circumstances, and it was, above all, for that reason that, at the beginning of the session, he had put forward certain reservations concerning the desirability of changing the Statute which might undoubtedly be defective in certain respects but the parts of which hold together and made a whole

were offered occupied important posts, would it always be easy to find men who would be prepared to give up everything and accept duties at the end of which they would not even be entitled to a pension, which was only given from 65 years of age ? This fact might cause a large reduction in the number of persons prepared to accept a judgeship.

Obviously, better systems than that existing could be imagined, but it must be borne in mind that a change in the present system in any one way involved the danger of consequences which could not be foreseen at a first glance.

M. FROMAGEOT, in reply to M. Urrutia, Sir Cecil Hurst and M. Anzilotti, said that the leave system which he had contemplated had been designed precisely in order to meet the observations of M. Urrutia. A person belonging to a non-European country had the very legitimate right to return to his home from time to time during his nine years of office.

In so far as the period of notice for the sitting of the Court was concerned, it could be fixed not at forty-eight hours but at three, five or ten days, if that were sufficient from the practical point of view. What was essential was to be able to count on the presence of judges after a fairly short notice. Moreover, up to the moment, there had been no case in which the Permanent Court had had to meet very quickly though such a case might arise, particularly as a result of certain treaties which were now in force.

In all countries persons prepared to live abroad were found who were ready to join the Diplomatic Corps. As regards the question whether it would be possible to continue to find persons ready to abandon their profession to take the office of judge, it was for them to choose. In M. Fromageot's view, the office of judge of the Permanent Court certainly required special qualities, competence, authority, experience, a high moral standard and character; he would, however, be very much surprised if it were no longer possible to find persons possessing these qualities and ready to devote themselves to such duties. The world had moved on in the past eight years ; new generations were growing up and the number of persons who step by step, with age and on the basis of sound legal training, would constitute excellent recruits for the Permanent Court was ever on the increase.

Jonkheer VAN EYSINGA had been much struck by the observations of M. Anzilotti, which proved how much the members of the Committee should congratulate themselves on the presence among them of the President and the Vice-President of the Permanent Court. Without their assistance, it would have been difficult to obtain any information on the exact position. M. Anzilotti had pointed out that, even under the present Statute, judges were required to be at the disposal of the Court but, in fact, that did not always seem to be the case. M. van Eysinga wondered if exactly the same state of affairs would not occur whether the office of deputy-judge were maintained or abolished. In his view it would be an excellent thing to abolish the deputy-judges unless the Committee had adequate reasons for retaining them. No argument had, however, yet been put forward in favour of their retention.

As regards the financial aspect of the matter, M. van Eysinga regretted that he could not show the same detachment as M. Fromageot. He had frequently been a member of the Fourth Committee of the Assembly where financial problems played a great part and, no doubt, M. Osuský, who was Chairman of the Supervisory Commission, would hold the same view. He thought that the financial effect of measures recommended by the Committee should be examined in detail.

Sir Cecil HURST would be grateful to M. Fromageot if he would withdraw his proposal that forty-eight hours' notice or any particular period of time should be laid down. Any time-limit would become superfluous if the various other changes proposed by M. Fromageot were adopted. What was necessary was to lay down the definite rule that the presence of the judges at The Hague was compulsory every time it was required. Such a measure would be sufficient and the judges would be perfectly free to fix their domicile where they desired. From the psychological point of view, there was nothing more annoying than to be compelled to live in a foreign country where a person had no work to do for such long periods as six months.

The comparison made by M. Fromageot between the duties of a judge and of a diplomat was not correct. What made the diplomatic life agreeable was continuous occupation and, if M. Fromageot were himself invited to carry out in China duties which would only keep him occupied for six months of the year, he would probably find it very difficult to accept the position.

Mr. ROOT thought that perhaps the object desired by M. Fromageot could be achieved by an amendment to Article 23 providing for an ordinary annual session. Two ordinary annual sessions a year could be held, which would do away with the present necessity of convening judges to attend extraordinary sessions suddenly. Further, at the beginning of each year, the Permanent Court could definitely fix the dates when each judge would go on leave and the period during which he would be required to perform his duties. If deputy-judges were replaced by full judges, the task of the members of the Court would be made easier and each one of them would be responsible for fulfilling his duties in the most satisfactory manner. The unfortunate part of the present position was that it contained a degree of uncertainty, and there was no need to impute any ill-will to anyone. A regulation of the kind which he had suggested would make it possible to avoid placing restrictions on the family life of the judges. Persons of the age and authority of members of the Permanent Court were no longer ready to accept such obligations.

Mr. ROOT replied in the affirmative.

M. ITO noted that M. Fromageot had raised the question of the possibility of abolishing deputy-judges. In his view, this was one of the fundamental points of the organisation of the Court, which had been founded on the system of ordinary judges and deputy-judges. In these circumstances, the Committee must reflect very carefully before it took any decision. If he remembered rightly, when the question had been discussed by the First Committee, during the ninth session of the Assembly, the general opinion had been that the fundamental principles of the present organisation should be respected and an endeavour made to improve secondary points.

Before taking a decision in regard to the fundamental question raised by M. Fromageot, it would be useful to discover whether the Permanent Court itself had up to the moment found any inconvenience in the present system. M. Ito would be grateful to hear the views of the members of the Court attending the Committee.

M. POLITIS recalled that the resolution adopted by the Assembly at its ninth session made no distinction between fundamental and other points. The Assembly had decided that " 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 ", and the Council in its report of December 13th, 1928, had used these words : " Having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference . . . ". He did not think, therefore, that there was any objection of principle to be made to the proposals of M. Fromageot or to any other proposal to amend a vital article of the Statute.

M. HUBER thought that Mr. Root had raised a very important question affecting the regularity or irregularity of the work of the Permanent Court. The element of uncertainty was perhaps, from the point of view of the judges, the most unpleasant part of the present system. If it became possible to regulate the work to a certain degree in the manner proposed by Mr. Root, it would be easier for the judges to be present. The Committee, however, should bear in mind the special nature of international questions. It would hardly be possible to arrange in January the work for the ensuing year. Even in the case of contested cases, it was very difficult to know what date they would in actual fact come before the Court. A period of time for their presentation was fixed, but Governments themselves sometimes asked for postponement or made arrangements between themselves.

Another element of uncertainty lay in the request for an advisory opinion made by the Council. Sometimes these requests were urgent and might lead to a convocation of the Court for an extraordinary session. On two occasions in 1926, for example, the judges had thought that they would shortly have to meet while in actual fact the matter with which they would have had to deal had been removed from their agenda. On other occasions they had been suddenly convened at very short notice. It was obvious that this state of things was especially inconvenient for the overseas judges.

Instead of the ordinary session called for June 15th, two or three sessions might be contemplated. Thus, as far as possible, judges would know that they would have to be at The Hague from a certain date onwards. This would mean that the Council and the Governments would conform to the dates so fixed.

The Court had on occasion discussed the possibility of having, at least in fact, two sessions a year. This idea had encountered opposition, for some judges had taken the view that for reasons of health they could not be present at The Hague during certain months. It would therefore not be easy to hold two or three ordinary sessions and at the same time be certain that all the judges would attend. However, to regulate the organisation of the Permanent Court would mean in any case adopting a system of two or three ordinary sessions instead of a single session which was at present the case.

M. PILOTTI asked the President and the Vice-President of the Permanent Court whether they had considered another possibility, namely, completely to transform the system laid down in Article 3 and to provide, as was the case in Courts throughout the world, that the Permanent Court should sit all the year round. Nevertheless, the Court would settle at the beginning of each year the leave to be taken by its members. If, during the year, the Court had no matters referred to it, the President would be free to grant additional leave, provided that the judges did not go too far away from The Hague. In case of need the system proposed by M. Fromageot would then be applied, that was to say, judges would be recalled at very short notice. In any case, the presence of at least nine judges could be ensured for a fixed period during the year, two or three judges being on leave.

M. ANZILOTTI, replying to M. Ito, said that he had already described the present state of affairs, which gave rise to difficulty. It must be admitted that, among the present members of the Court, some who lived farthest away from The Hague had accepted a judgeship in the conviction, at that time universally shared, that they would have to come to Europe only once a year to attend the ordinary summer session. These judges had continued this practice and were therefore absent from extraordinary sessions. Personally, M. Anzilotti was convinced that if the ordinary judges had accepted all the invitations of the President to attend, the appointment of deputy-judges would not have given rise to objection.

M. POLITIS pointed out that in that case the deputy-judges would have been useless.

In reply to M. Pilotti, he said that the Permanent Court had often discussed the possibility either of changing the date of ordinary sessions, which could be done under the provisions of the present Statute, or of adopting two different dates ; there was some doubt whether it would be possible to adopt the second solution under the terms of the present Statute. The change of date had been opposed by the American judges. M. Anzilotti had himself contemplated the adoption of a system similar to that suggested by M. Pilotti, whereby the legal year would begin in January and last until the agenda of the Court had been completed, the Court being free to take two months' vacation if its session lasted longer than six months. At that moment the question of revising the Statute had been brought before the Assembly and M. Anzilotti had provisionally abandoned his proposal.

The proposal of M. Politis was certainly very wide, but in the report of M. Cassin to the ninth ordinary session of the Assembly the following passages were to be found :

> " It is all the more important not to interfere with the framework of an established institution in that a large number of States have already concluded treaties agreeing beforehand to submit their international disputes to the jurisdiction of the Court, or treaties which are actually based on the Statue of the Court. "

And again :

> " As you will see, then, there is no question of re-casting the Statute of the Court or of actually revising it. All we are proposing is that it should be examined with a view to remedying such defects as experience may have brought to light, and introducing amendments which could be effected by general agreement without undue delay. "

Consequently, M. Anzilotti thought that the observations of M. Ito were quite correct. If it were possible to achieve a satisfactory result without touching the fundamental principles of the Statute, this should be done.

M. Fromageot thought that the Committee had somewhat strayed from the original question, which was that of Article 3 concerning the number of judges, in order to discuss Article 23, which dealt with the organisation of the Court's work on which the experience of M. Anzilotti was pre-eminent.

The Chairman thought that the two questions were cognate to one another.

M. Fromageot readily agreed, but considered it preferable to solve first the question raised in regard to Article 3 before taking up that raised by Article 23, especially since several proposals might be made later in regard to the latter article. It would be better, he thought, first to settle the question of the number of judges, since this was one of the main elements in the organisation of the Court.

The Chairman did not agree with M. Fromageot. The latter was quite right in saying that the number of judges was one of the elements to be considered, but it was on that account that the Chairman thought that, when considering the number of judges, the Committee must at the same time take into account the other questions of organisation.

He was entirely in favour of the proposal to abolish the system of deputy-judges. M. Anzilotti had argued that the main lines of the Statute should be retained, because it was the basis of a large number of treaties. The Chairman would point out, however, that the Permanent Court was not in all respects working in accordance with the spirit of its Statute. When the deputy-judges had been appointed, it had been intended that they should sit only in exceptional cases ; in actual practice, however, they had been very frequently called upon to replace one of the ordinary judges. The Statute, therefore, had not been carried out exactly in conformity with the original intentions. The result was that the Court was often composed of judges who belonged to two different categories — the ordinary judges and the deputy-judges. The deputy-judges could not be regarded as having entirely the same competence in their work as the ordinary judges, and as a former Minister of Justice, the Chairman had always deprecated the appointment as judges of men who were not fully qualified for their work. He would not himself care to be tried by a deputy-judge, but would prefer that the Court which tried him should be composed of persons who were entirely competent to judge the evidence and render their award upon that evidence. That, indeed, was the only way of safeguarding the liberties of the parties.

If the Committee decided to make a change in the number of judges, that would presuppose an amendment to Article 3. Such an amendment should not, however, be regarded as making any fundamental change in the Statute of the Court. The only essential point in regard to the election of the judges, and the one in which the Committee could make no change, was the provision that they should be nominated by the Assembly and by the Council and should be elected freely from all countries of the world.

Again, the question of the organisation of the Court's sessions was a purely administrative one, and did not in any way affect the basic principles of the Statute. The Chairman thought that Mr. Root's proposal to increase the number of sessions to two afforded a method of eliminating the dangers to which M. Anzilotti had drawn attention.

M. Anzilotti had argued that, if the new proposals for the organisation of the Court's work were adopted, there would be a risk that certain eminently desirable candidates might refuse the offer of a judgeship, since they would be unable to send a deputy in their place. The Chairman, however, did not think that a man who had accepted a judgeship but who failed to attend

whether they would be able or not to spare the necessary time to attend the Court's sessions. If a very eminent candidate were to say that he would be unable to devote the necessary time to the sessions, it would be better to take a less important man who would be prepared to discharge his duties. The remedy for this situation was that proposed by Mr. Root in regard to the number of sessions. If there were two sessions a year, it would be possible to establish at the beginning of each year a roster of those judges who were to be convened for each session In that way, when a candidate had been appointed to a judgeship, he would know that he was expected to give all the time that was required of him to his duties as a judge, a condition which had not existed hitherto.

The Chairman was not impressed by M. Huber's point that the Court had experienced difficulties in carrying out its full programme in the past. In this connection the experience of the past was of no great value for the future. The statistics of the Court showed that its business was increasing daily, and that in future there would be very few blank days during the Court's session. It was, in particular, the litigious business of the Court that was increasing every day and now formed the most important part of its work.

Lastly, the Chairman wondered whether it might not be possible for the Court to curtail somewhat the length of its judgments. The Chairman was perhaps influenced in this matter by his everyday experience, but, in his opinion, the best judgment was one which did not contain a single word over and above the actual decision of the Court. He did not think that it had been the intention of those who created the Court that it should act as a factory of international law, or that its judgments should build up a system of international law. The Court had perhaps been overconscientious in this respect hitherto. The best law was that which was built up objectively and it was objective law that was the true law. If, therefore, a different method were followed in drafting the Court's judgments, the members of the Court would have more time at their disposal and they would be free for other work without their ordinary work being made any heavier.

To sum up, the number of ordinary judges should be such as to make it possible to draw up a regular roster so that the number of judges attending the session would always be sufficient to form the quorum of nine in case of sickness or other valid excuse for non-attendance. In making the necessary modifications in the Statute for this purpose, the Committee would not in any way be changing anything that was essential in the relations between the Court and the Statute. The proposed changes would be purely administrative and as such would not affect the substance of the Statute.

M. GAUS assumed that, if the proposal for the abolition of the deputy-judges were accepted, it would involve an increase in the number of the ordinary judges.

The CHAIRMAN agreed.

M. RAESTAD wished to revert to one point on which M. Anzilotti had touched, namely, Mr. Root's proposal for two annual sessions. M. Raestad understood that M. Anzilotti considered that to hold one session lasting a whole year would be contrary to the terms of Article 23. M. Anzilotti had added that he had doubts with regard to the possibility of introducing a provision for two sessions and whether such a provision would be compatible with Article 23. M. Raestad thought that the only intention of Article 23 was that the Court should meet at least once a year and that there was nothing in the Statute which conflicted with its holding more than one session.

M. RUNDSTEIN thought that, in considering the proposal to increase the number of ordinary judges and the number of sessions, the Committee must not overlook the terms of Article 29 providing for the hearing and determining of cases by summary procedure. It might be found difficult to reconcile that rule with the proposal for the increase in the number of sessions. It would be desirable, moreover, to contemplate the possibility that the Chamber of Summary Procedure might meet even during the vacations.

M. ANZILOTTI said that he personally had always held the view that under Article 23 one session a year was to be regarded as a minimum and that there was nothing to prevent the Court from holding more than one session. He had said that it was true that the Court had contemplated changing the dates of its sessions, but certain of the judges, more especially the South American judges, had objected to any such changes. Further, the members of the Court felt certain scruples, which M. Anzilotti personally did not share, in regard to the possibility of fixing two sessions a year in view of the terms of Article 23.

Sir Cecil HURST enquired whether it would be possible to have from M. Fromageot or from some other member at the beginning of the Committee's next meeting a text of the amendments which would be required to carry out the proposals he had made and which seemed to have met with general approval — first, as to the number of judges and, second, as to rendering attendance on the part of the judges at The Hague obligatory, omitting the proposal for attendance within forty-eight hours of the summons.

M. FROMAGEOT replied that his amendment was very simple. It was that Article 3 should be amended to read " The Court shall consist of fifteen members. "

M. PILOTTI pointed out that this text would omit any reference to the powers of the Assembly to increase the number of judges up to a total of twenty-one.

M. PILOTTI pointed out that there were many people who were in favour of a quorum of eleven instead of nine judges and fifteen might be rather a small total number from which to obtain a quorum of eleven.

M. FROMAGEOT remarked that, leaving on one side the inconveniences to which a too large number of judges might give rise, there might be financial obstacles to the appointment of as many as twenty-one judges.

The CHAIRMAN thought that the financial difficulties were perhaps more apparent than real. As the work of the Court regularly increased and as more cases were brought before it by States which did not contribute to its upkeep, it would be only right and proper that such States should be expected to pay contributions. The financial question, therefore, was not necessarily of very great importance.

Sir Cecil HURST understood that the Committee had agreed unanimously that judges who had been elected to the Court should attend whenever they were convened. M. Fromageot's text made no mention of that point.

Jonkheer VAN EYSINGA agreed with Sir Cecil Hurst that the obligation to attend, on which members of the Committee had agreed, should appear in some article in the Statute. He thought perhaps Article 23, which had been reserved at Sir Cecil Hurst's request, might be the best place.

M. POLITIS pointed out that Article 15 would disappear in consequence of the decision to abolish the deputy-judges. It would therefore save the necessity for altering the numbering of the articles if the obligation to attend were contained in a new Article 15.

Jonkheer VAN EYSINGA wondered whether it would be possible immediately to draft a final text covering the obligation to attend, since there were certain cases where there would be overlapping and this was one of them. As the plenary Committee was too large to act as a Drafting Committee, he suggested that it would be better to set up a Sub-Committee to prepare a draft covering the three proposals which had been made and upon which there appeared to be agreement, namely, (1) Mr. Root's suggestion for the holding of two annual sessions, (2) the proposal for the abolition of the system of deputy-judges, and (3) the obligation on the part of judges to attend when convened.

M. FROMAGEOT proposed the following text to cover the obligation to attend the sessions of the Court :

> " Members of the Court shall be bound, unless they are absent for reasons of ill health or for any other serious reason duly explained to the President, to hold themselves at the disposal of the Court from the date when they may have received the notice of convocation addressed to them. "

The CHAIRMAN proposed that Sir Cecil Hurst, M. Fromageot and M. Politis should form a Sub-Committee to prepare a definite text of the various articles in the Statute which would require amendment from the point of view of the discussion held that morning.

The Committee agreed to this proposal.

SIXTH MEETING.

Held on Wednesday, March 13th, 1929, at 5 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

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

Article 23 (revised).

The CHAIRMAN submitted the following amended text of Article 23 proposed by the Sub-Committee :

" *Article* 23.

" Replace this article by the following text :

" ' The Court shall remain permanently in session except during the vacations, the

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

" ' Except during the vacations, members of the Court shall be bound, unless they are on regular leave or prevented by illness from attending, or are absent for any other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court ' ".

An exchange of views took place on the proper wording to be used to describe the domicil of members of the Court.

Sir Cecil HURST was in favour of the term " national ". The idea of nationality was preferable to that of domicil.

The CHAIRMAN pointed out that in the present amendment, which was designed to give additional leave to those judges who lived more than five days' journey from The Hague, it was essential to find some term to define their ordinary place of residence.

Jonkheer VAN EYSINGA suggested " residing in ".

M. POLITIS proposed " established ".

M. RAESTAD pointed out that a town situated near the frontiers of a country, for example Russia, might be within five days journey of The Hague but that a judge living in the interior of the country might need a longer time in which to do the journey.

M. POLITIS suggested the phrase " effectively domiciled ".

M. GAUS proposed " ordinarily resident ".

M. URRUTIA suggested that the real object of the amendment was to grant certain facilities to non-European judges. How was it possible, in those circumstances, to fix five days as the minimum ? Under modern transport conditions distances were much reduced ; that being so, why should not the amendment definitely state that it was intended to apply to non-European judges only ?

The CHAIRMAN pointed out that the amendment also applied to certain European judges. Further, account must be taken of the fact that journeys took longer in winter than in summer ; for example, a judge from Finland might be held up by bad weather conditions and be unable to reach The Hague within five days.

Jonkheer VAN EYSINGA suggested taking as a basis not the number of travelling days but the distance.

M. GAUS saw no reason why extra leave should be granted only to overseas judges. Would it not be better to extend it to all judges ? This would mean that three judges out of the fifteen would always be on leave.

Sir Cecil HURST thought that the Committee was losing itself in a mass of detail. The really essential point was to adopt adequate provisions ensuring that the best possible persons should be judges of the Permanent Court. To do so it was essential to choose persons coming both from near and from distant countries. It would be impossible, however, to induce the best persons to accept the position of judge if the conditions of service were such as to prevent them from ever visiting their homes. It was to avoid this difficulty that the special rule had been drafted and it was intended that it should apply solely to judges living long distances away from The Hague. For example, there might be an Australian lawyer, possessing to the full all the necessary qualifications required in a judge of the Court, who would not accept such a position unless he were allowed occasionally the possibility of visiting his home. The Sub-Committee had been assured by the representatives of the Permanent Court, whom it had consulted, that such a rule was adequate in the circumstances.

Further, the rule itself might become a dead letter in the near future owing to the rapidity with which transport conditions were changing.

For that reason, the Sub-Committee had thought it better not specifically to mention overseas judges but to base the amount of extra leave granted on the number of days it took to reach The Hague.

M. FROMAGEOT recalled that his original proposal had been to grant this extra leave to all judges in rotation. The disadvantage of granting it only to overseas judges was that the latter were placed in a position of inequality in regard to their colleagues in Europe who would attend the Court more frequently since they did not receive the same amount of leave. He was still of opinion that the cardinal principle should be that all judges must be placed in the same position. If, therefore, the extra leave were granted to all the judges, the Court normally would be composed of twelve judges with three absent on leave.

In reply to the Chairman, M. Fromageot considered that eighteen months' leave in nine years was not excessive.

M. ANZILOTTI said that to reduce the number of judges ordinarily sitting to twelve would mean that the President might [illegible]

M. RAESTAD pointed out that it was impossible, in fact, to put all the judges on an equal footing. Judges living outside Europe were not compelled to take that extra leave if they did not wish to do so. There seemed no reason therefore to extend the privilege to all judges. If it were so extended, either the number of judges must be increased to cover possible cases of illness or else the quorum must be lowered.

Sir Cecil HURST did not consider that the argument of M. Fromageot was well founded. Inequality in the position of the judges was really due to the fact that the seat of the Court was at The Hague which was not equi-distant from the homes of all the judges. The suggestion of the Sub-Committee was an attempt to create, as far as possible, equality between all.

M. URRUTIA, while not entirely opposed to the suggestion to grant the extra leave to all the judges, would point out that all amendments to the Statute of the Court must be adopted by the Assembly and ratified by the signatory States. That being so, it would be bad policy on the part of the Committee to propose any amendment which had not a fair chance of being accepted. Some States might think that, since it was more difficult for a judge coming from a far distant country to sit on the Court than was the case as regards a European judge, it would also be more difficult to elect a non-European judge. Unless there could be some assurance that persons coming from far distant countries had the same chance of election as persons resident in Europe, those States would refuse to ratify the amendment and the Committee's work would be useless. He therefore agreed with M. Fromageot that it was impossible to ignore the fact that some countries were farther off than others. If, therefore, certain privileges were granted to non-European judges, far from creating inequality among the judges the opposite would be the case ; equality would be re-established.

M. GAUS thought that the equality of the judges was not affected by granting the same amount of leave to all, since, if extra leave were granted only to overseas judges, the European judges would sit more frequently on the Court and therefore have greater influence.

The CHAIRMAN pointed out that judges remaining at The Hague were more highly paid than the others. Equality was thus maintained between the judges from overseas, who would get more leave, and the European judges, who would receive higher salaries.

M. ANZILOTTI recalled that, when the Court had been established, it had been decided to pay each judge a fixed salary and an allowance which varied according to the number of times he sat on the Court. If, however, as now seemed to be the case, the Court was to sit permanently, the system would, he thought, have to be changed and judges should in that case receive fixed salaries.

The CHAIRMAN observed that the reason why judges had hitherto been paid an allowance calculated according to the number of days they sat on the Court was to prevent their position from becoming a sinecure. If a judge did not sit on the Court, he was not paid. It was impossible to impose any penalty on a judge of the Permanent Court for non-attendance except indirectly by not paying him his allowances.

M. ITO agreed in principle with the amendment proposed but thought that the wording was too rigid. More liberty should be given to the judges ; if the amendment were re-drafted in a less precise form, the article would stipulate that judges living far away from The Hague should be entitled to a longer period of leave than others, that period to be fixed by the Court.

The CHAIRMAN called on the Committee to vote on the following three questions of principle :

1. That a special period of leave of six months' duration should be given every three years.

This proposal was adopted.

2. That this special period of leave should be granted to all judges.

By 6 votes to 5, *the Committee decided to reject this proposal.*

3. That only those judges who lived far away from The Hague should be entitled to the extra leave.

The Committee approved this principle.

On the proposal of the CHAIRMAN *the Committee decided* to refer these three principles, to the Drafting Committee with instructions to draft them in an appropriate form.

M. FROMAGEOT pointed out that the Committee had yet to decide which members of the Court would have the right to this special leave.

M. POLITIS said that it was necessary to decide also the question of the distance from the Court of the "home" of a judge who would be entitled to special leave. How was that distance to be measured ? It was suggested that the " home " should be five days' journey from The Hague. The time taken for the journey would depend, however, on the means of travel adopted. He would suggest that the expression " normal journey " should be used. Such an expression would for the moment preclude a journey by air between Europe and distant countries. If, however, such a means of travel became normal, the text would still apply, and no further amendment would be necessary.

The Committee decided to adopt the expression " home " (four) and the expression " five

Article 3 (revised).

The CHAIRMAN recalled that it had been proposed to amend Article 3 by suppressing the reference to the possible increase in the number of judges of the Court. The article as amended would read :

" The Court shall consist of fifteen members. "

M. POLITIS said that the reason for this amendment was a desire not to alarm public opinion by referring to the possibility of increasing the Court to twenty-one members.

The amendment was adopted.

Article 8.

M. FROMAGEOT pointed out that the reference to deputy-judges in this article should be suppressed.

Agreed.

Article 13.

M. FROMAGEOT suggested that this article should be taken in connection with Article 16.

Agreed.

Article 14.

M. FROMAGEOT said that, in accordance with Article 14, when a vacancy occurred in the Court, the same procedure had been adopted as for the first election. It had been found, however, that this procedure led sometimes to a prolonged vacancy before the election of a successor could take place. It was impossible to replace a member who died shortly before or during a session of the Assembly of the League of Nations until the next session of the Assembly. A seat might, therefore, be vacant for as long as fifteen months. Would it not be possible to secure the appointment of a successor within a shorter period ?

He had drafted an amendment to the effect that the procedure followed in the first election might, in certain cases, be modified. For example, the Secretary-General of the League of Nations, might, during the month following that in which the vacancy had occurred, proceed to the notification provided for in Article 5, and the date of the election would be fixed by the Council at its next session. He would point out that the only means of hastening the election would be to convene an extraordinary session of the Assembly. That, however, might be too drastic a procedure and the extraordinary procedure he had suggested should only be followed if, for example, two or several vacancies occurred. The Secretary-General might, when the second vacancy occurred, proceed to the notification provided for in Article 5, and the date of election might be fixed to coincide with the session of the Council following the expiry of the period of three months during which the national groups selected their candidates. It might be left to the discretion of the Council to decide whether an extraordinary session of the Assembly should be called in order to render an early election possible. The Committee might feel perhaps that such a procedure would only be justified in the event of three vacancies occurring. He would like to have the views of the Committee on his observations.

M. POLITIS said he would be in favour of applying the extraordinary procedure outlined by M. Fromageot in the event of three vacancies occurring, since he felt that twelve judges were a minimum to ensure the regular and equitable working of the Court.

Sir Cecil HURST enquired whether it was the intention of the amendment proposed by M. Fromageot to ensure that in every case a vacancy should be filled within six months.

M. FROMAGEOT said that the proposed procedure could only be adopted if more than one vacancy occurred. The procedure might already be justified in view of two vacancies. Three vacancies, however, so seriously disturbed the balance of the Court, that every endeavour should be made to avoid the inconveniences of such a situation. The Court had been carefully constituted in order that certain legal systems, civilisations, and national mentalities might be represented, and it was against the spirit of the Statute to allow too many vacancies to subsist unduly long.

The CHAIRMAN suggested that the Committee should request the view of the Secretary-General on the proposal to call an extraordinary session of the Assembly.

The SECRETARY-GENERAL said that an extraordinary session of the Assembly, called to fill a vacancy in the Permanent Court, could hardly be compared with the extraordinary session which had taken place in 1926. The extraordinary session of 1926 had been convened to deal with a definite political problem, and it had necessarily been attended by representative statesmen. An extraordinary session of the Assembly to appoint two or three judges would present no real difficulty. The States would presumably nominate their Ministers at Berne or in some capital near at hand with definite instructions as to their voting. No considerable expense or practical inconvenience would be involved. He would point out in this connection that the Council might convoke an extraordinary session of the Assembly by a majority vote.

The CHAIRMAN represented that the election of a judge to the Permanent Court was a very delicate matter, and a matter of special importance to the small States. Were these

M. FROMAGEOT said there were two questions to decide if the procedure of an extraordinary session of the Assembly were accepted in principle. The first was the question of the procedure to be followed if two or more vacancies occurred. The other question was whether it should be left to the Council to decide whether an extraordinary session of the Assembly should be called, or whether the convocation of an extraordinary session should become obligatory.

M. GAUS said he would prefer to leave it to the discretion of the Council to decide whether an extraordinary session of the Assembly should be called. If the convocation of an extraordinary session became obligatory, it might be necessary to call one in July or August, though in a short while the ordinary session of the Assembly would be taking place.

M. URRUTIA said he would like to take advantage of the presence of the Secretary-General to raise a point which was closely connected with the question under discussion. Last year there had arisen the question of the procedure to be followed in accepting the resignation of a judge of the Court. As a matter of form, it would seem that such a resignation should be accepted by the Assembly, but in the particular case mentioned the Council, in order to avoid delay, had decided to accept the resignation provisionally in order that machinery for the nomination and election of a new judge might be immediately set to work. The Council had taken this action, on the understanding that the Assembly would be asked to confirm its decision. Would it not be advisable to provide that the Council might, in future, accept a resignation ?

The SECRETARY-GENERAL said that, as the judges of the Court were elected by the Council and the Assembly, it had been felt that it was necessary both for the Council and the Assembly to accept their resignation. It might be assumed, however, that neither the Council nor the Assembly would wish to withhold its acceptance. There was no objection to inserting a clause in the Statute to the effect that the Council might accept a resignation, but the present system worked quite satisfactorily, subject to the interpretation which had been placed upon it by the Council in dealing with the resignation which had occurred in the past year. It would be sufficient if it were agreed that the Council might accept a resignation subject to confirmation of its action by the Assembly.

Jonkheer VAN EYSINGA thought that, if a rule were laid down that the extraordinary procedure should be applied in the event of two vacancies, it should not be left to the discretion of the Council to apply that procedure. In such circumstances, it should be the duty of the Council to convene an extraordinary session of the Assembly. He recognised, however, the difficulty to which M. Gaus had drawn attention. It would be unreasonable for an extraordinary session of the Assembly to be called in July or August. That contingency might, however, be provided against by laying down that the extraordinary procedure should only be applied in the event of a vacancy occurring in the early part of the official year.

M. POLITIS enquired whether there was not a danger of risking unnecessary delay if the convening of an extraordinary session of the Assembly were left to the discretion of the Council. The Council would then have to meet in order to discuss whether it was necessary to apply the extraordinary procedure, and, for that purpose, an extraordinary session of the Council might be necessary, in order to avoid delay.

M. FROMAGEOT doubted whether it was possible to lay down in the Statute that an extraordinary session of the Assembly should necessarily be convened. The signatories to the Statute of the Permanent Court could not, he thought, by means of a provision in the Statute, restrict the powers of the Council, which alone had the right to convene the Assembly.

Sir Cecil HURST, replying to M. Politis, pointed out that there would always be a session of the Council within the three months during which the national groups were considering their candidates, and at that session of the Council the question of convening an extraordinary session of the Assembly might be considered.

M. FROMAGEOT thought the Committee was agreed in principle, and that his amendment might be referred to the Drafting Committee. The explanations of the Secretary-General had convinced the Committee that an extraordinary session of the Assembly was practicable.

The SECRETARY-GENERAL hoped the Drafting Committee would bear in mind that it was quite possible to convene an extraordinary session of the Council in order to convene an extraordinary session of the Assembly. He hoped that the Council would be allowed discretion in the matter, and he did not think the exercise of that discretion would lead to any loss of time.

Jonkheer VAN EYSINGA, replying to an observation of M. Fromageot, said he would have no legal scruples in laying down that the Council was bound in certain circumstances to convene the Assembly. Provisions of a far more important character had been inserted in the Statute laying obligations upon the Assembly and the Council.

The CHAIRMAN pointed out that there was nothing in the Covenant indicating who should convene the Assembly. He thought that it was juridically possible to remedy that omission in the Covenant by inserting a provision such as was at present under discussion. He would ask M. Fromageot to revise his amendment in the light of the observations which had been made.

SEVENTH MEETING.

Held on Thursday, March 14th, 1929, at 10.30 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

13. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation). Proposals of Sir Cecil Hurst.

M. FROMAGEOT recalled that, as a result of the Committee's decision to abolish deputy-judges, Article 15 of the Statute should be deleted.

Sir Cecil HURST desired to draw the Committee's attention to a general question. At the previous meeting various amendments had been suggested of very varying importance. Sir Cecil Hurst referred more especially to the changes which it was proposed to make in Article 3 of the Statute regarding the abolition of deputy-judges, as compared with the amendment which had been proposed for Article 5, dealing with the fact that judges of the Court must have great practical experience.

Sir Cecil Hurst feared that, if this procedure were followed, the Committee would end by submitting for the approval of the Council and of the Assembly a list of amendments differing greatly in importance. Although the Council might have instructed the Committee to revise the Statute of the Court, the Committee must remember that any proposed change would have, in the last resort, to be ratified individually by each of the States which had adhered to the Protocol of the Court. A series of formalities had to be fulfilled, beginning with the drafting of the diplomatic instruments which would have to be communicated to Governments. These would have to be ratified by States and finally the Protocol would have to be signed. The amendments which the Committee might propose would be discussed by the Assembly in September 1929. In September 1930 the Assembly would have to proceed to a new election of judges of the Court. In the very short period of a year, therefore, the formalities to which he had referred would have to be completed.

No one was more aware of the slowness of this procedure than the Chairman of the Committee, who know by experience, as a member of the Council, the constant efforts which the Council had to make to secure the ratification of conventions. If the ratification of the new Protocol had not been obtained before September 30th, 1930 the Assembly, whose duty it would be to elect new judges, would be faced by a complicated situation and great confusion might result.

How could the Assembly elect the judges if it did not know whether it should elect ordinary judges and deputy-judges or only a larger number of ordinary judges and if it did not know what qualifications must be possessed by candidates ? So far as the candidates themselves were concerned, uncertainty with regard to the conditions required of them would make their decision to accept the post of judge, if offered, difficult. In the view of Sir Cecil Hurst, therefore, the Committee should do nothing which would jeopardise the hope that the new Protocol would have entered into force before the members of the Court had to be appointed. In the period since 1920, that was to say, over a period of eight years, fifteen States had still not ratified the present Protocol. What therefore would be the situation if in 1930 only half a dozen States had ratified the new Protocol ?

The Council could and must bring a certain amount of pressure to bear on the States concerned in order to induce them to ratify before 1930 and, in order to make it easier for the Council to hasten the putting into force of the revised Protocol, Sir Cecil Hurst desired to propose that the Jurists' Committee should only submit amendments involving really important points and of an urgent character. To take but one example, Sir Cecil Hurst thought that the modification suggested in Article 2 of the Statute (the condition that the candidates should possess practical experience) was a secondary point and should not be made the object of an amendment.

In his view, the end desired could be attained in some cases quite as well by recommendations to be adopted by the Assembly as by amendments of the Statute. Such a procedure was infinitely easier to follow and quite as effective.

Sir Cecil Hurst did not share the doubts of M. Fromageot in regard to the utility of these recommendations. The Secretary-General could, for example, draw the attention of the national groups in advance to the importance of the possession of practical experience by candidates for the post of judge. Sir Cecil Hurst was convinced that this suggestion would be fully effective. The groups would wish to secure the election of the candidates they submitted and would certainly take steps to ensure that their candidates possessed all the qualifications which they had been informed were essential.

As far as Article 5 was concerned, Sir Cecil Hurst suggested that the candidates submitted by the national groups should possess a working knowledge of the two official languages of

national groups, if the method of recommendations which he had just outlined were adopted. To require a knowledge of these two languages had nothing to do with the manner in which the Court worked, with the translation of the pleadings or after.

The reasons why Sir Cecil Hurst insisted on the importance of the question of languages were based on the special nature of the international disputes submitted to the Court. There were at the moment, on some questions of international law, two schools of law: the Anglo-American school and what might be called the Continental school. Judges were called upon, therefore, to give decisions on problems which presupposed a knowledge of both these legal systems. Sir Cecil Hurst thought it impossible that a judge who knew only one of the official languages could fulfil this condition. Most of the books enumerating the Anglo-American point of view were published in English and those enumerating the continental point of view were published in great part only in French. Judges must, therefore, have a knowledge of both languages in order to be acquainted with the writings giving both points of view.

Without dwelling on the secondary considerations which might make it necessary to require such knowledge from the judges, especially such considerations as the fact that they should all be in a position to understand the pleadings, Sir Cecil Hurst, for reasons which he had just explained, suggested that the need of an acquaintance with both languages should be mentioned in the recommendations to be made to the national groups.

To sum up his observations, Sir Cecil Hurst formally proposed: (1) that the Committee should only put in the form of amendments changes which were of urgent and real importance, justifying the exercise of pressure by the Council on States in order to obtain their ratification before September 1930; (2) that secondary points should be dealt with by means of "vœux" or "recommendations"; (3) that it should be laid down in a recommendation that an adequate knowledge of the two official languages of the Court was desirable for all the judges.

M. Fromageot, in reply to the observations of Sir Cecil Hurst, wished to lay before the Committee information regarding the dates of the ratifications of the Protocol of the Court. Most of these ratifications had been obtained in less than one year, that was to say, before August 1921. Among the States which had ratified later there were some which had been in a peculiar position such, for example, as Germany, which had not belonged to the League of Nations at that time but which had ratified the Protocol of the Court almost immediately after its entry into the League.

M. Fromageot thought that the fears of Sir Cecil Hurst appeared to be exaggerated. If most of the States had ratified the new Statute, it would no doubt be possible to bring pressure to bear on the others in order to obtain their adhesion by the requisite date.

The Chairman said that, according to his experience, it was easier to obtain the ratification of a considerable number of amendments submitted together than of a few isolated ones Isolated amendments would be easily regarded as matters of secondary importance, as the League had had occasion to note several times in connection with a number of amendments to the Covenant, some of which had not been ratified after a lapse of four or five years. An entire reform to which greater importance was attached in advance was more rapidly accepted. For that reason, he took the view that the number of amendments proposed would have no influence on the speed with which the ratifications would be obtained.

M. Politis wished to refer to two points mentioned by Sir Cecil Hurst. His view was that the fears of Sir Cecil Hurst with regard to the difficulty of obtaining ratifications of the new Statute by the requisite date were exaggerated. As regards the ratification of the Protocol of 1920, a period of nine months had sufficed. For the ratification of the new Statute, however, States would be allowed a full year and it was therefore logical to suppose that for some amendments a period of three months longer than that which had been necessary for the ratification of the original Statute would be amply sufficient.

M. Politis did not understand why the ratification of the secondary points would be more difficult to obtain than the ratification of any important amendments which might be proposed. He would prefer to see the necessary modifications put in the form of amendments properly so called rather than that the Committee should draw up a list of recommendations which might easily be rejected.

Sir Cecil Hurst replied in the first place, to the observations of M. Fromageot, that the ratifications of the 1920 Protocol had only been obtained as a result of great pressure which had been brought to bear by the League on the various States.

Moreover, he would point out to M. Politis that in reality the time-limit for the ratification of the new Statute would not be, as he had himself mistakenly indicated, a period of twelve months, but only of nine months, since it was necessary to deduct three months, as the notifications to the national groups to present their candidates were issued three months before the Assembly. By that time the national groups must know the number of judgeships for which they were to present candidates.

As to the third point raised by M. Politis, the question was not so much the difficulty of obtaining ratifications as the extent to which the amendments, which appeared at first sight to be of small importance, would receive general approval. He would mention as an example the proposal requiring the judges to have had practical experience. That proposal had already been opposed within the Committee by M. Raestad, who had pointed out that it had been

The same thing might happen in respect of other questions, and for that reason he thought that only modifications which were likely to meet with unanimous acceptance should be presented in the form of amendments.

The CHAIRMAN observed that the amendments were distinct from one another, and that it would be sufficient if the more important of them were ratified.

Jonkheer VAN EYSINGA agreed with Sir Cecil Hurst that the Committee should take into account the importance of the questions with which it would have to deal. He would observe that the position in regard to the ratification of the new Statute would differ from the position in 1920, for ratification by the majority of the States Members of the League had been sufficient to bring the original Statute into force, whereas the new Statute would have to be ratified by all the States which had ratified the previous one.

M. POLITIS, replying to the observations of M. van Eysinga, drew attention to the fact that in 1920 ratification by the majority of Members of the League had been declared sufficient by a unanimous decision of the Assembly, and he considered it quite possible that the Assembly of 1929 would take a similar decision concerning the ratification of the new Statute.

M. RAESTAD emphasised the importance of the observations of the Chairman. In 1920 the Protocol had formed a single whole, to be adopted or rejected by the States, whereas now a series of separate amendments or at least groups of separate amendments would be submitted to them. Ratification would thereby, in his opinion, be rendered more difficult. It was not yet known whether the amendments which might be proposed would be brought to the knowledge of the States concerned, to be rejected or ratified as a whole, or whether the States would have the option of accepting or rejecting them separately, or in groups. In his view, the apprehensions of Sir Cecil Hurst were well founded if the amendments were regarded as forming a whole, since certain modifications might meet with opposition on the part of certain States adhering to the Protocol, whereas other amendments might be unanimously accepted. On the other hand, he agreed with M. van Eysinga that all the signatory States would have to ratify the new Protocol and not the majority of the States, as in 1920.

M. URRUTIA, replying to Sir Cecil Hurst, said that the Assembly of last year had decided to submit the Statute of the Court to a thorough examination by a Committee of Jurists in view of the renewal of the terms of office of the judges, which would take place in 1930. The Council had followed up that decision of the Assembly by appointing the present Committee. Its task was, therefore, to examine the whole Statute, and it was its duty to propose amendments to all the articles which appeared to it to require modification. That was the principal duty of the Committee, and the Committee must consider that duty before everything else. On the other hand, if the new Statute were not in force by September 1930, the Assembly might then take into account the proposed amendments by means of recommendations such as Sir Cecil Hurst had suggested.

Lastly, he thought that the rapid and complete framing of the new Statute would enable the States which had not yet ratified the Protocol, but whose ratification might without difficulty be obtained within no very distant date, to proceed directly by a single act to the ratification of the revised Protocol.

M. PILOTTI asked Sir Cecil Hurst not to insist on the proposals which he had made as, in his opinion, it was not for the Committee to consider what would be the ultimate fate of the amendments which it was proposing. He thought that, in following up the suggestions of Sir Cecil Hurst, the Committee would be going beyond its present task, and would run the risk of failing to fulfil the object for which it had been established. He would suggest that the reading of the articles of the Statute should be continued and that the question whether it was desirable to give to the various modifications the form of actual amendments or whether they should be made the subject of a mere recommendation should be reserved to the end of the session. It was impossible to say at what moment the ratification of the new Statute would take place and what would be the situation at that time.

Sir Cecil HURST assured the Committee that his suggestion had been inspired merely with the desire to ensure that a positive result might be achieved by the Committee in its present task, and that it was in no way his intention to hinder the progress of the work of the Committee.

The CHAIRMAN asked Sir Cecil Hurst what amendments precisely he proposed to the provisions of Article 5.

Sir Cecil HURST said that he had no amendment to propose, but he would suggest, in reference to Article 5, that the Assembly should be invited to recommend the States to choose candidates who had a practical experience and acquaintance with the two official languages of the Court.

M. POLITIS supported the proposal of Sir Cecil Hurst, but thought that it would be more appropriately embodied in Article 2 and not in Article 5 of the Statute.

The CHAIRMAN observed that, if this suggestion took the form of a recommendation, it would not be connected with any particular amendment.

Article 13.

M. RAESTAD drew attention to the last sentence of this article, " Though replaced, they shall finish any cases which they may have begun ". Was that sentence intended to mean that a judge who had been replaced should continue to deal with cases regarding which the oral proceedings had already been begun while the judge still held his seat or with all the cases of which the Court as a whole had already been seized ? In legal language it was quite clear what was meant by the Court being seized of a case, but no exact meaning had been attributed to a formula stating that an individual judge, member of the Court, had been seized of a case. At the Conference in 1920, it had been suggested that the words " commencé de connaître " should be used, but this phrase had been rejected in favour of the term " saisie ". He would ask the members of the Court present to say by what criterion the Court determined whether a judge was seized of a case or nol.

M. ANZILOTTI said that the Court had never had occasion to solve the question raised by M. Raestad except, perhaps, indirectly in connection with cases in which the preliminary objection of incompetence had been judged by a Court of which the composition was different from that which later pronounced upon the substance of the question. In that case the Court had recognised that the two issues were entirely separate and it was possible for the Court to be composed of different judges for the preliminary objection and for the substance of the affair.

The CHAIRMAN thought that the provision might be left as it stood in the existing Statute.

M. RAESTAD observed that, in that case, it would be the Court which would decide whether a judge was seized of a case and asked whether, after the new election, it would be for the old Court which had already been seized of a case or for the new Court to take this decision.

The CHAIRMAN observed that the decision would be taken by the new Court since the old one would have ceased to exist. In any case, in his opinion, it was not the individual judges but the whole Court that was seized of the cases that came before it.

M. RAESTAD said, after reading the third paragraph of Article 13, that that paragraph applied to the individual judges and not to the whole Court.

M. POLITIS thought that the paragraph applied to the case of a judge who had not yet been replaced ; for example, if at the time of the new election to be held in September 1930 the Court had held over its decision regarding a case with which it had dealt in the previous summer, and if all the retiring judges were re-elected with the exception of two, all those who had been elected would continue to take part in the proceedings, with the exception of the two new judges.

M. ANZILOTTI took the following illustration : If a judge fell sick or was for any reason exempted from attendance after the hearing of a case had begun, he could not be replaced by another judge for the remainder of the hearing of that case.

Article 16.

M. FROMAGEOT pointed out that this article dealt with the question of the disabilities of judges. He proposed the acceptance of the following principle :

> " The members of the Permanent Court shall devote themselves exclusively to this high function and may not exercise any other functions. It shall not, however, be incompatible with this provision for them to be members of the Permanent Court of Arbitration under the Convention of 1907 or to sit as arbitrators under the terms of a submission to arbitration or a convention. "

The second sentence of the first paragraph should be deleted in consequence of the abolition of the deputy-judges.

The CHAIRMAN thought that there was an objection to the proposal to allow a judge to serve on the Permanent Court of Arbitration, since it was possible that a case which had been submitted to that Court might later come before the Permanent Court of International Justice as the result of an appeal.

M. POLITIS observed that it would hardly be possible for a judge who had already heard a case in the Permanent Court of Arbitration to sit as a judge in the Permanent Court of International Justice for the hearing of the same case.

Mr. ROOT thought that M. Fromageot's proposals might give rise to a somewhat dangerous situation. The Committee had already agreed upon certain new restrictions to the conduct of those who accepted election to judgeships in the Permanent Court, the intention of those restrictions being that the judges should devote themselves entirely to the Court's work as, indeed, they might very properly be expected to do. Moreover, it had been agreed that the judges should be in a position to reach The Hague at very short notice and that the duration of their vacations should be decided by the Court.

Though Mr. Root had nothing against the above provisions, he had accepted them with

impose on the judges of the Court, would deprive the Court of many men whose services it most needed. The original provision had been quite clear, but the additional words proposing a test applicable to the conscience of those persons who were asked to serve on the Court — and the judges would naturally apply that test in the broadest possible way — might have the effect that many men, when asked to accept a judgeship, would say that they could not thus exclude themselves from all the activities of life. In Mr. Root's opinion the Court needed men of that calibre more than they needed a position in the Court. Supposing it were desired to find an American to take Mr. Hughes' place in the Court, Mr. Root feared that the kind of man who would be willing and competent to serve would think that in accepting these restrictions on his liberty, he was returning to a state of tutelage resembling that of a schoolboy.

M. FROMAGEOT fully appreciated the wisdom of Mr. Root's observations. He thought thatp erhaps the principle. as he had formulated it, went further than the idea he had in mind. He had not meant to suggest that the judges should be entirely excluded from all other activities, but he considered it inadmissible that, when a man had accepted a judgeship, he should continue to follow in his own country another profession such, for example, as that of lawyer. These remarks also applied to education. If a professor, appointed as a judge, were at liberty to continue lecturing and to develop in this way his views and his doctrines, his decisions would be prejudiced in advance. It would be known that in such-and-such a case he would decide in such-and-such a way. His impartiality and his independence would be compromised. To be a magistrate or an educationalist were two different forms of activity. Both were worthy of respect. A choice might be made between the two, but the two offices must not be held at the same time.

The CHAIRMAN asked whether a man who had written a book on international law was to be excluded from the list of candidates ?

M. FROMAGEOT thought it was difficult to compare this case with the others since the writing of a book was not a professional occupation. When a man had been appointed a judge of the Permanent Court, his only profession should be that of judge of the Court.

The CHAIRMAN enquired whether the judge would be allowed to deal with the business of the League of Nations.

M. FROMAGEOT said that M. Gaus had drawn his attention to the case of Conciliation Commissions. It would be dangerous to allow a judge of the Court to serve on a Conciliation Commission, if the cases submitted to those Commissions had later to come before the Court. A judge's independence was the basis of his impartiality ; if he were not completely and obviously independent, his impartiality might be compromised.

M. Fromageot had already cited the case of the legal profession, which was a perfectly respectable profession but which did not appear to him to be compatible with the holding of a judgeship in the Permanent Court. He was, however, in the Committee's hands ; if the Committee thought that the remedy was worse than the evil, it must obviously reject it.

Dr. RUNDSTEIN did not think that it could be held that it was incompatible for a judge to hold an honorary professorship at a university. If, for instance, a judge had previously been a professor, there should be no obstacle to his giving lectures on the work of the Court. Furthermore, the services of an honorary professor were not remunerated.

Mr. ROOT said that he did not so much object to any particular wording in M. Fromageot's proposal as to the inclusion in it of anything that might seem to carry with it a feeling of suspicion or distrust that the people who were to be asked to render this service of a judge of the Court needed to be treated like children and instructed in their duties. The kind of man required for the Court might perhaps unconsciously resent the idea that he could not be trusted to conduct himself in accordance with the requirements of his office.

M. Fromageot's proposal might therefore perhaps require redrafting in order to obviate any indication that the judges might not abide by the standards of conduct expected of them.

M. URRUTIA thought that the changes of system which had already been adopted would suffice. It would be found, in practice, that a judge would be obliged to devote the whole of his time, except his holidays, to the work of the Court. M. Urrutia held the same views as Mr. Root. Any modification in the present system wherely residence at The Hague would be obligatory would entail more serious disadvantages than the possible advantages to be anticipated. In view of the large volume of business which the Court might in future expect, it would be quite impossible for a judge to bind himself to the exercise of any other profession such as that of teaching.

M. Urrutia had been greatly impressed by Mr. Root's observations and reminded the Committee that, at the time when the Statute was first drawn up, there had been a very lively discussion on this particular question both in the First Committee of the Assembly and in the Assembly itself. That showed how difficult the question was to solve. M. Urrutia would therefore prefer to leave things as they were, and he considered that the Committee should content itself with the changes it had already made.

that of the actual facts. As regarded the first point, there were obviously certain posts which were, as such, incompatible with the holding of a judgeship. Thus, the Statute had laid down that no ordinary member of the Court might exercise any political or executive function.

As regarded the second aspect, however, there were circumstances which might make the exercise of a function which, in itself, was compatible with that of a judgeship on the Permanent Court, incompatible in fact. For instance, a judge who conscientiously discharged his duties to the Court might possibly not have time to carry on any other form of activity, and, that being so, M. Huber agreed with Mr. Root that the question might be left to the conscience of the individual judges. He understood that Mr. Root thought that the Committee should not define too precisely the things which a judge might or might not do, since the question would be found to solve itself owing to the fact that a member would be required to spend most of his time at The Hague, and hence would not be free for other work.

As to the question of a judge serving on a court of arbitration, it was true that there was not necessarily any incompatibility in such service from a moral point of view, but arbitration cases usually demanded much time, and the work of the Court should come before any other functions whether compatible or incompatible with that work.

M. Politis thought that the Committee must devote its most serious attention to this question which was of capital importance, and which involved both the credit of the Court and the prestige of international justice. As his professor of law had frequently said, justice must not only be just, it must also appear just.

It had been said that confidence must be reposed in the judges. There were two observations to make in that connection. In those countries where justice had been organised for centuries traditions had grown up, and the judges knew that there was a strict obligation upon them not to take part in any activity which might be incompatible with their magistracy either in fact or morally. No such traditions existed in regard to international justice. That, however, was not the only difference. In the national courts of justice, the magistrate or judge had a career before him. In international justice, however, that stage had not yet been reached. The appointments were only temporary, although they might of course be renewed. The result was that an appointment to the Permanent Court might be offered to a man who was in the full course of his social or national activity. Such a man would serve for nine years at the Court, and on the expiration of that period he might find it impossible to take up again the position he had previously occupied in his own country. The ideal position of course would be to place the international judges on a footing of equality with the national judges and to make their appointments for life. That, however, was impossible in existing circumstances. It would necessitate a radical amendment in Article 13.

M. Fromageot observed that such an amendment affected also the observations he had made regarding Article 16.

M. Politis agreed. Continuing, he wished to make two proposals to meet the difficulties to which he had drawn attention. First, the period of appointment should be increased from nine to twelve years, with the hope that, in future, it would be found possible to go even further and to appoint the international judges for life. The adoption of a twelve-year period would do much to remedy the present situation, since, after serving twelve years on the Permanent Court, the great majority of the judges would have arrived at the period of life at which they would wish to retire from active work. Secondly, he would propose that judges should be given a pension which would carry with it an assurance that they would be able to keep up the honourable position they had earned when they retired to their own countries.

If these proposals were accepted, the material position of the judges would be assured and it would then be quite logical to introduce in Article 16 a provision to the effect that a judge should exercise no other profession or occupation than that of a judge of the Court. Meanwhile, it might be possible to make a stipulation that in the exercise of any profession or any function the judges of the Court should not be called upon to give opinions which might in any way be connected with the business of the Court.

Mr. Root suggested an addition to M. Fromageot's proposal so that it would read :

" Members of the Court may not exercise any political or administrative function or other professional employment. "

M. Fromageot readily accepted Mr. Root's amendment.

M. Ito asked for an explanation. When a national group had to recommend a candidate for a judgeship, it naturally attempted to find the man who had the best chances of being elected. Such a man would probably be one whose services would always be wanted in his home country. If therefore the conditions as to disability were made too severe, the national groups would have great difficulty in nominating a man who otherwise could be employed in his own country. M. Ito therefore considered M. Fromageot's first draft to be too severe, and he was glad to note that he had accepted Mr. Root's amendment.

of such functions exclude a candidate from the possibility of election ? The national groups at any rate might possibly feel some doubts as to the utility of putting forward his name. M. Ito therefore thought it inadvisable to make any hard-and-fast rule but that it would be better to leave the matter to the conscience of the individual judge.

Jonkheer VAN EYSINGA thought it necessary to bear in mind the observation which had been made by Mr. Root and which had led to the amendment which M. Fromageot had accepted. The difficulty had been greatly lessened by the fact that the Committee had already accepted an amendment to Article 23 by which the judges would be obliged to devote the whole of their time, except their vacations, to their work at The Hague. If the Committee accepted Mr. Root's amendment to M. Fromageot's text, doubtful cases, one of which had been mentioned by M. Ito, might nevertheless arise. In this connection, M. van Eysinga would point out that in the second paragraph of Article 16 as at present drafted there was a provision stating that doubtful cases were to be settled by a decision of the Court.

M. van Eysinga wondered whether certain decisions had already been taken in such cases by the Court. Without wishing to go into details, he would ask the President of the Court whether he could give any general information on the point. Did the President of the Court think that, in the various cases that had occurred, the Court had reached an entirely satisfactory result from the point of view of the provision that members should not carry on other occupations which might hamper their work as judges ? If the President's answer were in the affirmative, the Committee would have greater liberty of action, since it would be seen that, in those cases of doubt which had arisen, the Court had succeeded in settling them satisfactorily.

M. ANZILOTTI was unable to say that the application of the existing system had, so far as he knew, given rise to any difficulties or disadvantages. The case had never yet occurred where a judge had refused to discharge his duties on the ground of other professional occupations.

M. RAESTAD reverted to the point made by M. Politis with regard to the assimilation of national and international judges. There would always be a great difference in the status of the two categories of judges, as long as the individual States continued to exist. In the present state of the world it was very rightly laid down that the judges must represent the different forms of civilisation. Hence it was desirable for judges to preserve, to a certain extent, their connections with their country of origin ; by working in one way or another a man was best able, as a rule, to maintain his connection with his country. It was probably in order to be able to maintain a Court composed of judges who retained some connection with their home country that the limited term of appointment had been originally adopted.

M. Raestad considered that there was every reason for thinking that in practice the question would settle itself, and that therefore there was no need to make any change in the article (except to suppress the reference to the deputy-judges), especially in view of the new system which the Committee had already adopted as regards the composition and working of the Court.

M. FROMAGEOT then submitted the following proposal for the redrafting of Article 16 :

Article 16, paragraph 1 :

1. Add the following words at the end of the first sentence : " *nor engage in any other occupation of a professional nature* ".

2. Delete the second sentence.

The above proposals were adopted.

M. URRUTIA said that he had certain amendments to move in connection with Article 14. He would reserve his right to present them in connection with those which had been adopted in regard to Article 16.

M. FROMAGEOT considered that M. Politis' suggestions in regard to the duration of an appointment deserved careful consideration. An extension of the terms of appointment would be calculated to allay certain legitimate anxieties, but it would raise some delicate questions.

The CHAIRMAN thought that M. Politis' proposal raised a very complicated question. If, for instance, a judge was appointed at a fairly advanced age, he might be past all work before he reached the time-limit of his appointment.

M. POLITIS considered that the question was, nevertheless, of great importance and deserved serious attention. While he fully appreciated the wisdom of the Chairman's observation, he would be glad of an opportunity to offer further comments at a later meeting. In any case, the Committee should consider his second proposal, that of a pension.

The CHAIRMAN thought that this question hardly came within the purview of the Committee but rather of those who held the purse-strings. He thought that the remedy was contained in the Statute as it stood at present. If a judge was still young enough at the end of his nine years' term of office and if he had given proof of his ability to discharge his duties, he would almost certainly be re-elected. If, on the other hand, he was too old or incapable, his appointment would not be renewed.

EIGHTH MEETING.

Held on Thursday, March 14th, 1929, at 4 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

14. **Question of the Revision of the Statute of the Permanent Court of International Justice** (continuation).

Article 13 (continuation).

M. URRUTIA had an amendment to propose in regard to the resignation of judges. A case had recently arisen in which a judge had resigned, his resignation being forwarded to the Secretary-General. No procedure, however, had been laid down as to the action to be taken by the Secretary-General in such circumstances. In the case in point he had wisely submitted the resignation to the Council and to the Assembly. The Council had accepted it provisionally, subject to its acceptance by the Assembly. In view of the fact, however, that the vacancy had to be filled at the annual session of the Assembly, the Secretary-General had sent notice of the resignation immediately to all the national groups concerned, with a request that they should submit a list of candidates. This procedure had made it possible to carry out the election without delay, but the matter should be definitely settled by laying down rules in the Statute to govern the action of the Secretary-General in similar cases. The Secretary-General should be empowered, on receipt of the resignation of a judge, to notify the national groups immediately, for it was not, so M. Urrutia thought, legally necessary for such a resignation to be accepted by the Council and by the Assembly. He would therefore propose the following amendment :

> " In the case of the resignation of a judge, the resignation shall be sent to the Secretary-General, who will carry out the notification provided for in Article 5. "

Jonkheer VAN EYSINGA said that, as a general rule, a resignation was only tendered after due reflection. There were, however, cases in which an individual might wish to withdraw it. He thought, therefore, that there would be a certain advantage in adopting a procedure whereby all resignations of judges should be submitted to the organs which had elected them, that was to say, to the Council and to the Assembly. In certain cases, the Council might wish to urge the individual judge who had resigned to reconsider his decision. M. Urrutia's proposal seemed to be too automatic and left no loophole. M. van Eysinga would therefore prefer that the Council should take provisional note of a resignation. It was true that such cases would be rare, but they should not be forgotten.

M. URRUTIA said that there was a practical objection to the proposal of M. van Eysinga. Experience showed the difficulties attendant on a resignation and a consequent new election. If, for example, a judge resigned in April or May, that resignation would come before the Council in June and it would not be possible for the Secretary-General to fulfil the stipulations of Article 5 and to notify the national groups in time for the election of a new judge to take place at the Assembly's session in the following September. A delay, therefore, of over a year would occur. It was in the general interest that all resignations should be regarded as final from the outset. The same procedure, in fact, should be followed with regard to resignations as was followed in regard to the death of a judge.

Jonkheer VAN EYSINGA pointed out that the Council was not necessarily obliged to accept a resignation in respect of a duty which had been accepted for a period of nine years. All that need be required would be an exchange of correspondence, which would not waste very much time. He urged that in every walk of life there were men who took a decision and afterwards withdrew it. For that reason an automatic guillotine should not be erected.

M. ANZILOTTI suggested a middle course. Could it not be stipulated that the resignation of a judge should be notified to the President of the Court, so that the President could, if it were considered desirable, take steps to induce the judge to withdraw his resignation ?

The CHAIRMAN thought that the proposal of M. Anzilotti would meet the objections of M. van Eysinga and would not affect the substance of M. Urrutia's amendment.

M. URRUTIA accepted the proposal of M. Anzilotti.

Sir Cecil HURST agreed with M. Anzilotti, provided that it was quite understood that a judge could resign of his own right without it being necessary for his resignation to be formally accepted by the Assembly or the Council. He should not be required to wait until his resignation had been accepted by one or other body before taking his departure.

M. URRUTIA agreed with Sir Cecil Hurst.

The CHAIRMAN was prepared to accept the original proposal of M. Urrutia. If judges resigned, their resignation should be regarded as final. In view of the general feeling of the Committee, however, he was prepared to accept the proposal of M. Anzilotti.

The proposal of M. Urrutia, as amended by M. Anzilotti, was adopted in the following form :

" In the case of the resignation of a member of the Court, the resignation shall 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. "

Sir Cecil HURST, in accepting this proposal, pointed out that it implied that a judge could resign of his own right.

Article 17.

M. FROMAGEOT proposed to delete the first paragraph of Article 17, since it had now become superfluous owing to the decisions of the Committee with regard to Article 16.

M. GAUS doubted whether this was the case. If a member of the Court acted as counsel in one particular case only, he could not be said to be exercising the profession of counsel or advocate.

M. FROMAGEOT thought that, if there was any doubt about the matter, it would be better to leave the first paragraph of Article 17 untouched.

The CHAIRMAN considered that if a member acted as counsel or advocate only on one occasion, Article 17 would not apply. Only persons who actively followed the profession of counsel or advocate were debarred.

M. RAESTAD pointed out, more particularly, that the discharge of the duties of agent had not necessarily a professional character.

M. FROMAGEOT did not wish to insist on his proposal.

Sir Cecil HURST thought that there was a divergence between the French and English texts. The wording of the English text seemed safer and should be maintained.

After a short exchange of views, *it was decided* to maintain the first sentence of Article 17 and to delete the remainder of the first paragraph, which should read as follows :

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

Articles 26 *and* 27.

M. URRUTIA desired to draw the attention of the Committee to a possible difficulty in connection with Article 27. By the terms of that article, " the Court will appoint every three years a special chamber of five judges . . . When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors. . . "

Article 35 of the Rules of Procedure of the Court defined the procedure of the Court in regard to such special chambers. It was stipulated that " should the notice of a special agreement, or the application, contain a request that the case be referred to one of the special chambers mentioned in Articles 26 or 27 of the Statute, such a request shall be complied with, *provided that the parties are in agreement* ".

The deduction to be drawn from the provisions of the articles and from the wording of the Rules of Court was that, even if the parties were in agreement, the ordinary procedure was to be substituted for the summary procedure. That, however, did not seem, in the view of M. Urrutia, to be what had really been intended. He thought that the special procedure could be applied if the parties were in agreement, but he would like the views of the President and ex-President of the Court on the point. The matter had been discussed by the Legal Committee of the Organisation for Communications and Transit, which had expressed the wish that the position should be made quite clear, for it was often very important to have disputes connected with transit matters settled as quickly as possible.

M. Urrutia had been informed that no recourse had as yet been made to any special chamber, but that the dispute had always been settled by the full Court. Was this the case ?

M. ANZILOTTI replied in the affirmative. No special chambers had as yet been called upon to deal with any cases of the kind mentioned in Articles 26 and 27. He also considered that the present Statute precluded recourse to the Chamber of Summary Procedure for cases to which the above-mentioned articles applied. It was in this sense that the Court had interpreted the Statute in the last paragraph of Article 35 of the Rules.

M. URRUTIA thought that in that case some amendment was necessary. Even if the parties agreed, the case could not be brought before the Chamber of Summary Procedure.

Sir Cecil HURST desired to give the history of Articles 26 and 27. The original draft of the Statute of the Court contained no such articles. They had been introduced as a result of a British proposal, but that proposal itself had been amended before the articles had assumed their present form. By the Treaty of Versailles, the Permanent Court had been granted a

measure of obligatory jurisdiction in disputes under Parts XII and XIII of the Treaty. The British Government had desired all such disputes to come before special chambers and had consequently made proposals to that effect. Its view at the time had been that there would be a sufficiently large number of such cases to warrant the creation of special chambers in which judges conversant with such matters would sit. Experience now showed that this was not the case.

At a late stage in the drafting of the Court's Statute, the Assembly had adopted the British proposal, but had made an important change. The establishment of special chambers was not to be compulsory but optional, which meant that labour and transit disputes only went before special chambers if the parties so desired. The assumption that there would be a large number of such disputes had not proved correct. He understood that only four cases concerned with labour and one concerning transit had arisen and that these had all been dealt with by the full Court.

M. HUBER said that M. Urrutia was right in thinking that some labour or transit cases should be dealt with by special chambers, but only if the parties agreed. If they did not agree to accept the ruling of the five judges composing such a chamber, they would probably be less likely to agree to the ruling of three judges. He did not think that the maintenance of the present text would give rise to difficulties.

M. URRUTIA pointed out that the Rules of the Court prevented one party from claiming a special procedure. His point would be met if the words " provided that the parties are in agreement " were deleted from Article 35, paragraph 3, of the Rules of Court.

Jonkheer VAN EYSINGA pointed out that the terms of Article 27 : " If the parties so demand, cases will be heard and determined by this chamber ", justified the terms of Article 35 of the Rules of Court. It would not be sufficient, therefore, merely to amend Article 35 of the Rules ; an amendment should also be made in Articles 26 and 27 of the Statute. A provision should also be included which would make it possible to apply the summary procedure in matters concerning labour and transit, if the parties so desired.

Otherwise, the phrase : " In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25 ", occurring in paragraphs 2 of Articles 26 and 27 excluded the summary procedure.

M. ANZILOTTI thought it would not be difficult to make the necessary amendment. All that was required was to stipulate that the summary procedure should be applied if the parties so requested.

Jonkheer VAN EYSINGA said that a provision should also be included for the appointment of national judges *ad hoc*.

M. ANZILOTTI, referring to the doubts expressed by M. van Eysinga regarding Articles 26 and 27, observed that it would be sufficient to replace in those articles the words " will sit with the number of judges provided for in Article 25 " by the words " will sit in full session " ; this would, in fact, include the national judges provided for in Article 31. To ensure the presence of the national judges in the three special chambers it would perhaps be desirable to add a paragraph to that effect in Article 31.

M. RAESTAD pointed out that Article 26 contained the provision that " on all occasions " the judges should be assisted by four technical assessors. It did not seem possible for the Chamber of Summary Procedure to be assisted by such assessors.

(On the proposal of the CHAIRMAN, the Committee adjourned for as hort time to enable the text of an amendment to Articles 26 and 27 to be prepared on the lines of the suggestions of M. Anzilotti.)

When the meeting was resumed, the following modifications to Articles 26 and 27 were submitted :

Article 26.

1. Replace the sentence " In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25 " by :

" *In the absence of any such demand, the Court shall sit in plenary session.* "

2. Add the following paragraph at the end of Article 26 :

" *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.* "

Article 27.

This article to be amended in the same way as Article 26.

M. RUNDSTEIN suggested that the provisions of paragraph 4 of Article 31 should be embodied in an additional paragraph to Articles 26 and 27.

M. HUBER thought that it would be more convenient if paragraph 4 of Article 31 were to form a separate article which would apply to Articles 26 and 27.

M. ANZILOTTI said that, so far as he knew, there had never been any doubt that the principle formulated in paragraph 4 of Article 31 applied also to the special chambers.

THE CHAIRMAN thought it was clear that Article 31 had a general application.

Article 29.

M. RAESTAD recalled that the summary procedure of the Court had hitherto been little used. He wondered whether that was not due, at least in part, to the fact that no provision had been made for the attendance of national judges. On the other hand, at the time when the number of judges was increased from 11 to 15, the number of judges composing the Chamber of Summary Procedure might also be increased. Might it not be advisable to provide in the summary procedure for the attendance of national judges as in the procedure adopted for the special chambers under Articles 26 and 27 ?

M. ANZILOTTI said that the question of admitting national judges to the Chamber of Summary Procedure had been discussed at The Hague. The conclusion had been reached that the introduction of national judges would be inconsistent with the character and object of the summary procedure and interfere with its rapidity.

M. POLITIS supported the suggestion of M. Raestad. He did not think that the addition of national judges to the Chamber of Summary Procedure would be likely to prolong the proceedings. It might, on the contrary, even facilitate their progress.

The CHAIRMAN said he was not surprised that the summary procedure had not been used to any very great extent in the first years of the existence of the Court. The parties which had appeared before the Court were States which naturally desired that there should be a certain solemnity in the proceedings of the Court and that its judgments should carry as much weight and prestige as possible. The judges who attended the Court also very naturally preferred a more impressive procedure. He thought it would be better to leave Article 29 as it stood. The parties would realise the advantages of the summary procedure when the cases before the Court began to increase in number and its jurisdiction began to be more commonly exercised.

M. FROMAGEOT agreed with M. Raestad and M. Politis. He did not think there was anything in the text of the Statute which was inconsistent with the presence of national judges in the Chamber of Summary Procedure. The institution of national judges had been criticised, but it existed with its advantages and disadvantages. In any case, it might be said that the presence of national judges served as a guarantee for the parties not only from the point of view of the deliberations of the Court but also for the preparation of the awards. A national judge, while of the same opinion as the other judges of the Court, might be able to render an unfavourable decision more acceptable for his country by assisting his colleagues to draft it in terms which would avoid giving unnecessary offence, which the Court might involuntarily do in the absence of a national judge.

He did not see any serious reason why the same arguments in favour of national judges should not apply to the summary procedure as to the procedure followed in the plenary Court or in the special chambers for labour and transit questions. He did not think that the participation of national judges would lead to delay.

M. ANZILOTTI said that, personally, he had always been in favour of admitting national judges to the Chamber of Summary Procedure and had voted in favour of that course. The Court, however, had taken a different view. Care had been taken, in constituting the special chambers for transit and labour questions, that the admission of national judges should not, increase the total number of judges sitting in those chambers. Paragraph 3 of Article 26 and of Article 27 had been introduced for that special purpose. If national judges were admitted to the summary chamber, either the number of judges would have to be increased or, if two of the three judges retired in favour of national judges, there would be a majority of national judges. That would hardly be a desirable arrangement. The Court had accordingly decided that national judges should not be admitted.

M. RAESTAD asked whether there was any objection to increasing to five the number of judges in summary cases and admitting national judges in the same way as they were admitted to deal with labour and transit questions under Articles 26 and 27.

Sir Cecil HURST asked M. Anzilotti whether he thought that the summary procedure was likely to prove more useful if the Court consisted of five rather than of three members and if national judges were admitted.

M. ANZILOTTI said it was possible that, in this case, the Chamber of Summary Procedure would be a more useful institution.

Jonkheer VAN EYSINGA said that he was in favour of the proposal of M. Raestad to increase the number of judges to five, as that arrangement would enable the original suggestions of M. Raestad and M. Politis to be carried into effect. The Court would then consist of three neutral and two national judges, the ideal proportion so often advocated by Louis Renault.

M. POLITIS warmly supported the proposal of M. Raestad. In his view the presence of national judges was essential. Personally, he would never again recommend his Government to adopt the summary procedure unless national judges were admitted to the summary chamber.

The CHAIRMAN said that personally he would exclude national judges from the Court in all cases and particularly in cases where the Court consisted of a small number of members. The influence of a man of talent upon a small group was immense and, if national judges were admitted, the decision of the Court might often be the result of a conflict of ability between the national judges on the Court, a conflict in which the Government possessing the most able representative would prevail. The very essence of justice was impartiality, and it was an illogical proceeding to constitute a tribunal in which special views or interests would necessarily have influence. Strict impartiality, however, was perhaps, at the moment, an unattainable ideal.

M. FROMAGEOT pointed out that to secure the proposed amendment it would only be necessary to add a paragraph to Article 31 to the effect that its provisions applied to Article 29 as well as to Articles 26 and 27. The special reference to the introduction of national judges in Articles 26 and 27 could then be suppressed.

Jonkheer VAN EYSINGA said that, as he understood the proposal, there would be five judges in the summary chamber. If only one party were represented in the chamber, one of the judges would retire in favour of a national judge. If neither were represented in the chamber, two of the parties would retire in favour of a national judge. If both parties were represented in the chamber, no one would retire.

M. FROMAGEOT agreed that the object of the amendment would be to ensure that in each chamber there should be three neutral and two national judges.

After some further discussion as to the form to be taken by the amendment, *it was decided* on the proposal of M. POLITIS to suppress paragraph 3 of Articles 26 and 27 and to add to Article 31 a paragraph providing for the introduction of national judges into the special chambers mentioned in Articles 26, 27 and 29.

It was further decided that the judges mentioned in Article 29 should be five in number.

Article 31.

M. FROMAGEOT said he desired in connection with Article 31, to raise a point which had already given rise to considerable discussion. The question of the admission of national judges was closely related to the question of the manner in which the decisions of the Court should be rendered and published. Those decisions were at present given in accordance with Articles 56, 57 and 58. Under those provisions the judgment stated whether it had been taken by a majority or unanimity vote. It stated the judges who had formed the majority, and the judges whose opinions had differed had the right to express a separate opinion.

There was another method on behalf of which very strong arguments might be advanced. The decisions should, in his opinion, be regarded as decisions of the Court, and not as representing the views of its individual members. The present procedure placed the national judge in a difficult position vis-à-vis his Government which had specially appointed him, when he expressed an opinion precisely against that Government. Was it wise to put his independence to such a test ?

It was clear that the duty of a judge of the Court was to judge according to his conscience and not in accordance with the interests of his country, and there was a risk that the authority of the national judge would be greatly weakened if he could be regarded as being merely an advocate of his Government. A national judge who knew that his opinions would be published might easily be led to defend his Government instead of judging it. The fact that his attitude during the deliberations of the Court would be publicly declared exposed him, if he decided against his country, to the remonstrances of his Government. Was it reasonably possible always to count on the necessary independence of judgment and firmness of character ?

He felt that, in this connection, the manner in which the decisions of the Court were taken should be considered. In his view, all references to the manner in which a decision had been reached, whether unanimously or by a majority, should be suppressed, and the judgment should be given in the name of the Court alone, so that the Governments would not know of the attitude of their national judges. The latter would then be able, in full liberty and independence of spirit, to serve the course of justice.

The publicity given to the manner in which decisions had been reached and thereby to the deliberations of the Court, as well as the publication of the dissentient opinions, did not enhance the authority of the Court. The situation was different as regards domestic jurisdiction. Judges in such a case had no relations with the parties. In international jurisdiction the judges were involuntarily prompted not entirely to dissociate themselves from the States parties to the case, when they had been specially appointed by them.

Sir Cecil HURST said that he must strongly oppose the proposal put forward by M. Fromageot. The effect of that proposal would be to destroy the Court. There was in several continental countries a system which did not admit of the publication of dissentient judgments, but in international affairs it was impossible to regulate procedure in accordance with the practice of individual States.

He would point out that the procedure to be followed in international arbitration had not been regulated for the first time in the Statute of 1920. That procedure had been discussed in 1899 at the first Peace Conference at The Hague, which had set up the Permanent Court of

Arbitration. The principle had then been admitted that arbitrators should be allowed to express dissentient opinions. The matter had again been considered in 1907 at the second Peace Conference with the same result. The question had been again discussed in 1920 by the Committee of Jurists at The Hague, and it had been again decided that individual judges should be allowed to express their views. It was now being proposed to abandon this system.

Such a proposal was particularly untimely, in view of the fact that an endeavour was now being made to make it possible for the United States to adhere to the Protocol. This was not the moment to make a proposal which would revolutionise the whole system of procedure as practised in countries which had adopted the British practice. The effect would be most unfortunate in Great Britain and the Dominions.

The arguments put forward by M. Fromageot were strong arguments for excluding national judges from the Court on the ground that they would have insufficient courage to take a decision against their own countries. These arguments, however, did not apply to neutral judges. The views of distinguished judges who happened to be in a minority were as important to the building-up of an international system of law as the views of the majority. It would certainly not be admitted in Great Britain that the views of dissentient judges were of no value in the development and strengthening of the law of the country.

Mr. ROOT said that he also felt very strongly that a change in the procedure at present followed would be a serious mistake, and he hoped that M. Fromageot would not press his proposal. The convenience or desires of the national judges of the Court and their relief, to some extent, from the very serious responsibilities involved by their position were small matters in comparison with the preservation of the existing procedure.

The methods of diplomacy were at present being gradually modified in the direction of a greater publicity. It was impossible to ignore the overwhelming evidence which existed of this change in the public mind towards government affairs. The principle of greater publicity was being almost unanimously applied to the conduct of business in courts of law and in executive and legislative bodies. There was at present a wide public interest in political affairs in the broadest sense of the term, and it was impossible to oppose this development.

If there were no official and authentic publication of the views and arguments which underlay the judgments of the Court, there would inevitably be private and secret disclosures. No member of the Court would consent to rest under an imputation of acquiescing in views which he did not hold, and the judges would naturally defend themselves in private. The value of the Court, in his opinion, resided in the respect and authority secured for its judgments, and that respect and authority could not be founded on any suppression of the facts. The suppression of dissentient opinions would, in his view, be disastrous. He sympathised with the arguments which M. Fromageot had brought forward, but regarded them as of slight importance in comparison with the wider interests of the Court.

Jonkheer VAN EYSINGA said that the possible withdrawal from the Court of countries which had adopted the Anglo-Saxon system would be too high a price to pay for the amendment which M. Fromageot had suggested. Personally, he appreciated the full force of the arguments of M. Fromageot, but felt that the Committee could only resign itself to retaining the present system.

Sir Cecil Hurst had urged that the present system was the result of long discussion and reflection over a long period. There was one point, however, in which Sir Cecil Hurst had appeared to be mistaken on a question of fact. In 1907, after long discussion, it had been decided by the representatives at The Hague to exclude the reports of dissentient arbitrators, and the contrary thesis had only been restored during the discussions on the Statute of the Court.

Sir Cecil HURST apologised for having made an error in fact in his allusions to the discussions of 1907.

M. POLITIS said he had always been greatly impressed by the manner in which awards were rendered by arbitrators in the English-speaking countries. The influence of that system on the development of law had been greater than that of the continental system. In the interests of the building-up of an international jurisprudence there was no doubt that the publication of dissentient opinions was of immense value. When, nine years ago, the recommendations of the jurists at The Hague had been discussed by the Assembly during its first session, he had felt some hesitation in accepting the Anglo-Saxon system, and he had finally agreed to that system in a spirit of conciliation. Since then, however, he had watched the working of the Court, and he had noted the value and importance of dissentient opinions, so much so that if, by chance, representatives of the Anglo-Saxon countries were to ask for their suppression, he would feel obliged to oppose the suggestion, because, in his view, those opinions were of immense advantage to international law.

The value of a decision of the Court varied according as it was taken by a unanimous or majority vote, and it was essential that the public should know of this fact. The duty of the Court was not merely to settle disputes brought before it. It should establish a jurisprudence based only on the opinions of the judges. It was important to be in a position to know and to appreciate the motives which had influenced all the judges, those in the majority as well as those in the minority. The publication of these divergent opinions enabled observers to appreciate the scope and scientific value of the judgments.

There was another argument in favour of the publication of dissentient opinions. A Government which lost a case might find some consolation in knowing that the Court had been

divided and that dissentient opinions in accordance with its own views had been expressed. The publication of such opinions would show, at any rate, that the Government had not been quite wrong in bringing the case before the Court.

M. HUBER said that within the Court itself there had been a very distinct divergence of views on the subject. Arguments had been put forward both for and against the publication of dissentient opinions. In 1922 the Court had felt a certain reserve in dealing with this subject. In 1926, however, the Court had expressed itself as definitely in favour of developing the system of dissentient opinions. In the revised Rules of Court, it was not only laid down that the judgments and advisory opinions should state the reasons on which they were based, but should mention the number of judges constituting the majority. These provisions had been laid down in the conviction that it was necessary to inform the public of the truth and to avoid the appearance of unanimity or almost unanimity which did not exist. As the publication of dissentient opinions was optional, judges might hesitate, although not in agreement with the decision, to attach their dissentient opinions to the judgment. In these circumstances, the absence of dissentient opinions or a great reduction in their number might give rise to the erroneous idea that the judgment represented the opinion of all the judges or of the great majority. The authority of the Court could only be increased by the whole truth.

He was not revealing any secret in stating that M. Anzilotti and he himself had, during the discussions of this question in the Court, when it had drafted and revised its Rules, supported the publication of dissentient opinions. The Court had considered that the publication of such opinions not only had all the advantages to which M. Politis had referred, but that the possibility of the publication of those opinions made it necessary for the Court to examine very carefully the different points of view brought forward by the judges, and to state clearly the reasons for its awards. The Court had also felt that the possiblity of publication was a guarantee against any subconscious intrusion of political considerations, and that judgments were more likely to be given in accordance with the real force of the arguments submitted. He felt that it was essential to retain the right of individual judges to publish their views, and he would urge that this right was an essential condition for the exercise of their liberty of conscience and their impartiality.

The CHAIRMAN said it was obvious from the discussion that had just taken place that the views of the various members were largely determined by the national and legal traditions in which they had been trained. There was on one side the Anglo-Saxon and, on the other side, the Latin tradition. He did not think the Committee should discuss this question at any length. It was not, in practice, possible to change the present system. Circumstances made it necessary to abide by the procedure in force, and the general tendency at the moment in all departments of public life was in the direction of greater publicity. The arguments put forward by M. Fromageot were theoretically excellent, but could not be taken as a basis for a constructive proposal.

M. FROMAGEOT said that for the reasons given by M. van Eysinga, he would not insist upon his proposal, if it might result in the withdrawal of Great Britain and make the accession of the United States more difficult.

NINTH MEETING.

Held on Friday, March 15th, 1929, at 10.30 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

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

Articles 26 *and* 27 (continuation).

M. URRUTIA, reporting on the amendments considered by the Committee at its previous meeting, read the following text of the amendments proposed to Articles 26 and 27 :

Article 26.

1. Replace the sentence " In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25 " by " *In the absence of any such demand, the Court shall sit in plenary session* ".

2. Omit paragraph 3.

3. Add the following paragraph at the end of Article 26 :

" *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.* "

Article 27.

This article is amended in the same way as Article 26.

Jonkheer VAN EYSINGA wondered whether these amendments, which also concerned the Organisation on Communications and Transit and the International Labour Organisation, might be submitted to those two organisations for approval. He thought that such a course would be specially convenient since the Advisory and Technical Committee on Communications and Transit was at present in session at Geneva. He therefore suggested that the Committee and the Director of the International Labour Office should be asked whether they agreed with the amendments which M. Urrutia had just read.

M. POLITIS supported M. van Eysinga's proposal, provided that a reply could be received within a very short time.

Article 31.

M. FROMAGEOT observed that the drafting of this article gave rise to certain difficulties by reason of the different hypotheses which had to be taken into account. The principle contained in paragraphs 2 and 3 of the article was to the effect that a party which had no judge on the Bench, while the other party was represented in the Court, could appoint a deputy-judge or a judge nominated *ad hoc* belonging to its own nationality, and that if the Court included on the Bench no judge of the nationality of either party, each party could nominate a judge. This principle must be maintained and the system might work normally in ordinary cases.

The question was somewhat more difficult in the following cases. In disputes concerning labour and in those relating to communications and transit special chambers were formed, the composition of which was determined in advance by Articles 26 and 27.

If both parties were represented in these special chambers, the principle of Article 31 was maintained and there was no difficulty. If only one of the parties was represented by a judge of its own nationality, it might be laid down that one of the other judges of the chamber should give up his seat to a deputy-judge or to a judge selected *ad hoc* of the nationality of the other party, and nominated by it in conformity with paragraph 2 of Article 31. It might, however, happen that there would be among the ordinary judges not composing the special chamber a national of the party not represented. In that case it would seem natural for the said ordinary judge to sit in the special chamber instead of a deputy-judge or a judge appointed *ad hoc*. These were the various hypothetical cases which must be taken into account, and which made the drafting of the article somewhat difficult. If the general principle laid down in Article 31 were to apply to Articles 26, 27 and 29, account must be taken of the different cases which might occur. Moreover, the question was not one of substance but purely one of wording.

M. POLITIS asked M. Fromageot if he could make a slight amendment in the wording of the proposal he had submitted yesterday. The proposal appeared to him to be excellent, but M. Fromageot might perhaps be able to take into account the difficulties to which he had just drawn attention.

M. FROMAGEOT explained that the most delicate point was to make it clear that each time that one of the parties was represented in the Court by one of its nationals that national should be convened to sit before recourse was had to a deputy-judge or a judge appointed *ad hoc*.

Mr. ROOT feared that, in giving effect to the considerations developed by M. Fromageot, the Committee would only be augmenting the specifications on points of detail in regard to the Court's work, with the result that the efficiency of the Court would be impaired.

M. FROMAGEOT thought that paragraphs 2 and 3 of Article 31 might be replaced by the following provisions :

" If the Court includes upon the Bench no judge of the nationality of the parties, each of these may select one of its nationals to sit as a judge. That judge should be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

" The present provision shall apply in 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 party concerned and, failing such, to national judges specially appointed by the parties.

M. FROMAGEOT explained that he used the term " members of the Court " in opposition to the term " national judges ", which signified judges appointed *ad hoc* in a particular case. Furthermore, the last two paragraphs of Article 31 would, of course, be maintained.

Mr. ROOT expressed certain apprehensions as to the expediency of M. Fromageot's suggestion, the result of which might be to deprive the Court, when sitting in full session, and according to the character of the differences brought before the special chambers, of the ordinary national judges who would be required to sit in one or other of the special chambers. He thought that

the interests of the Court sitting in full session were paramount and he would prefer that the Court itself should be able to decide whether in a particular case the national judge could sit in the special chamber or whether the business of the Court sitting in plenary session should not take precedence over the business of the special chambers. The decision on this point should be left to the discretion of the Court itself.

M. PILOTTI wished to put two definite questions to the President of the Court in connection with the observations submitted by Mr. Root.

He would be glad to know whether there was anything to prevent a national judge who was convened to take his seat in connection with a case before a special chamber, from sitting at the same time on the Court in plenary session. If there were, it would naturally be better not to remove a judge from the Court in order that he might sit in one of the special chambers. The Court would, in such cases, do better to invite the parties to nominate a judge *ad hoc* so as to obviate disturbing the regular working of the whole Court. If, however, no such obstacle existed, the decision regarding the question whether an ordinary judge should sit in one of the special chambers might be left to the discretion of the Court.

M. Pilotti, moreover, wondered whether, in taking account of what had been said regarding the disadvantages of appointments of judges *ad hoc*, it would not be possible to consider the appointment of judges according to the rules laid down for the nomination of the technical assessors who were selected, in conformity with the provisions of Article 27, from a list prepared in advance. That procedure would have the result of modifying the special character of the nominations which were made by the States at the time when the suit was already pending. Each Member of the League would have an opportunity of presenting a list of judges, and the Court would summon the judges *ad hoc* according to their order on that list, as was the case in regard to technical assessors to whom reference had been made. It was on these two points that M. Pilotti wished to consult the President of the Court.

In reply to the questions put to him, M. ANZILOTTI said that, legally, the fact that a judge sat in a special chamber did not constitute any obstacle to his participation in the work of the Court itself. The only obstacle that might exist would be due to the possibility that the sessions of the plenary Court might coincide with those of a special Chamber ; but that was a hypothesis which would probably not occur in practice or at any rate very rarely, and the difficulty might easily be overcome by a suitable arrangement as to the hours of hearing. M. Anzilotti thought, therefore, that there was no need to feel any concern at such a possibility.

As to the second question, the President of the Court saw no objection to the appointment of judges *ad hoc* in accordance with the procedure suggested by M. Pilotti. He thought that the preparation in advance of a list of the national judges to be convened to sit on occasion would make the system somewhat less personal in character than it was at present. There were, moreover, of course certain political considerations on which M. Anzilotti did not wish to dwell but which might make the States unwilling to waive their right to appoint the judges *ad hoc* at the time when the case came and to agree instead to nominate them in advance.

M. RUNDSTEIN observed that if it were desired to enunciate a general principle in Article 31, the words : " for the purpose of the preceding provisions " in the fourth paragraph would have to be deleted in order to remove any doubt as to the scope of the provisions of the article.

Jonkheer VAN EYSINGA referred to the suggestion made by M. Pilotti, namely, that the same procedure as that existing for the choice of the technical assessors should be adopted for the appointment of the judges *ad hoc*. As the President of the Court had pointed out, the consequence of that would be to deprive the system of appointing judges *ad hoc* of its special character. M. van Eysinga, however, thought it his duty to draw the Committee's attention to the discussions of the Legal Committee of the Communications and Transit Organisation in which it had been observed that the system of technical assessors, to whom resort had never yet been had, did not afford the best guarantees of efficiency in a special case. The Legal Committee had considered that it would be better, in particular cases, to resort to the much more elastic procedure indicated in Article 50 which enabled the Court at any time to appoint experts to examine a question which required expert investigation or appreciation. It had been found that that procedure was better adapted to the needs of the Court than the system of technical assessors appointed in advance from a special list.

M. PILOTTI remarked that it had been his idea simply to bring to the attention of the Committee the possibility of having the judges *ad hoc* appointed in conformity with the provisions of Article 27 in respect of the technical assessors. He had thought that the procedure might give a better result than the present method of appointing judges *ad hoc*. He had not intended in any way to discuss the utility of the provisions of Articles 26 and 27 in substance.

M. Pilotti contemplated the following drafting for the first two paragraphs of Article 31 :

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

" If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party has the right to require that a judge of its nationality be called to sit on the Bench. That judge shall be chosen in each case in accordance with the rules of procedure contemplated under Article 30, from a list of assessor judges composed of names of which two only would be submitted by each Member of the League of Nations. "

Jonkheer VAN EYSINGA did not question the advantages of the proposal made by M. Pilotti, but he thought that the very personal character of the appointment of the judges *ad hoc* had a special purpose and was not allowed for in the procedure contemplated by M. Pilotti. Furthermore, M. van Eysinga thought, with M. Anzilotti, that the proposal to appoint in advance the judges *ad hoc* like the technical assessors might not perhaps, for political reasons, meet with the approval of the Governments.

M. van Eysinga would be glad to examine the proposal submitted by M. Fromageot in writing and he suggested that the discussion should be adjourned until it could be printed and distributed to the members of the Committee.

The Committee agreed.

M. HUBER considered that the system of nomination for the judges *ad hoc* suggested by M. Pilotti would certainly conduce to the efficiency of the Court, but he thought that M. Pilotti's suggestion was already carried out in principle by the provisions of paragraph 2 of Article 31 which laid down that, if there were no deputy-judges belonging to the nationality of a party not represented on the Court, the Court might choose a judge preferably from among persons who had been nominated in conformity with Articles 4 and 5. It would therefore be enough to delete the word " preferably " in order to attain M. Pilotti's object. The choice as judges *ad hoc* of persons nominated as candidates in conformity with the provisions of Articles 4 and 5 would, moreover, afford the necessary guarantees of their ability to discharge the duties of a judge, a point to the importance of which M. Fromageot had already drawn the Committee's attention. It might of course happen in the course of years that one or another of the candidates thus nominated might die, but that was an extremely rare event which should not be allowed to determine the adoption of the principle. The principle already laid down in Article 31 could therefore only be strengthened by the deletion of the word " preferably " in the last sentence of the second paragraph. This would remove the accidental and hazardous element in the appointment of the judges *ad hoc*.

Sir Cecil HURST feared that the deletion of the word " preferably " suggested by M. Huber would, in particular cases, prevent the application of the principle laid down in the provisions of Article 31. The candidates to judgeships in the Court were nominated not by the States, but by national groups, and some of the nominees were not nationals of their country. For example, supposing Siam had nominated as a candidate to a judgeship an English lawyer, the bizarre result might be that, if an Englishman had to be appointed as judge *ad hoc*, it would have to be the candidate nominated by the national group of Siam.

The CHAIRMAN observed that the discussion appeared to have shown that it would be unsafe to go further until the Committee had before it a definite text of M. Fromageot's proposed amendments.

M. ANZILOTTI hoped that it would be possible for the members of the Committee to have before them a complete list of all the amendments that had been adopted, so that they might devote at least half a day to considering them and satisfying themselves that they were consistent with one another and with those provisions of the Statute which had not been amended, before the Committee adopted its report to the Council.

Article 32.

M. POLITIS reminded the Committee that the original draft of this article had been prepared on the assumption that there would only be occasional meetings of the Court. The article provided for an annual indemnity for the judges, plus a grant in respect of the actual performance of their duties. Under the new system of organisation on which the Committee had agreed, all judges would be obliged to be present all the time at The Hague except during their periods of leave ; the existing system of remuneration would, therefore, require reconsideration. According to the present wording of Article 32, the judges, under the new system, would logically be entitled to receive pay for every day of their attendance at The Hague, with the exception of leave periods. If, however, the Committee did not accept that interpretation of the article, it must say so specifically.

M. URRUTIA pointed out that Article 32 would, in any case, require amendment since it referred to the fees and travelling allowances of deputy-judges.

M. POLITIS agreed. The Committee had a choice of methods before it ; it could either give an interpretation of Article 32 so as to cover the new system or it could introduce some definite new provision.

Jonkheer VAN EYSINGA agreed that the Committee could settle the question raised by M. Politis either by enunciating an interpretation of Article 32 as it stood, or by recommending an amendment to it. It would in any case be necessary to submit either an amendment or a proposal of some sort to the Council in order that the Council might know what to submit to the Assembly on the subject. The Asembly, again, would require to know the probable financial consequences of the modification made in the organisation of the Court as a result of the abolition of the deputy-judges, and the adoption of the principle of obligatory attendance on the part of the ordinary judges. The Committee must, he thought, come to a decision on the material aspect of the question and say quite frankly what remuneration they thought the judges should receive.

M. OSUSKÝ said that, unless it modified the system laid down in Article 32 of the Statute, the Committee would be under no obligation to change that article, since the financial consequences resulting from the adoption of the new system of organisation might be dealt with by means of a resolution, as had been done on previous occasions.

Sir Cecil HURST asked M. van Eysinga, who had on previous occasions acted as Chairman of the Fourth Committee of the Assembly, whether there was not something to be said in favour of a change in the system laid down in Article 32, and whether it would not be desirable, in order to avoid all friction, to give the judges a fixed sum per annum to cover everything.

M. FROMAGEOT thought, if he was not mistaken, that it was not necessary to modify Article 32, which was so drafted that it could be adapted to the system of consolidated pay such as had been suggested by Sir Cecil Hurst, and which M. Fromageot readily accepted. The only amendment to be made in the article appeared to be the omission of paragraph 3.

Jonkheer VAN EYSINGA observed that if the Committee could determine that each judge should receive an annual consolidated salary, the result would be greater certainty in the budget estimates of the Court. It was certain that precise budgetary estimates were always advantageous, so long as the figures were not too high. If the system suggested by Sir Cecil Hurst were adopted and if the judges of the Court were put on the same financial basis as all the other persons occupying permanent posts on the League, it would be necessary to amend the article by the deletion of the third paragraph.

M. van Eysinga thought that M. Politis would find it difficult to arrive at the desired result by an interpretation of the article as it stood and, accordingly, he considered that it would be much better to delete paragraph 3. He would be glad to hear the views of the Chairman of the Supervisory Commission on the question raised by Sir Cecil Hurst.

M. OSUSKÝ said that from the Minutes of the Committee of Jurists which had met at The Hague in 1919, and from those of the First Committee of the first Assembly in 1919, it would be seen that Article 32 had been based on the assumption that it was impossible, as early as 1919, to foresee the number of days on which the Court would sit each year. The system adopted, therefore, had been a very elastic one. If the Committee endorsed the various proposals which had been made for the modification of the Statute, they might have a rather important influence on the system adopted in 1919 in regard to the remuneration of the judges.

In the proposals which it had adopted the Committee had, in the first place, accentuated the disabilities of judges in that it had laid down that they were not to fulfil any other functions. It had originally been contemplated that the judges might fulfil other duties while they were not in attendance at The Hague. Secondly, the Committee had accentuated the necessity for real and effective attendance on the part of the judges at The Hague. In M. Osuský's view it followed that it was essential to establish some system of fixed salaries, and if the Committee intended to do that it would, he thought, be necessary to remodel Article 32 completely.

The CHAIRMAN requested M. Osuský to submit a text for the re-drafting of Article 32, especially taking into account the observations which M. Osuský had himself presented.

M. POLITIS observed that the Committee should first agree on some general principles before asking M. Osuský to draft a text. He would state his personal view on the question. Under the new organisation which the Committee had adopted, it was anticipated that the Court would have seven months' work a year and three months' vacation ; there remained two other months, which would be covered by various public holidays, travelling and so forth. The average number of days, therefore, on which the Court might be expected to work would be about 210. That being so, it did not seem to M. Politis that the Committee would be making any great departure from the present system in consolidating the judges' salaries and, therefore, he thought that such a consolidation could be effected without making any amendment to Article 32. The President would, of course, continue to receive a special indemnity.

There were, however, two other observations to be made in this connection. First, some change must be made in the system of travelling allowances. Under the new organisation it would no longer be possible, as had hitherto been the case under paragraph 4, to give the judges travelling allowances to their homes and back to The Hague three times a year. With the new system the judges should receive travelling allowances only once a year. Travelling allowances could not be included in the consolidated pay, since the fares from the seat of the Court to the judges' homes varied according to the nationality of each judge.

Secondly, it had been agreed that judges were to be given special leave of six months every three years. M. Politis wondered whether judges should receive their full salaries or only a reduced salary for such periods of special leave.

The CHAIRMAN asked M. Osuský to take into account the observations submitted by M. Politis.

M. ITO agreed with M. Politis in regard to the principle of a consolidated annual salary for the judges. He thought, however, that M. Politis's second proposal with regard to a reduction in salary for judges during their period of six months' leave would give rise to many complications. He could not accept it.

M. POLITIS replied that that system was adopted in most Civil and other Government Services.

Article 33.

M. URRUTIA considered that the terms of Article 33 had been drafted too precipitately, and would need revision. Article 35 made provision for the case in which a State that was not a Member of the League, being party to a dispute, was to pay contributions towards the expenses of the Court. It followed that not all the expenses of the Court were borne by the League. He was prepared to submit a new text if the Committee agreed.

Sir Cecil HURST recalled that this question had been considered in 1926 at the time of the Conference which had been convened to consider the special conditions which the United States Government had laid down for its participation in the Court. One of those conditions was that the United States Government should contribute a fair share of the expenses of the Court. The Conference had accordingly considered whether or no the wording of Article 33 was consistent with the acceptance of contributions from the United States, and it had been found that such contributions would give rise to no difficulty under the existing practice of the League, since the United States would make its payment in respect of its contribution to the League, and such contributions would constitute what in English public finance were known as an appropriation-in-aid. The sum contributed by the United States would therefore be deducted from the total amount of the expenses of the Court within the wording of Article 33. It had consequently been held that no change was required in the wording of that article.

The CHAIRMAN agreed with M. Urrutia that the wording of Article 33 was dangerous. It was true that the United States Government had offered to pay its contribution to the expenses of the Court, but there might be other States which, being parties to disputes, might make Article 33 a pretext for making no contribution to the expenses at all. They would say that Article 33 sufficiently covered the question of the expenses of the Court. The Chairman thought that the article should therefore either be abolished or should be extended to meet the new circumstances.

M. URRUTIA added that there were certain States which were not Members of the League but which still contributed towards the expenses of the Court. It followed that the Court's expenses were not defrayed entirely by the League. The article might be amended to read that the Council and the Assembly should decide in regard to the payment of the expenses of the Court.

Jonkheer VAN EYSINGA pointed out that Article 32 of the League's Financial Regulations made provision for appropriations-in-aid. Hence the budgeting system of the League was entirely in conformity with this form of revenue, which, for example, figured largely in the budget of the Health Section.

In order to allay the scruples of M. Urrutia, which were apparently shared by the Chairman, M. van Eysinga would suggest that Article 33 of the Statute should be amended to the effect that the expenses of the Court should be borne by the budget of the League of Nations, since the budget would cover all sorts of appropriations-in-aid received from non-Member States. M. van Eysinga reminded the Committee that, in the draft Protocol of 1926, it had not been considered necessary to contemplate a contribution from the United States towards the expenses of the Court, although the Conference had expressed its gratification at the United States Government's offer.

M. OSUSKÝ observed that, from the point of view of the pure doctrine of finance, the case of a State which acceded to the Court was not covered either by Article 33 or by Article 35. Article 35 provided only for *ad hoc* cases and not for that of a State which adhered to the Court. As the present Committee was endeavouring to make a permanent settlement and to establish a sound doctrine, it would perhaps be well to remodel Article 35 as well as Article 33, so as to provide for the case of a State non-Member acceding to the Court.

Articles 34 *and* 35.

M. URRUTIA said that he had certain observations to offer on these articles, but before formulating any amendments he wished to hear the views of the other members of the Committee.

Article 34 had been drafted in a somewhat different way from Article 14 of the Treaty of Versailles, which was the basis of the article in the Statute. M. Urrutia did not wish to consider the juridical aspects of the question, but only certain practical aspects. The wording of Article 34 implied that the League could not itself be a party to a case before the Court. The League, however, was a juridical international association with a legal and moral personality, and hence M. Urrutia thought that provision should be made for the possibility that the League might have to plead before the Court. If that idea were accepted by his colleagues, he would suggest the addition after the words "Members of the League of Nations" of the words " or the League of Nations itself ".

The CHAIRMAN pointed out that Article 35 began by contradicting the terms of Article 34.

M. POLITIS thought that the Committee should pay special attention to the very interesting and delicate question raised by M. Urrutia. It would be necessary to discover whether the

League as a collectivity, that was to say, as an association of States, could be a party to a suit. An illustration was to be found in the Minorities Treaties in which there was a provision by which one of the Principal Powers signatory to those treaties could submit a minorities case to the Hague Court. It was not clear, however, whether the minority State or the Council itself had authority to do this.

There were other cases in which the League might be involved in a suit. For instance, a contract was to be signed between the League and the Swiss Confederation for the exchange of certain lands for the building of the new Secretariat. The Secretary-General would sign that contract on behalf of the League. Though the assumption was a somewhat remote one, and though there was no likelihood of a dispute between the contracting parties, such a dispute might nevertheless arise, and it would have to be decided what Court would be competent to try the case. That hypothesis was not altogether impossible, although of course it was practically certain that any such dispute would be settled by friendly agreement or by resort to arbitration.

M. Politis therefore wondered whether it might not be necessary to make some small changes in Article 34, although such changes should be effected with all the discretion required by the delicacy of the question.

M. RAESTAD observed that, in 1920, the question whether the League or the Council could go before the Court had been discussed. The case which had been chiefly considered was that in which the League or the Council would appear before the Court side by side with the State concerned in the case.

The law was now in process of evolution ; the League of Nations or the Council concluded, as a contracting party, international agreements. It was for this reason that M. Raestad agreed with M. Urrutia that an addition was necessary to Article 34 to make provision for the appearance of the League or the Council before the Court, but only as a contracting party, and not at the side of an interested State.

Jonkheer VAN EYSINGA thought the discussion very interesting both from the theoretical point of view and from that of the evolution of international law. There were other cases which would require consideration — cases, for instance, in which the League had entered into an agreement which was not a purely civil contract but which was, in reality, in the nature of an international convention. Conventions existed between the League and certain States with regard to certain institutes, for instance, the agreement with the French Government concerning the Institute of Intellectual Co-operation and that with the Italian Government in regard to the International Institute of Private Law. If it were desired to accord to the League a *jus standi* before the Court, this would also be useful for the interpretation and application of conventions of the type just mentioned. If, as M. Raestad proposed, it was desired to limit the League's power to appear before the Court to cases in which it was a contracting party, it should be clearly stipulated that that power related not only to civil contracts, but also to contracts which had, in reality, a public character.

M. van Eysinga wondered, nevertheless, whether the question of any such amendment to the Statute of the Court, however valuable and necessary to the life of the League that amendment might be, did not fall outside the scope of the present Committee's work.

With regard to the use of the word " only " at the beginning of Article 34, M. van Eysinga recalled that at the Conference of 1927 in regard to the Prize Court, provision had been made by which individuals, as well as States, could plead before the Court. The term " only " therefore, as used in Article 34 of the Statute of the Court, meant that only States and not individuals could be parties to cases before the Court.

M. van Eysinga repeated that personally he thought that M. Urrutia's suggestion fell outside the scope of the Committee's work.

M. GAUS said that it was of course possible to foresee cases in which the League might come before the Court as a party to a case, for instance, the cases cited by M. Politis and M. van Eysinga. In all such cases, the two parties would be on an equal footing. He thought, however, that it would be very difficult to find a suitable wording, especially as it would be necessary to contemplate the possibility of a case being brought before the Court to which the parties were the League on the one hand and a Member of the League on the other hand, a case, for instance, in which there was a divergence between the Council and a State as to the duties and rights of a State as a Member of the League. That would be an altogether different category of dispute from those contemplated by M. Politis and M. van Eysinga, and the Committee would see how difficult it would be to make any exact distinction between these two categories of dispute.

M. POLITIS, in reply to M. Gaus, thought that it would be quite enough to say, in the present circumstances, that the League was entitled to appear before the Court, without determining the cases in which it could be a party. The only object was to ensure that the Court should not be bound by the text of Article 34, which would force it to say that it could not accept the League as a party to a case because the League was not a State. It was all the more necessary to make some mention of the League in Article 34, because of the possible effects of many arbitration treaties which provided for the obligatory competence of the Court in case of dispute. In such cases the Council could not be regarded as having no interest in the

dispute, and therefore it would be natural that it should be entitled to appear before the Court.

M. Politis thought that it would suffice if Article 34 were to read that the Court was open to all the Members of the League, to non-Members of the League, subject to the conditions of Article 35, and to the League itself.

M. RAESTAD, in reply to M. Gaus, said that the proposed alteration to the wording of Article 34 would not create any obligation on the part of the Council to appear before the Court, but would merely give it an opportunity to do so if it so wished. A dispute between a Member State and an organ of the League would not come under the heading of a contract, and he therefore adhered to his proposal that the League should be empowered to be a party only to cases in which it was concerned by virtue of a contract under international law.

M. ITO shared M. Gaus's doubts. It was necessary to consider two classes of case to which the League might be a party. In the first place, there were private cases, such as a dispute relating to the contract concluded on the occasion of the purchase of the necessary land for the construction of the new League buildings. It would hardly be necessary to take a dispute of that kind before the Permanent Court of International Justice. Secondly, there were public disputes, a dispute, for instance, between the Council and a State. M. Ito did not think that it would be prudent to admit, even in principle, that such a case could be brought before the Permanent Court, since many of the Council's actions were of a political nature and it would be dangerous to admit the principle that political cases could be brought before a court of law and could therefore be subject to the control of a judicial body.

The CHAIRMAN thought that the proposal to include the League among the possible parties to cases before the Court, under Article 34, was not related to the question of the competence of the Court. It was a fact that, at the present moment, the League had not the right to appear before the Court. But the criterion of the competence of the League to appear before the Court should be based not on a contract but on the interests of the League. The League obviously could not appear before the Court to defend the interests of one of its Members; that was to say, in a case in which the League was a party it could appear solely in order to defend its own interests and not those of anyone else. The Chairman did not for the moment see how this restriction could be drafted.

M. POLITIS thought that the only question was to determine who were the legal persons who could appear before the Court. As drafted at present the article said that only States could appear and therefore that individuals and associations of States could not appear. His object was to open the gates of the Court to such associations of States, in order that if, at any time, there arose a difference between the League and any State, the Court might not be obliged to say that the League was not competent to appear before it because it was not a State.

Jonkheer VAN EYSINGA agreed with M. Politis. The point raised by M. Politis might be strengthened if it were remembered that the Statute said nothing about the competence of the Court ; even Article 36 referred only to disputes between States. M. Gaus's fears were therefore more apparent than real. The only object of the proposal was to open the Court to the League in cases in which the League and a State both desired to have recourse to it.

M. ANZILOTTI pointed out that in addition to the League there were, and there might be, other groups of States which constituted permanent organisations. It would perhaps be rather unsatisfactory to make a special exception in favour of the League. He therefore preferred to maintain the text as it stood, since it did not, in his view, prejudge the question whether an association of States could, in certain circumstances, appear before the Court.

Sir Cecil HURST had not been convinced by the arguments used in favour of the proposed change. The real purpose of the Committee's meeting was to consider what changes were necessary in the Statute. If it admitted that the League was a unit which was competent to come before the Permanent Court, the Committee would be making not merely an amendment in the Statute of the Court but a fundamental change in the constitution of the League. Sir Cecil Hurst doubted whether a change of that sort would commend itself to the generality of the Members of the League.

The purposes for which the League had been founded were in part political and such purposes were absent in respect of other foundations, such as the Institute of Intellectual Co-operation and even the International Labour Office. If the proposed change in the Statute were accepted, the Committee would inevitably be admitting the idea that the League constituted a political unit. Some States would have difficulty in accepting that idea. The League had been defined in England as a better method of conducting the foreign relations of States. If the idea that it was a political unit were accepted, the League would be exposed to the criticism that it was becoming not an association of States but a super-State.

M. Politis and others had cited instances in which it might be useful for the League to be able to appear before the Court. Sir Cecil Hurst was not convinced by these examples. Some of them, for instance, a dispute in regard to the new Secretariat buildings, could be

dealt with by the national tribunals, since a case of that kind would be decided in accordance with national law and not in accordance with international law.

It was of course possible that questions might arise in which what appeared to be a dispute between the League and a State called for a judicial solution. For such cases, however, the method which had been adopted hitherto, that of asking the Court for an advisory opinion, had been found sufficient. Such cases had arisen on three or four occasions and on each occasion the matter had been conveniently submitted to the Court by the method of asking for an advisory opinion. Sir Cecil Hurst could not help wondering whether that method did not provide all the machinery that was required.

On the previous day he had presented certain practical observations to the effect that there would be a very limited time in which to obtain the consent of all the Members of the League to the Protocol containing the changes recommended by the Committee. Would it be safe to present to the States changes which would effect so radical an amendment in the constitution of the League ?

TENTH MEETING,

Held on Friday, March 15th, 1929 at 4.30 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

16. **Question of the Revision of the Statute of the Permanent Court of International Justice** (continuation).

Article 34 (continuation).

M. ANZILOTTI saw no necessity to modify Article 34. Its provisions were in his view intended to exclude individuals and private organisations. The question whether organised groups of States and the League of Nations itself could be parties to a case before the Court was not settled by Article 34 ; it could, he thought, only be settled by the Court when it arose.

If the League possessed a collective personality in international law, Article 34 would not exclude it from appearing before the Court. To refer, however, only to the League in the article would give the idea of an exception, and the possibility for other groups of States to be parties to a case would be seriously prejudiced. Moreover, M. Anzilotti had been struck by the observations of Sir Cecil Hurst. Any mention in the article of the League and of the League alone might be regarded as due to political motives or as an attempt to make the League a super-State, which was legally and politically impossible. For those reasons, therefore, M. Anzilotti was not in favour of any change in Article 34.

Mr. ROOT thought that in trying to find a means of putting the League in the list of competent suitors, the Committee would be deciding a serious political question which involved placing a very grave construction on the meaning of the Covenant itself. The question had been much discussed during the long controversy concerning the League in the United States of America. Many ardent friends of the League had now taken up a position which would be negatived if the Committee took such action. In those circumstances, Mr. Root was unwilling to run such a risk without a far more thorough examination of the proposal than was at the moment possible. The Committee had not the necessary opportunity at the present juncture for deliberating the matter and for making a thorough study of the question. The problem was of essential importance, but it had only arisen casually. That being so, Mr. Root could not, with the evidence now before him, vote in favour of any change in Article 34. The reputations of all the members of the Committee would suffer if they came to an immediate decision. No pressure had been put upon them to do so. The Council had already approved the present position and the Committee had received no instructions to make so important a change. For those reasons he hoped that the matter would not be further discussed.

M. FROMAGEOT said that the French Government had been one of those which had proposed that the Statute of the Court should be examined in the light of the results of eight years' experience.

In this case no precedent existed and the Committee was therefore examining the question purely *in abstracto*. It had no experience to guide it in proposing a change. The amendment proposed was important. Some people seemed to regard the League as a sort of super-State ; others gave to it the character of an improved organisation for facilitating diplomatic negotiations. The Committee was not in a position to take a decision on this point. Such a discussion would lead to grave and useless controversies ; M. Fromageot felt obliged to oppose any change in Article 34.

Jonkheer VAN EYSINGA said that it was impossible for the Committee to put before the Council a report which had not been almost unanimously adopted. In those circumstances he thought it would be impossible for the Committee to include in its report the amendment proposed by M. Urrutia in view of the divergencies of opinion between the members. He thought, therefore, that no change should be made in Article 34.

He could not, however, altogether agree with the arguments of M. Fromageot, who had maintained that experience had not proved the usefulness of an amendment to Article 34. The League had concluded several contracts under private law and conventions under public law. The mere fact that the League had been able to conclude these agreements proved that it had already a moral entity, and to say that it possessed a *jus standi* before the Court would not, as Sir Cecil Hurst thought, alter the legal status of the League in the least.

M. Anzilotti had maintained that Article 34 only excluded individuals from appearing before the Court, but not States or groups of States. To follow out this argument, the fact of stating openly that the League could be a party in a case brought before the Court could not change the legal situation existing at present.

M. van Eysinga did not, however, consider it desirable to adopt such a course. The practical reasons against doing so were convincing, but the same could not be said of the legal reasons.

M. URRUTIA reminded the Committee that he had at the outset explained that he had had no intention of proposing a definite amendment. His proposal had been made primarily in order to provoke the very useful exchange of views which had now taken place, and which had been recorded in the Minutes. He had found, in the course of the eleven years during which he had worked in connection with the League, that ideas which had been regarded as very revolutionary at the outset were now, little by little, beginning to be accepted. The discussion which had taken place had been most profitable. It was not really a strong argument to say that it was inopportune to raise any particular question. He had had no intention of mentioning any political considerations, or of making any attempt to change the nature of the League. Further, no proposal made by the Committee could come as a surprise, for its report would be most carefully considered and discussed, both by the Council and by the Assembly, and by every State Member who would receive a copy of it. He would not, however, press his proposal.

His real desire had been that the question of the League's personality should be examined. Under Article 34 as now drafted the Permanent Court could not be used as the arbitrator between the League, on the one hand, and a State with which it had a dispute, on the other. The Court had no powers to settle such a dispute.

In conclusion, he would emphasise once more the fact that his proposal had had no political significance. It had been put forward simply in order to make it possible for the League to come before the Court.

M. RUNDSTEIN thought it inopportune to amend Article 34. If it were amended so as to make it possible for the League to come before the Court, Articles 62 and 63 providing for the intervention of States would also have to be amended, and paragraph 3 of Article 40 would have to be altered. He could not, however, agree to any such wide alterations of the Statute.

The CHAIRMAN agreed that no amendment should be made in Article 34. He would, however, take this opportunity to urge that merely because a proposal was new the Committee should not take the view that it must not be discussed. In his opinion, the particular question which had arisen was riper for treatment than some might imagine. This had been made clear by M. Anzilotti. The League had concluded several arbitration treaties, which meant that it had the power to set up an arbitrator; that arbitrator had so far been the Council. While the matter was, therefore, approaching maturity, it had not yet reached it, but, in a year this might prove to be the case.

With regard to the actual text of Article 34, he thought the English wording more accurate than the French, which contained the expression " se présenter ", which might be applied not only to a party to a case but also to witnesses. He thought, therefore, that the French text should be made to conform more accurately to the English.

M. POLITIS agreed, but urged that the definite article " les " should be omitted from the first phrase : " Seuls, les Etats ou *les* Membres de la Société des Nations ".

The CHAIRMAN disagreed. By the provisions of Article 35, the Court was open to Members of the League and also to States mentioned in the Annex to the Covenant.

M. FROMAGEOT agreed with the Chairman in thinking that the French text of Article 34 was not so accurate as the English. The phrase in question might, for example, read as follows : " Seuls, des Etats ou des Membres peuvent être parties en cause ".

The Committee decided to entrust the revision of the French text of Article 34 to the Drafting Committee.

Article 35.

M. URRUTIA made certain general observations regarding the drafting of this article.

The CHAIRMAN, in reply to one point raised by M. Urrutia, said that all States were mentioned in the Annex of the Covenant, but they were not all Members of the League.

M. URRUTIA was satisfied with this explanation. With regard, however, to the conditions under which the Court should be open to other States and which, by the terms of Article 35, had to be laid down by the Council, he would point out that the Council had, in May 1922, fulfilled this task and drawn up the necessary regulations.

The CHAIRMAN thought there was no necessity to amend the text of this paragraph of the article. With reference, however, to the final paragraph, it would be desirable to say that States non-Members must contribute towards the expenses of the Court in the same proportion as States Members of the League.

Article 36.

M. POLITIS drew attention to the fact that in sub-paragraphs *c* and *d* of paragraph 2 of Article 36 the word " obligation " was used in the English text and the word " engagement " in the French text. Would it not be better to bring the French text into conformity with the English text in order to remove any possible doubt as to the character and extent of the obligation ?

M. GAUS, though he agreed with M. Politis as to the desirability of bringing the texts into agreement, thought it would be dangerous to make any amendment. The words used were in each case those which had been embodied in the Covenant of the League. Article 36 of the Statute was referred to in many arbitration treaties and certain misunderstandings might arise if the text were amended.

Sir Cecil HURST asked whether M. Politis thought that the amendment which he proposed would in any way affect the contractual obligations of the States which had signed the Protocol.

M. POLITIS replied in the negative. The amendment which he suggested would, however, remove a possible ambiguity.

The CHAIRMAN pointed out that it was impossible to amend the text of the Covenant and that it was, therefore, hardly necessary to amend the text of Article 36. The words used in that article had, in a sense, become official.

The Committee decided to leave the text as it stood.

Article 37.

No observations.

Article 38.

Sir Cecil HURST pointed out that there was no equivalent expression in the French text of paragraph 4 of Article 38 for the words " of the various nations " in the English text.

M. ANZILOTTI said that in the Italian text there were words corresponding with the additional words in the English text.

The Committee decided to insert in the French text the words " des diverses nations " in order to bring it into literal conformity with the English text.

Article 39.

M. POLITIS suggested that in the last paragraph the expression " at the request of the parties " should be amended to read " at the request of any party " (" de toute partie ").

M. ANZILOTTI said that the paragraph had been interpreted by the Court, in the sense of the amendment proposed by M. Politis. It was desirable, in his opinion, to amend the text.

M. RAESTAD drew attention to the fact that different words were used in paragraphs 1 and 2 to describe the awards of the Court. In paragraph 1 the word "judgment" ("jugement") was used, while in paragraph 2 the word " decision " (" arrêt ") was employed. Why should not the same word be used in each case ?

M. ANZILOTTI said that the word " decision " (" arrêt ") was used by the Court itself.

M. FROMAGEOT wondered whether it was really necessary to make these amendments. It did not seem that any difficulty had arisen in such matters.

In French legal terminology the word " jugement " referred to the decision of a tribunal and the word " arrêt " to the decision of a Court. The word " arrêt " was undoubtedly more appropriate in the case of the Permanent Court of International Justice.

The CHAIRMAN did not think it necessary to make any amendment in order to cover this purely textual point.

The Committee agreed.

Article 40.

M. RAESTAD pointed out that there was a slight discrepancy between paragraph 2 of Article 40 of the Statute and Article 36 of the revised Rules of Court. Paragraph 2 of Article 40 referred only to the communication of an application, whereas Article 36 referred to the communication of special agreements or applications.

M. ANZILOTTI pointed out that in certain respects the Rules of Court were to be regarded as supplementing and completing the Statute. There were many cases in which additions such as that to which M. Raestad had referred would be discovered. It would be necessary to make a very considerable number of amendments and corrections if it were desired to bring the two documents into strict conformity.

The CHAIRMAN said that, in his opinion, the articles of the Statute which dealt with mere questions of procedure might be eliminated as being out of place in this document. He did not think any amendment of the present article was necessary.

Agreed.

Article 41.

The Committee agreed to add the words " of the League of Nations " (de la Société des Nations) after the word " Council ".

M. HUBER said that the provisional measures referred to in Article 41 had been, on two occasions, taken by the President of the Court, namely, in the Chinese-Belgian dispute and in the dispute between Poland and Germany regarding minorities. No difficulty had arisen in the application of those provisions and, in the opinion of the Court, the article in question was sufficiently elastic. Experience had not shown that any amendment was necessary and such amendment might lead to an extensive discussion.

M. POLITIS enquired whether there was any reference in the Statute to the powers of the President.

M. ANZILOTTI replied in the negative. The powers of the President were dealt with in Article 57 of the Rules of Court.

M. POLITIS asked whether it would not be better to insert the provisions of Article 57 of the Rules of Court in the Statute. The provisional measures which might be taken by the President when the Court was not sitting might be of considerable importance.

M. ANZILOTTI said that Article 57, like several other articles of the Rules, had been drafted to meet an actual necessity. At the time when the Rules had been drawn up in 1922 it had been necessary, in virtue, moreover, of Article 30 of the Statute, to give the President certain powers in the name of the Court, when the latter was not in session. Quite a number of the articles in the Rules carried out this idea.

M. FROMAGEOT said he thought that the question of the provisional measures to be taken by the President was too delicate a matter to be made the subject of an amendment.

The CHAIRMAN said that the application of such measures would not in any case be an obligation upon the President. The measures would be taken at his discretion.

M. FROMAGEOT objected that there were certain cases in which the President might with advantage consult his colleagues before deciding whether such measures should be taken. Itwas necessary to act in this matter with great prudence since many treaties made express provision for provisional measures. He thought it would be better to leave things as they were.

M. ANZILOTTI recalled once more the fact that Article 57 of the Rules of Court had been drawn up at a time when it had been thought that the Court would only sit for one month in the year. The need for action by the President would now become increasingly rare.

The CHAIRMAN noted that Article 41 provided that the Court and not the President should take provisional measures.

M. ANZILOTTI said that the Court had felt it necessary to provide in its Rules for action by the President in the intervals between the sessions of the Court.

M. FROMAGEOT begged to insist on this point : It was not desirable to make amendments regarding an important question if those amendments might be dangerous.

The CHAIRMAN pointed out that, in the present instance, the Committee had as a precedent for such an amendment the Rules of Court which had been successfully applied in practice.

M. GAUS said that Article 41 played an important role in many treaties already in force. The amendment of the article might therefore raise important questions and it would almost certainly give rise to misunderstandings.

Jonkheer VAN EYSINGA said he quite appreciated that the question under discussion was extremely important. He felt that there should be in the Statute itself some basis for the discretionary action of the President. He fully realised, however, the force of the arguments put forward by M. Fromageot. Would it not be possible to solve the difficulty by adding a provision to Article 30 authorising the Court to include in its Rules provisions to cover cases in which the Court was not in session ?

M. POLITIS said he had not advocated the proposed amendment without due reflection. He had in mind a case in which provisional measures had actually been taken and he had been asked by his own Government whether it was bound to respect the orders of the President in such cases, in view of the fact that there was no reference to any such obligation in the Statute. Such a question gave cause for reflection. Should a case occur in which important

political issues were involved, and should a critical situation arise, the role of the President might be extremely difficult and delicate. He would not be fulfilling his duty if he did not venture to take provisional measures. The question arose whether the orders of the President, in such a case, had the force of a decision of the Court.

The Council of the League might be called upon to act in this matter under paragraph 4 of Article 13 of the Covenant and it might thereby be placed in a difficult position. One of the parties might plead that the action of the President, being based on the Rules of Procedure of the Court, had the same effect as a decision of the Court, whereas the validity of the action of the President might be questioned by the other party on the ground that it was not covered by the Statute. If, in such circumstances, one of the parties asked for an execution of the orders of the President, the Council might be embarrassed both in practice and from the legal point of view. Was it preferable, in view of these difficulties, to leave the matter in doubt or to remove any possible ambiguity by an amendment of Article 41 ? He would suggest that the attention of the Council might be drawn to the matter.

M. ANZILOTTI said that he himself had certain doubts as to the constitutional character of the powers attributed to the President. It seemed to him, however, that, if the Court were to be a permanent institution although it was not always in session, it must always be able to take the necessary measures to ensure its uninterrupted working ; from this point of view, the powers given to the President by the provisions of the rules might be inferred from the very nature and constitution of the Court. For the last seven years the existing rules had worked without difficulty. Was not that fact in itself a sufficient justification for their further application ? He would again point out that the question had lost some of its previous importance, owing to the fact that the Court was now more continuously in session.

M. FROMAGEOT again represented that Article 41 was closely bound up with existing treaties. Its amendment would undoubtedly affect those treaties, and might lead to a discussion regarding them. He thought that it might be left to the rules of procedure of the Court to regulate such matters, and that it would be unwise to modify the Statute. Such provisional measures as were taken would be taken on the responsibility of the Court, acting in accordance with such rules as the Court considered it desirable to establish.

Jonkheer VAN EYSINGA pointed out that the taking of provisional measures was not the only case in which the President might be called upon to take action in the intervals between the sessions of the Court. Quite a number of duties devolved upon him when the Court was not sitting. He quite appreciated the scruples of M. Politis, but he would again suggest that the difficulty might be overcome by referring in Article 30 to such duties as the President might be called upon to perform between the sessions of the Court. Such a reference would afford a legal justification for the provisions laid down in the Rules of Court.

M. POLITIS insisted that it was essential to know what was the exact validity of such provisions, particularly in cases where the Statute and the Rules of Court did not exactly correspond.

M. RAESTAD urged that Article 41 and Article 30 of the Statute should be read together. If a sufficiently wide interpretation were given to Article 30, that article might be regarded as conferring upon the Court the necessary legal authority to make such rules as were necessary for the discharge of its duties.

Mr. ROOT agreed with M. Raestad. In his opinion, measures taken by the President differed from a judgment or order. The parties to a case, when they submitted their controversy to the Court, might be regarded as having come under an obligation not to destroy the subject matter of the controversy or in any way to anticipate the judgment of the Court by action of their own. Such an obligation was implied in their acceptance of the jurisdiction of the Court.

Under Article 41 of the Statute, the Court would merely indicate what the duty of the parties required and what action was necessary if the parties conformed with the obligations involved by their submission to the Court. The indication of such obligations was not to be regarded as a judgment to be enforced. The Court, or its President, merely indicated what was required, and a refusal to comply with such a requirement would naturally be placed upon record. The Court in its final judgment would have to consider whether the indications given by the President had been a correct expression of the obligations of the parties. It was the duty of the President to indicate the obligations of the parties, but it was left to the will of the parties to act upon such indication. The President merely intimated what, as President of the Court, he considered to be their duty.

The CHAIRMAN concluded from the discussion that it was undesirable to amend Article 41. It should, however, be recognised that Article 30 empowered the Court to decide what action the President might take, and those indications were given in the Rules of Court. The Rules of Court thus acquired a legal basis under Article 30.

The Committee agreed.

Article 42.

M. ANZILOTTI said that the Court had frequently noted a tendency to confuse the duties of agents and of counsel in cases brought before the Court, a fact which might well give rise to certain inconveniences.

Sir Cecil HURST asked whether this meant that the same person should not fulfil both duties.

M. ANZILOTTI said there was no objection to an agent and a counsel being the same person, but the Governments should be reminded that the duties of the agent and those of counsel were different.

Article 43.

No observations.

Article 44.

No observations.

Article 45.

M. RUNDSTEIN drew attention to a divergence between the French and English texts. The English expression " if both were absent " did not correspond to the French expression " en cas d'empêchement ".

The CHAIRMAN said he thought the French text was more in conformity with the intention of the article.

M. ANZILOTTI agreed. The Court had adopted the rule that its President might not sit as President if he were a national of one of the parties to the dispute. He might, however, sit as judge, and, hence, he would be present although he would be unable to be President.

Sir Cecil HURST said he would find an English expression to correspond with the French text.

Articles 46 *to* 50.

No observations.

Article 51.

The CHAIRMAN asked whether the French word " utiles " was correctly translated by the English word " relevant ".

M. FROMAGEOT said there was a slight discrepancy, but, in practice, the two texts were identical in meaning.

Articles 52 *to* 54.

No observations.

Article 55.

M. Politis asked whether, in accordance with this article, there existed an obligation on the part of a judge to vote upon a decision of the Court. If no such obligation existed, was it not desirable to intimate that it was the duty of a judge to vote and not to abstain from voting, when the Court took its decision ?

M. ANZILOTTI said that this question had been discussed on several occasions by the Court. In general, it had been admitted that a judge, while he might abstain from voting on secondary questions, could only do so if he expressed his opinion regarding these questions which the Court was called upon to decide. In his view, abstention was hardly compatible with the duties of a judge.

M. HUBER said he thought it was self-evident that abstention in such cases was not consistent with the duty of a judge.

M. FROMAGEOT agreed. It was not correct for a judge to abstain from voting. Was it necessary, however, definitely to say so ? Could it be said in the Statute that a judge should conscientiously fulfil his duties ?

Articles 56 *and* 57.

Sir Cecil HURST said that he had a proposal to make on Articles 56 and 57. It might be thought that his proposal touched upon questions which affected the internal working of the Court. If the President and Vice-President of the Court took that view, he would withdraw his proposal, as it was not his intention to introduce into the Statute amendments which might affect the internal procedure of the Court.

He did not, in making his proposal, intend to raise again the question of dissentient opinions which had been discussed at the previous meeting, though his proposal had some connection with that question.

Under Articles 56 and 57 it was laid down that dissentient judges were entitled to deliver a separate opinion. The inference from the text was that a judge who concurred in the views of the majority had no right to deliver a separate opinion. Was that arrangement altogether satisfactory ? From a long experience and careful reading over many years of the judgments of the Court of Arbitration at The Hague, he had come to the conclusion that these judgments were excessively long, owing to the fact that they had necessarily to embody the opinions of all the judges who concurred in the opinion. The result was a certain weakness in the judgments. They tended to take the form of a compromise, and to combine the views of judges who might

have reached the same conclusions upon entirely different grounds. Was it not desirable to give to the judges who agreed with the majority decision the right to express their individual opinions ? Such an arrangement would make it possible to publish more concise and more effective judgments, and would, incidentally, help to build up rules of international law. This end would be secured by following the practice adopted in Great Britain. The decision of the Court and its reasons would be given in one document, and the views of the judges who participated in it would be embodied in another document.

The articles, if amended in accordance with his proposal, would read, as follows :

" 56. The judgment shall state the decision of the Court. It shall be accompanied by a statement of the reasons on which it is based.

" 57. If the judgment does not represent in whole or in part a unanimous opinion of the judges, it shall be open to any judge or judges not in agreement with the statement of reasons or dissenting from the decision to frame a statement embodying their view as to the correct decision and the reasons therefor.

M. ANZILOTTI said that the Court already followed in practice the procedure described by Sir Cecil Hurst. In many cases so-called dissentient opinions really tended towards the conclusion which had been reached by the Court. The Statute had been interpreted very widely in this respect, and the judges who took part in a majority decision were allowed to express their views. The Court would not, therefore, have any difficulty in accepting the proposal of Sir Cecil Hurst. Did Sir Cecil Hurst, however, suggest that the decision should first be announced, and that it should be followed by a statement of reasons? This system certainly had advantages. M. Anzilotti thought, however, that it should be left to the rules of Court to determine the way in which the decision of the Court would be presented.

M. FROMAGEOT also thought that the judgments of the Court were too long, but he did not think that the proposal of Sir Cecil Hurst would tend to abbreviate or lighten them. Certain judges might desire to add what had been said and written on a question and to give their own line of reasoning. It did not seem that this should be encouraged. The object to be achieved was a concise and synthetic judgment, and not a scientific dissertation. The decision should be brief, and contain only the logical series of reasons on which it was based.

He was prepared to vote for the text as it stood, although, as had been seen, he was not personally in favour of the system of dissentient opinions at present in force under the existing Statute. It would be difficult, moreover, for him to encourage them.

Sir Cecil HURST said that the observations of M. Fromageot were arguments in favour of the proposal which he had himself put forward. He desired that the judgments of the Court should be concise and clear, and, in order to secure that object, he desired to dissociate them from the individual views and arguments of the judges. A judgment under the present system had frequently to embody several views, and this arrangement gave to the judgments an appearance of weakness and made them unnecessarily long.

The Committee decided that no amendment should be made to Articles 56 *and* 57

Articles 58 *to* 63.

No observations.

ELEVENTH MEETING.

Held on Saturday, March 16*th*, 1929 *at* 10 *a.m.*

Charman : M. SCIALOJA.

Present : All the Members of the Committee.

17. Procedure for Advisory Opinions and Question of the Transfer to the Statute of Certain Provisions of the Rules of Court.

Jonkheer VAN EYSINGA wished to draw the Committee's attention to a question which had not yet been examined, because it had no direct connection with any of the articles of the Statute, but which was, nevertheless, of direct interest to the work of the Committee.

The business of the Court consisted of two quite separate operations : first, the settlement by judgment of disputes brought before it and, second, the framing of any advisory opinions for which it might be asked.

In its present form the Statute of the Court referred to only one of these operations, that was to say, decisions rendered in the form of a judgment. Nothing was said in the Statute in regard to the method of pronouncing advisory opinions.

Some months previously M. Hammarskjöld had recalled in a very interesting article published in the *Revue de droit international et de législation comparée* the reasons for which the Statute of 1920 made no mention of advisory opinions. The Committee of Jurists for the preparation of a draft Statute had made provision for certain clauses concerning advisory opinions, but in consequence of the discussions in the Assembly the articles in the draft relative to advisory opinions had been omitted. That line of action had presented the advantage of leaving the Court entirely free itself to fix the rules to be applied in regard to advisory opinions.

It was true that the 1926 draft Protocol contained a provision, the object of which was to confer upon an article in the Rules of Court, in regard to advisory opinions, the same force as it would have had if it had been embodied in the Statute itself. The article in question was No. 3 of the Protocol, which prescribed that the Court should deliver its advisory opinions in open court, as had been requested by the United States in the fifth reservation of the United States Senate.

Apart, however, from that isolated provision in the 1926 draft Protocol, the procedure in respect of advisory opinions was regulated solely by the provisions of the Rules of Court, and M. van Eysinga thought that three or four of those provisions would be better placed, and should legally be placed, in the Statute itself. He did not fail to recognise that in the past it had been necessary for the Court itself to prepare a form of procedure in this matter, and he had no intention whatever of criticising what had been done up to the present.

M. van Eysinga's only desire was to examine now the legal situation, and he wondered whether many of the provisions contained in the Rules should not be transferred to the Statute. He referred as an example to paragraph 2 of Article 71, which provided for an extensive application of Article 31 of the Statute, and which accordingly should appear in the Statute and not in the Rules. There was ground even for asking whether the *de facto* obligation to prescribe this provision had not led the Court to legislate *ultra vires*. Article 72 of the Rules gave the details as to the procedure to be observed by the Council and the Assembly when applying for an advisory opinion, and on this point, again, it might be asked whether it would not be wise to insert in the Statute itself a provision similar to that contained in Article 40 relative to the introduction of contentious cases before the Court.

M. van Eysinga thought, therefore, that if the Committee agreed with him on the principle which he had just enunciated, it would be advissable to review Articles 71 to 74 of the Rules with a view to deciding which, if any, of their provisions should be transferred to the Statute.

M. van Eysinga repeated that one of these provisions would in any case be inserted in the Protocol in consequence of the United States reservations, and would thus receive the same force as if it appeared in the text of the Statute. He thought, furthermore, that the need to safeguard the Court's liberty, which, perhaps had been felt in 1920, had ceased to exist at the present time when, as a result of several years' activity, it was possible to form an accurate idea of the working of the procedure in respect of advisory opinions. As only certain provisions would be included in the text of the Statute, the liberty of the Court as regards the rest of its procedure would remain intact.

M. van Eysinga would be glad if the Committee would make a pronouncement on this question.

The CHAIRMAN requested M. Anzilotti, President of the Court, to give the Committee the opinion of the Court on the suggestion submitted by M. van Eysinga.

M. ANZILOTTI did not think that the Court would have any objection to make to the transfer of certain provisions in the Rules to the text of the Statute. Although he had not as yet formed any very definite opinion on the necessity for such a modification, he could say on behalf of M. Huber and of himself, at any rate, that they had no objection to make. He would merely remind the Committee that the Court had been obliged itself to regulate this question, since the Statute with which it had been presented contained no provision on the matter.

M. FROMAGEOT felt that although the Court had itself quite justifiably regulated the procedure in respect of advisory opinions, because the Statute itself made no mention of the question, it would, nevertheless, now be desirable, as M. van Eysinga had proposed, to insert the essential provisions relative to that procedure in the Statute, which was their legal place.

M. GAUS supported M. van Eysinga and M. Fromageot's view. He thought it quite essential to incorporate certain articles of the Rules in the Statute. He was thinking in particular of Article 72 of the Rules relative to the procedure for making an application for an advisory opinion. That provision implied a decision as to the competence of the Council of the League and of the Assembly, and should consequently be dealt with in the Statute itself.

M. RAESTAD had no objection in principle to the suggestions which had been put forward, but he thought that the provisions of the Rules went into far greater detail than was required in the articles to be introduced into the Statute. He mentioned, for instance, the disproportion existing between the provisions of Article 40 in the Statute and the text of Article 73 of the Rules, dealing with the notification of applications for an advisory opinion. He had therefore no objection to make on the point of substance, but thought that the Committee should consider whether it was really necessary to include in the Statute everything that was contained in the Rules.

Jonkheer VAN EYSINGA explained that he had had no intention of proposing any amendment to the Rules. He merely suggested that the Drafting Committee, which would, no doubt, be appointed that day, should examine in principle which were the provisions in the Rules that might be transferred to the Statute without in any way handicapping the freedom of the Court as regards the remainder of the Rules. The Committee would, he thought, be going too far if it began to discuss the text of the Rules, and for that reason he suggested that the whole question should be submitted to a Drafting Committee for examination.

M. ITO, before giving an opinion on the proposal which had been made, wished to know whether any of those members of the Committee who had been members of the Committee which had been instructed to prepare the draft Statute could indicate the reasons for which the articles in the draft Statute relative to advisory opinions had been deleted by the 1920 Assembly. If those reasons were good and sound, the Committee was bound to take them into account.

M. HUBER said that he had been a member of the Third Committee of the first Assembly, and he recollected that the reasons for which it had been decided to delete the articles in the draft Statute relative to advisory opinions had been of a general nature. There was at that time no experience of the question, and it had been desired not to hamper the future business of the Court by provisions the full scope of which it was impossible to foresee.

Now that the Court had acquired an experience covering several years, and now that a sort of procedure had been established by the Court, there was no obstacle to what he might call a " codification " of that experience.

M. FROMAGEOT pointed out that the hope that the United States would accede to the Protocol of the Court was a special reason for inserting in the text of the Statute the provisions in the Rules relative to procedure in respect of advisory opinions. In this respect, also the situation differed from that existing eight years previously. As the United States had made one of the provisions relative to advisory opinions a condition for its accession to the Protocol, it was desirable, when meeting the wishes of the United States, to insert in the Statute the important provisions bearing on this point.

The CHAIRMAN, though he had not been a member of the Committee appointed to draft the original Statute, thought nevertheless that he should point out that in 1920 the institution of advisory opinions had been considered solely as a right held by the Council and the Assembly, but had not been examined as part of the business of the Court.

Jonkheer VAN EYSINGA thought that there was a slight misunderstanding. Article 3 of the 1926 Protocol relative to the publicity of hearings in regard to advisory opinions would have the effect, once the Protocol was adopted, of giving part of the Rules the same force as a provision of the Statute. That had no connection with the procedure itself, but it would be well to insert in the text of the Statute all the important provisions bearing on this point, a suggestion which M. Fromageot also had made.

M. PILOTTI pointed out that it was not only the principle of the publicity of the audiences but that of the discussion in open court which should be introduced into the Statute of the Court in conformity with the 1926 Protocol.

Furthermore, it was probable that Mr. Root would ask that the principle that all the parties concerned should be heard should also be laid down in a clause in the Statute.

M. URRUTIA called the Committee's attention to the desirability of giving the Drafting Committee instructions to see whether any other provisions in the Rules of the Court, in addition to those which had been mentioned in regard to advisory opinions, might not also be embodied in the Statute. For instance, the passage in Article 64 of the Rules indicating the time from which an award was considered as having binding force contained a materially legal provision which would be more appropriately placed in the Statute itself. Furthermore, Article 58 of the Statute referred to the signature of the judgment by the President and by the Registrar. That was a provision which should rather be included in the Rules. Again, the provision laid down in Article 74 of the Rules to the effect that an advisory opinion must be heard in open Court, was certainly one of those which should be transferred to the Statute.

All these various questions might be referred, as he had proposed, to the Drafting Committee.

Agreed.

18. Appointment of Rapporteurs and of a Drafting Committee.

The CHAIRMAN requested the Committee to nominate the members of the Drafting Committee.

Jonkheer VAN EYSINGA, after expressing his regret that the Chairman of the Committee would be obliged to leave for Italy before the Committee had finished its work, thought that, in nominating the members of the Drafting Committee account should be taken of the two principal questions which had been discussed by the Committee.

The two main subjects which the Committee had considered had been :

(1) The examination of Mr. Kellogg's letter and of Mr. Root's proposal with the object of submitting to the Council a report containing a revised draft of the 1926 Protocol together with a final amendment of Article 4 of the Protocol :

(2) The preparation of a list of all amendments to the various articles of the Statute and of the recommendations to be proposed.

M. van Eysinga thought that it would be most appropriate if a Rapporteur were appointed for each of these questions. He therefore proposed :

(1) To ask Sir Cecil Hurst to prepare, in close collaboration with Mr. Root, a report to be submitted to the Council and the revised draft of the 1926 Protocol ;

(2) To appoint Mr. Fromageot and M. Politis Rapporteurs for the second question.

Furthermore it would be necessary to appoint a small Committee to revise all the articles adopted hitherto as well as the provisions in the Rules which might be transferred to the Statute. He suggested that this small Committee should consist of M. Raestad, M. Urrutia, M. Gaus and Sir Cecil Hurst, and he further requested the President of the Court and Mr. Jessup to take part in the work of the Committee. He particularly regretted that he could not propose the excellent Rapporteur of 1926, M. Pilotti, since the latter, being obliged to leave, could not guarantee his collaboration until the close of the work of the Committee.

M. URRUTIA assumed that M. van Eysinga, as Vice-Chairman of the Committee, would of course take part in the work of the small Committee.

The Committee adopted the proposals of M. van Eysinga and M. Urrutia.

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

Articles 26 and 27 : Observations of the International Labour Office and of the Advisory and Technical Committee for Communications and Transit.

The CHAIRMAN put before the Committee the communications which had reached the Secretariat regarding the amendments proposed to Articles 26 and 27 of the Statute.

1. The Director of the International Labour Office had stated verbally that the competent department of the Office had no objection to make to the adoption of the amendments proposed by the Committee to the text of Articles 26 and 27 of the Statute.

2. The Advisory and Technical Committee on Communications and Transit had forwarded the following resolution to the Secretariat :

" The Advisory and Technical Committee for Communications and Transit, having been informed that work is at present proceeding in connection with a possible revision of the Statute of the Permanent Court of International Justice, considers it necessary to draw attention to the following point :

" Article 27 of the Statute of the Permanent Court of International Justice lays down the the Court shall hear and determine cases relating to transit and communications under the special conditions described in that article. This article makes provision for the hearing of cases by a special chamber, and for the assistance of technical assessors.

" The Advisory and Technical Committee feels that, in the interests of the satisfactory settlement of communications disputes, it would be desirable purely and simply for the ordinary procedure of the Court to be applied in the case of such disputes.

" Although the Court has had laid before it a number of cases coming within the scope of Article 27, it has hitherto never resorted to the special chamber provided for in that article. Moreover, no similar arrangement exists for the settlement of any disputes of an economic character which may be laid before the Court under the Conventions relating to the Simplification of Customs Formalities, Import and Export Prohibitions, etc. It may, moreover, be very difficult to decide what precisely are the categories of disputes that come under Article 27, as distinct from disputes of an economic character, or disputes the settlement of which involves consideration of general juridical questions outside the domain of communications.

" Nor has any use been made of the other option allowed under Article 27, namely, the addition of technical assessors to the Court. The considerations set out in the preceding paragraph also apply to this provision of Article 27.

" In so far as disputes regarding communications call for the solution of juridical questions, it is desirable that, except in urgent cases necessitating the application of the summary procedure, the authority called upon to render a decision should be the Court hearing and determining such disputes *in pleno*, since juridical questions relating to communications raise problems which it is difficult to isolate from the law as a whole. When these disputes require an examination of technical questions, the latter are always of so highly specialised a character that any resort to assessors, whose names appear on a short list prepared in advance, is not at all likely to afford the Court any real assistance. In such cases the Court can obtain, in each instance, the necessary technical assistance only through the much more elastic procedure indicated in Article 50 of the Statute.

" If the questions raised in Article 27 could be regarded merely as questions affecting the internal organisation of the Court, the Advisory and Technical Committee would naturally think it unnecessary to give any opinion whatever on this matter ; but seeing that, apart from labour disputes, no special procedure has been provided except in the case of disputes relating to communications and transit, it would appear obvious that the

intention was to lay stress on the special character of these disputes. As an advisory organ of the League of Nations on questions of communications and transit, the Advisory and Technical Committee accordingly thinks it desirable to put forward the present observations.

" Alternatively, it would at all events be desirable, if the special chamber provided for in Article 27 is retained, to remove certain difficulties which may arise in connection with this article, particularly as regards the summary procedure and to allow the parties, without the possibility of opposition, to choose, should they so desire, the procedure before the Chamber of Summary Procedure even for disputes covered by Article 27. "

Interpretation of Articles 5 *and* 31 *of the Statute, and proposed Amendment to Article* 23.

Sir Cecil HURST wished, before the general discussion on the revision of the Statute closed, to draw attention to three questions which he thought should be examined by the Committee. Only one would necessitate a possible amendment. The others concerned the interpretation to be given to two articles of the Statute.

1. Sir Cecil Hurst would refer first to Article 5 of the Statute, and desired to know what interpretation should be put upon this provision in cases when, as had recently occured, several members of the Court had to be replaced before the expiration of their term of office. Although Article 14 referred back to Article 5, the text of this article, more particularly of paragraph 2, had been drafted rather with a view to securing the complete renewal of the Court than isolated appointments.

It might well be asked what would be the number of candidates to be submitted by the national groups if a vacancy was followed by another before the submission of the names in accordance with Article 5 had taken place ? If two vacancies occurred, would each group submit four candidates, that was to say, double the number of posts to be filled, as had occurred in a recent case, or should not each vacancy be dealt with independently of the other ?

If ever the regrettable case occurred of three members of the Court leaving it at short intervals, would the national groups then be in order in submitting six candidates, or would they be bound by the maximum of four candidates laid down in paragraph 2 of Article 5 ?

Sir Cecil Hurst wished to express no opinion as to the usefulness or necessity of making a possible amendment to the text of the Statute. He desired simply that the Committee should at any rate achieve a unanimous interpretation of this provision in order that the procedure to be followed in the future should be clearly defined.

Personally, Sir Cecil Hurst took the view that it would be preferable to deal with each vacancy as an isolated case to which the provisions of Article 5 would be applied independently of any vacancy which might subsequently occur. If the Committee called to mind the possibility that those members of the Court who might have to be replaced might belong to nations or civilisations entirely different in character, they should also note that it would be incorrect to draw up a list of the candidates to replace them according to the same procedure as that followed with regard to the complete renewal of the Court, i.e., a maximum of four candidates per national group.

2. Sir Cecil Hurst wished to know the opinion of the Committee on the interpretation to be given to the text of paragraph 2 of Article 31 in so far as the British Empire was concerned.

The British Empire was a political unit of an exceptional kind. One of the consequences of its peculiar legal structure was the fact that some British subjects lawfully possessed two nationalities — general nationality of the British Empire and also the citizenship of a particular self-governing member of the Empire to which they belonged.

It was true that Great Britain and the Dominions were separate Members of the League of Nations, and Sir Cecil Hurst wished to know whether everyone was agreed to recognise that Article 31, in using the word "nationality", used it in the same sense as "ressortissant" in Article 27. Canada, for example, would probably not agree to consider that she was represented on the Court by a judge of her own nationality, owing to the sole fact that the Court comprised an English judge among its members.

Sir Cecil Hurst did not think it necessary to make an actual amendment to the text of Article 31, but he wished to know what interpretation would be given to this provision.

All that was really necessary, he thought, was to co-ordinate the practice of the Court and that of the Council of the League. On the Council the Dominions were represented as separate Members of the League. India, for example, had the right to be represented on the Council during the discussion of a question affecting India despite the fact that a British member sat upon it.

3. So far as the amendment adopted by the Committee to the text of Article 23 of the Statute was concerned, Sir Cecil Hurst thought the number of fifteen judges to be called upon to sit in a full meeting was too high. The work of the Court would be hindered by such a considerable number of judges.

In agreement with Mr. Root and M. Fromageot, Sir Cecil Hurst proposed that the Court should be granted the right to reduce the number of judges called upon to sit in plenary meeting at any time to eleven, while the quorum of nine judges provided by Article 25 would be maintained. It would thus be possible for the Court to grant special leave to those members who did not possess the right to take six months leave every three years as laid down in the new provisions of Article 23, but who nevertheless required a longer holiday for similar reasons. Some judges might be intrusted with special work during which they should not be required

to attend the plenary meetings of the Court. This procedure would make it in certain cases easier to accelerate the work of the Court.

Sir Cecil Hurst would refer particularly to the fact that Mr. Root, who had been responsible in earlier years for re-organising the Courts in New York when they were very overworked, had achieved the best possible result with a similar system. The Court at The Hague should be given the opportunity of applying the advantages of such a system without being compelled to do so.

M. RAESTAD thought that the views put forward by Sir Cecil Hurst, in so far as the nationality of the members of the British Empire was concerned, were the logical consequence of the provisions of Article 10, paragraph 2, of the Statute which, said that two judges could not be nationals of the same " Member of the League of Nations ". Originally, it had been proposed to say that the judges should be nationals of the different " States ", but the term " Members of the League of Nations " had been substituted precisely in order to cover the case of the British Dominions. If two or three persons belonging to different parts of the British Empire could simultaneously be ordinary members of the Court in virtue of Article 10 of the Statute, it was good logic to interpret the provisions of Article 31 in the same sense, as Sir Cecil Hurst had done.

M. POLITIS did not regard the question of the nationality of British subjects to be a mere matter of interpretation. In his view, it was a problem of the greatest importance. No one could ignore the special and peculiar character of the structure of the British Empire. Account had been taken of this in the organisation of the League in which the members of the British Empire were independent Members of the League side by side with Great Britain.

M. Politis wondered, however, whether the text and the spirit of Article 31 of the Statute made it possible to invest the definition of nationality, in so far as the provisions of paragraph 2 of Article 10 were concerned, with the meaning contemplated by Sir Cecil Hurst.

The object of the provisions of Article 31 was to guarantee to every country not represented on the Court the power to nominate, if necessary, a judge of its own nationality with an intimate knowledge of the jurisprudence and peculiarities of his country's institutions.

M. Politis wondered whether, in the case of disputes which might break out between one or other member of the British Empire and another State, an English judge, for example, would not be just as capable of fulfilling the task of the national judge in the sense which he had just indicated.

M. Politis thought, on the other hand, that the interpretation of Article 31 contemplated by Sir Cecil Hurst might lead, in a special case, to a position which it would be difficult for the other nations to accept If, for example, the Court counted among its members a judge who was a native of Canada, in addition perhaps to an English judge, what would be the position, if, in a dispute between the United States and Australia, Australia demanded her right to appoint a judge *ad hoc* in conformity with Article 31 on the ground that the Court did not possess a judge of Australian nationality ? Would not the parties appearing before the Court be placed on a footing of inequality ? It was impossible to ignore the economic and political bonds uniting the various members of the British Empire.

M. Politis did not think it possible to regard this question merely as one of interpretation. The problem was so important that it would be desirable for Sir Cecil Hurst to submit a proposal in the form of a possible draft amendment.

Sir Cecil HURST said that as an Englishman he was, perhaps, more conversant with the present position of the Dominions than was M. Politis. The impression that the legal and legislative system in force in Great Britain and that in force in the Dominions were the same was incorrect. M. Politis had quoted Australia. It was true that the Australian legal system was perhaps the most akin to that of Great Britain but, generally speaking, the divergencies between the legal systems of Great Britain and the Dominions were numerous and profound ; for example, the legal system in South Africa, which was the old Roman Dutch law, was far more akin to the legal system of M. van Eysinga's country than to that of Great Britain. French Canadian law was similarly far more closely allied to French law than to the British law. There was a welter of different legal systems in India, mainly Mohammedan, also Brahmanic, with a veneer of Western law. The system differed completely from the English system as had been proved time and again by the appeals to the English Supreme Court coming from India.

Therefore, in actual fact it was quite a delusion to imagine that the English member of the Permanent Court would be qualified to represent in the same manner as would a national judge, the appreciation of the local system as provided for in Article 31.

Sir Cecil Hurst could assure M. Politis that the autonomy of the Dominions was developing fast and that no close union in legal matters existed between them and the mother-country. The most obvious proof of this, he thought, lay in the fact that the Council had recognised this to be the case, as indeed had the Assembly, for there was a Canadian representative at present sitting on the Council together with the permanent British representative.

M. RAESTAD asked whether the Constitution of the British Empire prevented a dispute between Great Britain and a Dominion or between two Dominions from being brought before the Court.

Sir Cecil HURST replied that this matter had been discussed in London where the view was that no question arising between Great Britain and a Dominion could be brought before the Permanent Court owing to the provisions of Article 14 of the Covenant which laid down that

the Court possessed jurisdiction only in regard to international disputes. This provision excluded the submission to the Court of disputes between two of the units composing the British Empire, because the relations between them were different from the relations between two foreign States, and for this reason the relations between them were not international. Although the Dominions were autonomous, a dispute between two of them or between a Dominion and Great Britain was not an international matter and could not technically be brought before the Court.

Articles 32, 33 *and* 35.

M. Osuský submitted the following new draft for Articles 32 and 35 :

Article 32.

" The Members of the Court shall receive an annual salary to be determined by the Assembly of the League of Nations upon the proposal of the Council. This salary must not be decreased during the period of their appointment.

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

" The Vice-President shall receive a special allowance for each day on which he performs the duties of President, to be fixed in the same way.

" The judges selected or chosen as provided in Article 31 shall receive a grant for each day on which they perform their duties, to be fixed in the same way.

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

" A regulation, adopted by the Assembly of the League of Nations, shall fix the conditions under which retiring pensions are given to the members and Registrar of the Court.

" Members of the Court shall be refunded the expenses of one return journey each year to their homes, with the exception of members whose homes are situated at a distance from the Court exceeding five days' normal travelling ; such members shall be refunded the expenses of a return journey every three years.

" In addition, members of the Court and the judges referred to in Article 31 shall be refunded travelling expenses when on mission. "

The adoption of these changes would make it necessary to amend the resolution which the Assembly would adopt fixing the salaries of the President, Vice-President and members of the Court. He would accordingly propose the following draft :

" The Assembly of the League of Nations, in conformity with the provisions of Article 32 of the Statute, fixes the salaries, grants and allowances of the members and judges of the Permanent Court of International Justice, as follows :

	Dutch florins	
" *President* :		
" Annual salary.	45,000	
" Special grant	15,000	
" *Vice-President* :		
" Annual salary.	45.000	
" Allowance per day of duty (100 × 100)	10,000	(max.)
" *Members* :		
" Annual salary.	45,000	
" *Judges referred to in Article* 31 *of the Statute* :		
" Grant per day of duty	100	
" Daily subsistance allowance	50	

" The salaries, grants and allowances are free of all tax. "

He had suggested the figure 45,000 florins as the salary of a judge, after consulting the Registrar of the Court whose views had been based on the experience of the last eight years.

M. Politis thought the proposal of M. Osuský to be the most practical solution possible.

With regard to the special allowance granted to the judges appointed under Article 31 of the Statute, he presumed that this allowance would not be paid to a member of a Court sitting in a special chamber.

M. Osuský agreed.

M. Politis also presumed that a judge appointed *ad hoc* would be paid his travelling expenses and also a special allowance when travelling on the business of the Court.

M. Osuský agreed.

With regard to pensions, M. Osuský submitted the following proposal :

" *Proposed redraft of paragraph* 5 *of the Regulations regarding the granting of retiring pensions to the Judges and Registrar of the Court :*

" The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Nevertheless, in cases when the person concerned has, before this age, completed a period of duty without being re-elected, the pension may be paid to him as from the date on which his duties terminate. The Court shall decide. "

Two possibilities had, he thought, been open to him. He could either have suggested that the age-limit should be abolished or else that the Court should be given greater freedom to decide whether a member should be entitled or not to receive a pension. After reflection, he had thought it best to propose the latter solution. If a judge, after leaving the Court, returned to his own country and there exercised his profession or gained his living by other means, he would not be granted a pension. Supposing, however, he did not do so, and possessed no private means, then a pension would be granted.

The CHAIRMAN doubted if the Court should decide whether or not to grant a pension ; nor did the Assembly seem to be a suitable body. He thought that the Supervisory Commission was the proper body to deal with this point.

M. OSUSKÝ pointed out that the Supervisory Commission was a technical organisation

Jonkheer VAN EYSINGA suggested that the decision in regard to the grant of a pension should be taken by the Council on a report by the Supervisory Commission.

20. **Departure of the Chairman.**

The CHAIRMAN thanked the members of the Committee for their assistance and regretted his inability to stay at Geneva until the conclusion of the session. He yielded the Chair to M. van Eysinga as Vice-Chairman.

Mr. ROOT proposed that the Committee should express its thanks to the Chairman and its grateful appreciation and admiration for the charming and effective manner in which he had directed its deliberations. Among a considerable body of men agreements and decisions depended chiefly on their state of mind. That kindly consideration for the opinion of others and the sincere attempt to understand the interests of others, not to speak of the delightful manner in which M. Scialoja had presided over the Committee, had enabled members to achieve the only spirit in which international affairs could be properly conducted.

The vote of thanks proposed by Mr. Root was unanimously adopted.

The CHAIRMAN in thanking Mr. Root said that one of his greatest pleasures and one of the greatest honours which had fallen to him was to have had an opportunity of meeting Mr. Root. Mr. Root was a splendid example of a statesman and of a man of science. He combined the qualifications of both with a modesty, rare among men, especially among statesmen. M. Scialoja would never forget the time which he had spent in his company.

(The Chairman withdrew and the Vice-Chairman, Jonkheer van Eysinga, took the Chair.)

21. **Question of the Revision of the Statute of the Permanent Court of International Justice** (continuation).

Articles 32, 33 and 35 (continuation).

The VICE-CHAIRMAN, after mentioning the difficulties of his task as successor to so distinguished a Chairman as M. Scialoja, called on the Committee to resume its discussion on Articles 32, 33 and 35.

M. POLITIS thought, with regard to the pensions scheme, that a certain degree of elasticity was necessary. The proposals put forward by M. Osuský were too rigid.

The VICE-CHAIRMAN agreed.

The case in which neither the President nor the Vice-President took the Chair must also be considered in connection with the special allowances to be paid.

It was decided to refer the proposals of M. Osuský to the Drafting Committee.

M. OSUSKÝ thought that it would be impossible to amend Article 33. To touch it would be to upset the entire financial system of the League which had now been in force for nine years. States paid contributions to a single fund out of which the expenses of the Secretariat, of the International Labour Office and of the Permanent Court were met. A common fund for all three organisations was preferable to three separate funds.

With regard to the last paragraph of Article 35, he would propose the following amendment:

> " In the case of States which are parties to a dispute but which have not acceded to the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, or which are not Members of the League of Nations, their contributions towards the expenses of the Court shall be fixed by the Court itself. "

The case of the United States of America must be specifically provided for in the Final Act or the Protocol.

The VICE-CHAIRMAN, in summing up M. Osuský's proposals, pointed out that no change was proposed for Article 33 and but small change for Article 35. That would not give rise to any difficulty, for the United States Government had signified its willingness to bear a share of the expenses of the Court when it was necessary to do so.

M. RAESTAD enquired what would be the position of States which, without being Members of the League, had signed the Protocol of the Court. How would they support their share of the expenses ?

M. OSUSKÝ replied that this would be settled by the conclusion of individual contracts with the States concerned.

It was decided to refer the proposals of M. Osusky to the Drafting Committee.

Article 27.

The VICE-CHAIRMAN referred the Committee to the proposal made by the Committee on Communications and Transit in regard to which account had already been taken in the revised draft. The Transit Committee apparently would prefer the whole article to be deleted. The Vice-Chairman, however, wondered whether such a step was necessary. As amended, the article could stand.

M. POLITIS agreed. How would the summary procedure, however, work in practice, and what would be the composition of the Court in transit cases dealt with under that procedure? Presumably the assessors would not sit.

The VICE-CHAIRMAN said there were three possibilities. Either such cases would be dealt with by the full Court or by the special chamber or by the summary procedure under the terms of which five judges and no assessors would sit. The summary procedure could only be followed if the parties agreed.

It was decided to ask the Drafting Committee to consider the final text of Article 27.

Article 23.

The VICE-CHAIRMAN submitted the new text of paragraph 4 to be added to Article 23 as proposed by Sir Cecil Hurst :

> " 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 to be dispensed from time to time from sitting in the Court. "

He added that he fully agreed with this proposal.

M. POLITIS also agreed.

Mr. ROOT felt strongly that in all the Committee had done it had lost an element of adjustment arising from the *ad hoc* employment of supplementary judges. The rigid rule which before applied only to eleven judges was now to be applied to the whole fifteen. The rule thus established would bar the Court from making the necessary adjustments. He felt sure that this had not been the Committee's intention. The presence of the full number of fifteen judges was not only unnecessary, it was even a disadvantage. The Court would be too large, which meant that the length of time occupied by each case would be increased and greater difficulties would be met with in reaching a conclusion. Further, some judges might feel a sense of superfluity if their presence was invariably required in every case coming before the Court. Too many idlers in any organisation were fatal to its efficiency.

The Court must therefore be provided with means to make the necessary adjustment. The following method was one which he thought would prove successful. Hitherto, all judges had sat day after day in Court listening to the same cases, which had meant that they went on to consider another case before they had finished the previous one. So long as this system prevailed delays were inevitable. Would it not be possible for the superfluous judges to perform the necessary judicial work on the unfinished cases ? Such a sytem would increase the efficiency of the Court.

Thirty-five years previously a law had been adopted in New York prohibiting all judges from sitting on any one case. Its object had been to prevent unnecessary delay. For example, in the Court of first instance only seven out of nine judges could sit, and in the Supreme Court for a city as large as New York with seven million people transacting a vast volume of business, only five out of seven judges sat. The result had been that those Courts were to-day conducting an amazing amount of business, because the two judges not sitting were engaged in finishing the previous cases. The work was done by men coming fresh to it. The application of that law had more than doubled the capacity of the Courts of New York and had always given entire satisfaction. The great advantages thus obtained could, Mr. Root thought, be also obtained by the Permanent Court if it followed the same system. For that reason he would support the amendment proposed by Sir Cecil Hurst.

M. GAUS understood the motives for the proposal of Sir Cecil Hurst as supported by Mr. Root. It might, however, possibly have unfortunate consequences. Everything depended on the manner in which the Rules of the Court were followed in practice. The Committee must use every endeavour not to give the impression that the Permanent Court was an *ad hoc* body. An international tribunal of its eminence must be constant in character. It was necessary, therefore, that in drafting its Rules the Court must be entirely objective and must carefully consider the effects of a method of rotation in practice. Would it be possible in these circumstances to delete the phrase " from time to time ".

Sir Cecil HURST said that the Committee must be equally careful not to fall into another difficulty. While he appreciated the force of the arguments put forward by M. Gaus, he would remind the Committee that the feelings of individual judges must also be considered. If the words "from time to time" were omitted, some judges might possibly think that the intention was that the Court should, if it so desired, be able to exclude them entirely from its sittings.

It was decided to submit the proposal of Sir Cecil Hurst to the Drafting Committee.

TWELFTH MEETING.

Held on Monday, March 18th, 1929, at 11 a.m.

Jonkheer VAN EYSINGA (VICE-CHAIRMAN), in the Chair.

Present : All the members of the Committee, with the exception of M. Scialoja and M. Osusky.

22. Question of the extension of the Jurisdiction of the Permanent Court of International Justice as a Court of Appeal : Considerations brought forward by M. Rundstein.

M. RUNDSTEIN said that, in submitting his considerations to the Committee (Annex 6), he in no way wished to add to its work. His sole desire had been to draw its attention to the possibility of widening the competence of the Permanent Court as a court of appeal. This competence should be enlarged not in respect of *personæ* nor of *materiæ* but solely in respect of *ordinis*.

The fundamental principle underlying his considerations was not new. It had been discussed many times and had even found expression in the text of a treaty of arbitration signed between the United States of America and Great Britain at Washington on January 11th, 1897, but which had never been ratified.

In making these suggestions regarding the establishment of a Court of Appeal, he did not think that he was exceeding his powers. He did not propose that the details should be examined or that a draft resolution should be drawn up. In his view, it would be enough if the Committee, without expressing any opinion either for or against the principles contained in his considerations, should draw the Council's attention to the usefulness and desirability of submitting to a close examination problems connected with the question of appeal to the Court.

The VICE-CHAIRMAN proposed that the very interesting considerations submitted by M. Rundstein should be annexed to the covering letter which the Vice-Chairman would send to the Council, forwarding the Committee's report.

This proposal was adopted.

23. Method of seeking Advisory Opinions on Labour Questions from the Permanent Court of International Justice : Memorandum by the International Labour Office.

The VICE-CHAIRMAN said that the very interesting memorandum submitted by the International Labour Office (Annex 5) concerned the manner in which advisory opinions on labour questions were to be sought from the Court. The Labour Office had drawn attention to a certain lack of co-ordination in this respect between Article 14 of the Covenant and Article 423 of the Treaty of Versailles. The International Labour Office was convinced that the object at which it aimed could not be achieved by any amendment of the Statute of the Court and, therefore, the matter went somewhat beyond the Committee's terms of reference. What, in fact, the International Labour Office appeared to desire was a decision on the question whether recourse to the Court must be agreed to by a majority or by a unanimous vote. The Vice-President did not think it was for the Committee to take the initiative regarding such a decision. Nevertheless, he proposed that the memorandum from the International Labour Office should be submitted to the Council.

M. MORELLET (International Labour Office) explained that the point raised by the Labour Office related not so much to the question whether an advisory opinion should be sought by a majority or by a unanimous vote, but to the exact legal nature of the act by which the Council transmitted a request for an advisory opinion, based on Article 423 of the Treaty of Versailles. He was quite ready to accept the Vice-Chairman's suggestion.

M. PILOTTI agreed with the Vice-Chairman's suggestion. The matter should certainly be brought to the Council's attention in the manner proposed. In his view, however, the memorandum from the International Labour Office did not really concern the question whether recourse to the Court must be adopted by a majority or by a unanimous vote. What the Inter-

national Labour Office desired was the adoption of rules governing the Council's action when it performed the office of organ of transmission for requests for an advisory opinion arising out of Article 423 of the Treaty of Versailles.

It was conceivable that the interpretation of the fifth reservation of the United States of America included in the Protocol of which the object was to secure the adhesion of the United States to the Court might be effected by the question raised by the International Labour Office.

Sir Cecil HURST could not accept M. Pilotti's view that when the Council acted as a bureau of transmission in the case of a request from the International Labour Office for an advisory opinion it merely played the part of a post-office. The Council, in his view, always retained its full liberty of action.

M. PILOTTI said that he had not given his own views in the matter but had only sought to interpret the memorandum from the International Labour Office. In any case, he had never regarded the Council as a mere bureau of transmission but as an organ of transmission. He would urge that the matter should be brought to the notice of the Council.

The proposal of the Vice-Chairman was adopted.

24. Interpretation of Articles 73 and 74 of the Rules of Court.

M. URRUTIA asked the President of the Court whether the latter 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.

M. ANZILOTTI replied 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.

25. Question of the Adhesion of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice (continuation) : **Examination of the Revised Draft of the Preliminary Protocol of 1926.**

Sir Cecil HURST urged that the objections of M. Raestad should be discussed before the report and the protocol (Annex 7) were considered.

M. POLITIS did not think that any discussion of principle could be held at that stage. That discussion had been finished some days previously and M. Raestad's objections had been noted. The whole matter had been referred to a Drafting Committee, of which the main task had been to co-ordinate the proposals of Sir Cecil Hurst and M. van Eysinga in regard to Article 4. The new draft represented the results of the Drafting Committee's work and he did not think that the general discussion could be re-opened.

The VICE-CHAIRMAN pointed out that Sir Cecil Hurst had been asked in drawing up his report and the new draft Protocol to consult Mr. Root on all points.

M. POLITIS agreed. All he desired to make clear was that, as the questions of principle had been dealt with, the forthcoming discussion could only concern matters of detail.

M. RAESTAD said that he had no intention of raising serious objections to the new revised draft which differed considerably from the first draft that had been discussed. The new draft was of such a nature that it was not necessary for him to make any important reservation. He thought, however, that he would be in order in making a general declaration at the moment of withdrawing his objections.

The CHAIRMAN said that the proposal of M. Raestad was in order, and called upon him to make his general statement.

M. RAESTAD said that the group of nations to which his country, Norway, belonged attached the greatest importance to the adhesion of the United States of America to the Court. Those countries, however, regarded the maintenance and even the development of the system of advisory opinions as of equal importance. The view had been expressed that the new arrangement to be concluded with the United States of America might result in the abolition of the system of advisory opinions. If this were so, or even if the new arrangement seriously diminished the efficiency of that system, the countries to which he had referred would be faced by an insoluble difficulty. Personally, M. Raestad was now convinced that the adoption of the new draft would not have this effect.

It might be said that, approximately, there were two classes of advisory opinions. There were, first of all, advisory opinions given regarding matters which might be described as political in character. In cases of this kind a special Committee of jurists might quite well be the organ best adapted to settle any doubtful legal points which might arise. His own view was, nevertheless, that in such cases also the Court would probably often be the best organ for the purpose. The second class of advisory opinions dealt with the position of a Member of the League *vis-à-vis* the other Members, within the terms of the Covenant, and with the position of the Members of the League *vis-à-vis* the organisations and institutions of the League and with the working of these organs and institutions. As regards these questions, a special Committee of jurists

could never replace the Court ; the Court was an essential feature of the League and must be used to interpret what might be described as the " law " of the League.

In proportion as the League developed and extended its activities these problems would become more numerous, more important and more complex. The importance of the system of advisory opinions would therefore tend to increase, if not in other respects, at least as regarded this last category of questions. It was essential, from the point of view of the efficiency and development of the League and the mutual confidence of its Members, that these questions should be dealt with by the Court as a matter of course. The whole League was based on the principle that the questions relating to the internal affairs of the League — questions which were of interest exclusively to the League — should be dealt with by the Court as an institution of the League.

He would remind the Committee of the proposal made by M. Motta at the last session of the Assembly to the effect that it was essential to extend and strengthen the use of the system of advisory opinions. M. Raestad fully subscribed to this view.

He was well aware that the United States of America had no intention to destroy the system of advisory opinions nor even to diminish its efficiency. Similarly, the United States was not interested in the domestic affairs of the League. Nevertheless, it might happen that, contrary to the intentions of the parties, an arrangement concluded with the United States might result in a restriction of the use of the procedure of advisory opinions. It was for this reason that the nations interested in the maintenance and development of that system were obliged to study very carefully the provisions of the new arrangement with the United States. As he had said, however, he was sure that the proposed arrangement was not prejudicial to the system of advisory opinions.

The new draft was a very great improvement on previous texts. While no change of principle could now be made, it was the duty of each member of the Committee to elucidate any legal point which was obscure. He did not wish, therefore, to express his doubts regarding the draft as a whole, for he quite realised that it was impossible to split up what was intended to be an indivisible whole. He would, however, ask for explanations of detail. In the first place, he asked whether the sentence in Article 5 :

> " The Secretary-General shall... inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court "

meant that, each time any member of the Council or the Assembly proposed that recourse should be had to the Court, the Secretary-General should be invited to inform the United States of America of this proposal, or did it not simply mean that each time that the Council or the Assembly had had before it a report proposing that the Court should be asked for an advisory opinion the Secretary-General should notify the United States accordingly.

The VICE-CHAIRMAN invited M. Raestad to formulate the amendments which he might desire to suggest.

M. RAESTAD asked whether the reference to an exchange of views between the Council and the United States in Article 5 should not be followed by the words " if desired ". The omission of those words changed the whole aspect of the procedure.

Sir Cecil HURST said that the words had been omitted by error.

M. RAESTAD noted that different expressions were used in describing the parties or signatories referred to in the Preamble, and in various articles of the draft. In the Preamble there was a reference to the States signatories of the new Protocol. In Article 3 there was a reference to the contracting States. The reference in Article 7 was to States which had ratified the Protocol of 1920. Were these expressions correctly employed in every case ?

He noted also that in Article 9 it was said that the new Protocol would be open for signature to the States which "may in the future sign the Protocol of 1920". He did not think that the provision to the effect that the new Protocol should remain open for signature by such States was in accordance with the real position. In his view, the States which would sign later the Protocol of 1920 would be obliged to sign at the same time the present Protocol ; the two documents must be regarded as an interdependent whole.

The second paragraph of Article 7 laid down that the present Protocol should come into force as soon as all the States which had ratified the Protocol of 1920, and also the United States, had deposited their ratifications. At the time when the United States adhered to the present Protocol must it not also adhere to and ratify the Protocol of 1920 ? The Protocol of 1920 was in effect the principal object of the present Protocol, and the ratification of one implied the ratification of the other.

He would say, in conclusion, that, though he was calling attention to these points of drafting, and while he still felt some hesitation regarding the draft as a whole, he desired to express the greatest admiration for the work of Mr. Root and Sir Cecil Hurst.

Sir Cecil HURST, replying to the various points which had been raised, stated that the words "before the Council or the Assembly of the League" in the first paragraph of Article 5 had been inserted in order to make it clear that the provisions of the article would not apply when the request for an advisory opinion came from an outside body and when it was not likely to be seriously entertained by the Council or the Assembly.

If, however, there was any likelihood of a request being seriously considered by the Council or Assembly of the League, the United States would, of course, be consulted in conformity with

the stipulations of the article. He would urge that the references to this matter should be expressed in language as elastic as possible, and that the question of informing the United States should be left to the good sense and discretion of the Secretary-General and the Council.

The various expressions used in referring to States which had signed or ratified the Protocol had been carefully considered, and were, in his view, correct in each case. The Preamble referred to the States signatories of the Protocol of 1920. There were some eleven States which had signed the Protocol of 1920, but had not yet ratified it. Any one of those States might at any moment deposit its ratification, and would then be included among the States whose rights were defined in the Protocol of 1920. If the reference in the Preamble were confined to States which had ratified the Protocol of 1920, the States which had signed that Protocol, but had not yet ratified it, would be left out of account.

The reference to contracting States in Article 3 was to States which had both signed and ratified the 1920 Protocol. Only such States had the right to claim that no amendment of the Statute of the Court should be made without their consent.

He would draw attention, incidentally, to a mistake in the wording of the article, which should refer to " amendment of the Statute of the Court " and not to " amendment of the Statute annexed to the Protocol of 1920 ".

He did not think that M. Raestad was right in his contention regarding Article 9. He could not agree that the present Protocol was compulsory upon the signatories of the Protocol of 1920, and it was, in his view, impossible, by the present instrument, to take away from States which had signed the Protocol of 1920 the rights which they enjoyed under that Protocol. When the United States accepted the present Protocol, it would be open for them to become parties to the Protocol of 1920. He did not think it was possible for the stipulations of the present text to go any further than that.

He would like to say, in conclusion, that he was glad that M. Raestad had raised the points under discussion. He desired, and he felt sure his colleagues desired, that the present text should be unanimously and cordially approved by the whole Committee.

Two slight textual modifications were necessary. In the second paragraph of Article 5 it was necessary to add the word " such " before the words " exchange of views " to indicate that the contemplated exchange of views was that to which previous allusion had been made. It was also necessary in the last paragraph of that article to insert the words " of this article " after the words " paragraphs 1 and 2 ".

M. Politis said he also desired to request certain explanations in regard to the present text. He did not think the reply of Sir Cecil Hurst on the point which had been raised concerning Article 9 was altogether satisfactory. What would be the position of States which had ratified the Protocol of 1920, but which did not ratify the present Protocol ? Such States would not have accepted the United States reservations and their position would have to be considered. Was it right to regard the present Protocol as forming a whole with the Protocol of 1920 ?

The second question he desired to raise was more important. In several paragraphs of the present text, reference was made to the reservations of the United States. Those who read the document might not know exactly what was contained in those reservations, or in what order the reservations had been made. Was it not necessary either to explain the purport of the reservations in the text, or to annex to the Protocol the reservations themselves ?

Another point arose in connection with paragraph 3 of Article 8 which provided for the case in which a contracting State might desire to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of 1920. He quite understood that this power of withdrawal should be accorded in respect of the fifth reservation. States not accepting that reservation, which had been granted as a concession to the United States, might be entitled to withdraw. The same reasoning, however, did not seem to apply to the second part of the fourth reservation to which reference was also made in the paragraph. The fourth reservation was to the effect that the Statute of the Court should not be changed without the consent of the United States. Such a stipulation could not be regarded as a special concession to the United States, but was a guarantee based upon the common law of nations. Obviously, the Statute of the Court could not be modified without the consent of all the contracting parties. He did not, therefore, see why the power of withdrawal should be referred to in connection with the second part of the fourth reservation, and he considered that this reference should be suppressed.

M. Raestad agreed with Sir Cecil Hurst that the text of the Protocol should be as elastic as possible. He would, however, draw attention to the fact that the text of Article 5 seemed precisely not to be elastic enough since it gave very little discretion to the Secretary-General of the League. It was laid down that the United States should be informed of any proposal before the Council or the Assembly. Would it not render the text more elastic if some term conveying the meaning of the word " serious " used by Sir Cecil Hurst were inserted before the word " proposal " ? This would allow a considerably wider discretion in the application of the article.

Sir Cecil Hurst said he was under the impression that the English text which referred to " any proposal before the Council or the Assembly of the League " was sufficiently elastic. A proposal which was before the Council or the Assembly would of necessity be a serious proposal. He wondered whether the French text " soumise au Conseil ou l'Assemblée " was satisfactory. A proposal might be submitted to the Council or the Assembly without being in effect before those bodies in the sense of the English expression.

After an exchange of views as to the precise significance of the French and English expressions, *it was decided* to maintain the text as it stood, on the understanding that the French text correctly conveyed the meaning of the English text.

Sir Cecil HURST, continuing his observations on Article 5, said he would hesitate to introduce the word " serious ", which might have a limiting effect and might to some extent narrow the discretion of the Secretary-General and the Council. He thought the text as it stood ensured that, if there was any real question of the Council or the Assembly being asked to consider a request for an advisory opinion which might touch the interests of the United States, the provisions of the article would apply. He felt that the application of the provision might safely be left in practice to the Secretary-General and the Council, interpreting the article as it stood.

M. RAESTAD said he was quite willing to withdraw his suggestion that a term conveying the idea " serious " should be inserted before the word " proposal ", especially in view of the fact that Sir Cecil Hurst admitted that, in accordance with the present draft, a proposal which would justify a consultation with the United States would of necessity be sufficiently serious in character.

The point raised by M. Politis in respect of Article 9 was more important. He could not agree that it was impossible to impose on future signatories an obligation to sign the present Protocol and the Protocol of 1920 at the same time. There seemed to be a tendency to lay too much emphasis, as regards the Protocol of 1920, on its character of an agreement between the signatories. The Protocol must also be regarded as an element of the Constitution, so to speak, of the League of Nations, and he did not think that, in this matter, the acquired rights of third parties existed. The two Protocols, in his opinion, formed an inseparable whole, and he did not see that there was any legal objection to recognising that fact. He desired to state clearly that it seemed to him inconceivable that a State could accept one Protocol and not the other, and that he considered it to be within the competence of the Assembly to pass a resolution to the effect that the two documents should be regarded as forming a whole.

M. PILOTTI said he desired to support the original proposal of M. Raestad, which had been developed by M. Politis. He wished it to be laid down quite definitely in Article 9 that the present Protocol should be signed by States which had signed the Protocol of 1920. States were free to sign both documents or neither.

The reference in Article 8 to the second part of the fourth reservation of the United States was, he thought, explicable in the light of the discussions which had taken place in 1926. Such a reference had seemed necessary in 1926, owing to the fact that, in the Protocol of 1920, no provision had been made for withdrawal. The United States had asked for the right of withdrawal to be recognised, and it had accordingly been necessary to insert a specific reference to the point, in order to ensure equality of treatment between the United States and any other State which might ask for a similar privilege. He would ask M. Politis to leave Article 8 as it stood, since it contained an answer to scruples and difficulties which had been discussed in reference to the previous Protocol of 1926.

M. RUNDSTEIN referred to the proposal that the reservations of the United States should be embodied in the Preamble or annexed to the Protocol. If the present Protocol were accepted there would be no necessity for a Final Act, and the only place for a suitable summary of the reservations would seem to be the Preamble.

The VICE-CHAIRMAN said that perhaps Sir Cecil Hurst would consider whether any summary of the reservations should be made, or whether these reservations should be annexed to the Protocol.

Sir Cecil HURST said his only objection was that the reservations of the United States were longer than the Protocol itself. He thought that the present reference in the Preamble was sufficiently explicit. It referred to the reservations in a way which would enable them to be easily identified.

The VICE-CHAIRMAN asked whether there was any objection to annexing the reservations.

Sir Cecil HURST said he would prefer to leave that question to Mr. Root. The important point was that the document should be issued in a form which would render it acceptable to the United States.

M. POLITIS again urged that the reservations should be annexed. Otherwise readers of the Protocol in the near future would have some difficulty in understanding the document without first obtaining the text of the reservations.

Mr. ROOT said he would consider the matter. He felt it was important that the Protocol should be understood by a public which was not accustomed to reading legal documents. He felt that it was extremely desirable to reduce to a minimum any recitals in the Preamble or any protracted statement preceding the substance of the document. He would discuss the matter with Sir Cecil Hurst.

The VICE-CHAIRMAN said there remained the question of Article 9, and the question of the reference to the fourth reservation in Article 8. Those matters would have to be discussed at the next meeting of the Committee.

THIRTEENTH MEETING,

Held at Geneva on Monday, March 18th, 1929 at 4.30 p.m.

Jonkheer VAN EYSINGA (Vice-Chairman) in the Chair.

Present: All the members of the Committee, with the exception of M. Scialoja and M. Osuský.

26. 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 : Examination of the Revised Draft of the Preliminary Protocol of 1926 (continuation).

The Vice-CHAIRMAN reminded the Committee that there remained over from the morning's discussion three points which had been put forward by M. Politis.

He would ask M. Politis if he wished to press his suggestion that the original five United States reservations should be included in an annex to the draft Protocol. He thought that M. Politis might be satisfied if, in his covering letter to the Council, the Vice-Chairman were to request the Secretary-General to circulate the text of the five reservations to the Members of the League.

M. POLITIS assented to the Vice-Chairman's proposal.

The VICE-CHAIRMAN reminded the Committee that M. Politis' second point referred to the words occurring in the third paragraph of Article 8, which conferred on the contracting States, other than the United States, the right to withdraw their acceptance of the special conditions made by the United States as regards its adhesion to the Protocol, "in the second part of its fourth reservation and in its fifth reservation ". The Vice-Chairman thought that M. Politis' wishes would be met if the words in brackets were omitted.

Mr. ROOT intimated that he had no objection to the omission of the words indicated.

Sir Cecil HURST said that he had expressly enclosed the words referred to by the Vice-Chairman in brackets in the hope that they would be omitted by the Committee in the final draft.

He would point out that the text of the articles had been copied from that of the 1926 draft and that the word " other " had been omitted in the English text (first line of the third paragraph) before the words " Contracting States ".

M. POLITIS agreed to the omission proposed by the Vice-Chairman.

The VICE-CHAIRMAN observed that the third question left over was that of Article 9. Several objections had been made to that article at the morning meeting, at the end of which Mr. Root had made a suggestion which would probably meet the wishes of all the members of the Committee. The suggestion was to omit Article 9 altogether and to add at the end of Article 6 the following words: " 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 ".

Mr. ROOT thought that his suggestion came under the general necessary rule that it was impossible to have a dozen different conditions attached to the signatures of the various contracting parties to an international treaty, some signing only one part and others another. The effect of his proposal would be that, when the Protocol had been amended, all future signatories must accept it in its amended form.

M. GAUS considered Mr. Root's proposal very simple and practical and said that he personally would have no objection to it. From the theoretical point of view, however, it might be necessary to take into consideration all possible contingencies that might arise. It might therefore be preferable to leave Article 9 as it stood, since questions similar to those that had arisen in connection with the 1920 Protocol might arise again in connection with the amendments to the Statute adopted by the Committee. There were three matters to be considered, the revised draft Protocol of 1926 now before the Committee, the Protocol of 1920 and the Protocol containing the amendments to the Statute. Would it not be possible for the Assembly to pass a resolution to cover all possible cases which might arise out of these three instruments ?

The VICE-CHAIRMAN thought it would be difficult to find a formula to cover all possible theoretical cases and that it would be better perhaps for the Committee to confine itself at the moment to adopting Mr. Root's proposal.

M. GAUS thought it might be possible for the Assembly to pass a resolution laying down that in future no State could sign the 1920 Protocol in its original form, but only subject to any amendments which might have been made in it.

M. ANZILOTTI saw no difficulty, from the legal point of view, in the adoption of Mr. Root's proposal, which was very clear and precise. The new Protocol would only come into force

when it had been signed and ratified by the Contracting Parties to the 1920 Protocol. It was only natural that the Contracting Parties to the 1920 Protocol should say that those States which had signed but had not yet ratified that Protocol had no right to expect the other contracting Parties to wait indefinitely for their ratification nor the right to hold up for this purpose any amendments which they might think necessary to make in the Statute. It was true that the 1920 Protocol did not mention any time limit for signature and ratification; it would, however, be scarcely reasonable to interpret the invitation to sign and ratify as entailing a right for the aforesaid States that the invitation should be neither withdrawn nor modified. It followed that such States would be at liberty to ratify the Protocol if they had signed it or might sign it first if they had not yet done so, upon the new conditions offered them by those Contracting Parties which had signed and ratified it.

M. ITO thought the difficulties contemplated by M. Politis in regard to Article 9 would occur only rarely in actual fact. In view of those difficulties, M. Ito preferred Mr. Root's proposal by which the Committee would establish a connection between the present Protocol and the Protocol of 1920. But the same difficulties in a more serious form would arise as between the 1920 Protocol and the Protocol to be established with any amendments that might be adopted. To meet this case an appropriate solution should be found on the lines proposed by M. Anzilotti, with such modifications as might be necessary. In M. Ito's opinion, the difficulties should be solved as and when they occurred, and it was unnecessary to have any instrument to solve them collectively.

M. URRUTIA thought Mr. Root's solution so clear that the Committee could agree to it without further discussion. It corresponded, indeed, to the present situation, that was to say, the new juridical situation created by the adoption of the new Statute. Legally, indeed, the old Statute would disappear as the result of the agreement of the Contracting Parties to accept the amendmed Statute. That being so it was, in point of fact, unnecessary to do anything at all. There was only one posssible eventuality which might arise (and that being so it was not worth while providing for), namely, that a State which had signed but had not yet ratified the 1920 Protocol might desire to ratify it after all the other Contracting Parties had accepted the new Protocol. Such ratification would not be legally valid since the old Protocol would have disappeared.

Mr. ROOT observed that he had not intended to present a hard and fast proposal but rather a suggestion, and he enquired whether M. Gaus would be satisfied if, in his proposal, the word " ratification " were substituted for the word " signature ".

M. GAUS said that he was prepared to accept Mr. Root's first proposal. He had only been contemplating possible cases that might arise and he agreed that there would be practical difficulties in finding a formula to cover all cases.

The VICE-CHAIRMAN noted that M. Gaus accepted Mr. Root's proposal in its original form.

M. RAESTAD preferred the term " ratification " to the term " signature ", since he did not think that in this case " signature " could be taken to mean acceptance. In the case of treaties subject to ratification, signature was only the starting-point for acceptance and acceptance itself only followed when ratification had taken place. He enquired whether the Committee considered that the term " signature " implied acceptance.

The VICE-CHAIRMAN and M. POLITIS thought that it did.

The VICE-CHAIRMAN noted that the Committee agreed to the term " signature ".

The amendment proposed by Mr. Root was adopted.

On the suggestion of the VICE-CHAIRMAN, the draft Protocol was then read article by article with a view to ensuring the exact concordance of the two texts.

Article 4.

M. FROMAGEOT observed that the proper method of rendering the word " substantially " in the French text would be to omit the words " quant au fond " and to insert after the word " dispositions " the word " essentielles ".

In reply to a question of M. Gaus, M. Fromageot said that the words " dispositions essentielles " in the phrase as drafted would mean that the " dispositions " formed the essential part of the articles in question.

Article 8.

M. RUNDSTEIN observed that it was clear that denunciation of the Protocol could not have retroactive effect, but he thought that it would be wise to say so definitely. A provision to that effect was included in the arbitration conventions, for instance, in that between Germany and Switzerland and also in the Council's resolution of May 17th, 1922. He suggested, therefore, that provision should be made that denunciation should not affect disputes of which the Court had already been seized.

M. POLITIS considered that M. Rundstein's point was a purely theoretical one and that there was no need to make any special provision to meet this case.

The VICE-PRESIDENT agreed with M. Politis.

M. RAESTAD said that the fact that the United States did or did not adhere to the Statute could not affect cases actually before the Court. It was a matter of indifference, in respect of such cases, whether a country adhered or no to the Statute. The analogy mentioned by M. Rundstein did not apply, for jurisdiction existed independently of accession, whereas, in the case of arbitration treaties those treaties themselves created the jurisdiction.

M. RUNDSTEIN said that he would not press his point.

The VICE-CHAIRMAN noted then that the Committee agreed to adopt the draft Protocol in the following amended form :

" 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 had 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 forego 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 ....., the ..... day of ..... 19....., in a single copy, of which the French and English texts shall both be authoritative. "

27. **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** (continuation) : **Examination of the Draft Report submitted by Sir Cecil Hurst.**

Sir Cecil HURST read his draft report (Annex 8) on the accession of the United States to the Protocol of Signature of the Statute of the Court.

In the course of the discussion on the report, M. ANZILOTTI pointed out that the Protocol, the text of which had been revised by the Committee, would be concluded not between the States signatories of the 1920 Protocol and the United States of America, but between the States which had ratified, or might ratify, the 1920 Protocol and the United States.

The VICE-CHAIRMAN and other members of the Committee observed that, whereas the accession of the States which had ratified, or might hereafter ratify, the 1920 Protocol was indispensable, nothing prevented other States, even those which had only signed the 1920 Protocol, from also signing the new Protocol. The term " signatory States " appeared, moreover, in the text of the revised draft of the Protocol of 1926, and the use made of that term in Sir Cecil Hurst's report, was in accordance with current practice.

M. PILOTTI said that in 1926 it had been necessary to make use of the term " signatory States " because some States which had not ratified the 1920 Protocol had been represented at the Conference (Dominican Republic, Liberia, Luxemburg, Panama, Persia). There was no reason why the Committee should adopt the same procedure, which in M. Pilotti's view, was incorrect.

Sir Cecil Hurst's report was adopted with certain amendments on points of detail.

28. **Communication to the Press of the Revised Draft of the 1926 Protocol.**

On the proposal of the VICE-CHAIRMAN, the Committee decided to communicate to the Press the revised draft of the 1926 Protocol, in order to obviate any possibility of the publication of an incorrect text.

29. **Printing of the Minutes of the Committee.**

On the proposal of the VICE-CHAIRMAN, *the Committee decided*, in virtue of the Assembly resolution of September 26th, 1928, to request the Council of the League to authorise the printing of the Committee's Minutes.

30. **Question of holding a Public Meeting at the close of the Session.**

On the proposal of the VICE-CHAIRMAN, *the Committee decided* that it should close its proceedings without holding a public meeting.

FOURTEENTH MEETING.

Held on Tuesday, March 19th, 1929, at 10.30 a.m.

Jonkheer VAN EYSINGA (Vice-Chairman) in the Chair.

Present: All the members of the Committee, with the exception of M. Scialoja and M. Osusky.

31. Interpretation of the Word "Nationality" in Article 31 of the Statute of the Permanent Court of International Justice: Point raised by Sir Cecil Hurst.

Sir Cecil HURST asked that mention should be made in the report of the Committee to the Council on the question of the revision of the Statute of a point of special interest to the British Empire. It concerned the interpretation of the word "nationality" in the first line of Article 31 of the Statute. He desired, on behalf of the British Dominions, that this article should be interpreted to mean that it did not exclude the right of a Dominion to appoint to the Court a judge *ad hoc* even though an English judge should also be a member. He had originally intended to propose an amendment to this effect, but a close study of the Statute had convinced him that such a course was no longer necessary and that the interpretation which he put upon the Statute, without being the only possible interpretation, was the one which was, in fact, correct.

The point which he desired to make perfectly clear was that the word "nationality" in Article 31 should bear the same meaning as the word "national" *(ressortissant)* in the third paragraph of Articles 26 and 27 which were to the following effect:

> "*Article* 26. If there is a national of one only of the parties sitting as a judge in the Chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31."
>
> "*Article* 27. If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31."

It seemed perfectly clear to him that the word "nationality" in Article 31 should be interpreted in the sense given to the word "national" in the foregoing passages.

There were other articles in the Statute which corroborated his view. Article 4, paragraph 2, laid down the conditions under which lists of candidates for election to the Court should be submitted. They were to 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" At that date the British Government had acted for all the Dominions which had consequently possessed no national groups. The procedure in Article 4 had been applied in the British Empire since 1920, which showed once more that, in the matter of nationality as understood for the purposes of the Court, the British Dominions were distinct from the mother-country.

The second paragraph of Article 5 was to the following effect:

> "No group may nominate more than four persons, not more than two of whom shall be of their own nationality . . ."

Here, again, it was clear that the word "nationality" was used in the sense of the word "national" in Articles 26 and 27.

Again, the second paragraph of Article 10 stipulated that:

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

This paragraph meant that there was nothing to prevent the election of, for example, an English and a Canadian judge at the same time, because the Englishman did not possess Canadian nationality and *vice versa*. Great Britain and Canada were separate Members of the League.

Finally, Rule 71 of the Court stipulated that:

> "On a question relating to an existing dispute between two or more States or Members of the League of Nations, Article 31 of the Statute shall apply."

This showed that the mere presence of an English judge would not prevent the appointment of a Canadian judge *ad hoc*.

In view of these considerations, Sir Cecil Hurst thought that any amendment was superfluous and, further, that it would be bad policy, because the meaning of the word "nationality" in Article 31 was quite clear.

When he had first raised the matter, he had encountered the opposition of M. Politis. No other member of the Committee except M. Raestad had expressed his views, and M. Raestad had agreed with Sir Cecil Hurst. Sir Cecil had therefore been under the impression that, with the exception of M. Politis, the Committee agreed with his view. It now appeared, however, that M. Politis was equally convinced that with the exception of Sir Cecil Hurst and M. Raestad the Committee supported the opposite contention. It was therefore with the object of settling the matter that he had raised the question. All that Sir Cecil Hurst now asked for was that this interpretation should be mentioned in the Committee's report. To do so would satisfy the British Dominions.

M. Politis agreed with the view of Sir Cecil Hurst as to what had taken place in the Committee when the point had been originally raised. M. Politis himself had had exactly the contrary impression to that of Sir Cecil Hurst. For that reason he was grateful to his British colleague for having raised the matter again, in order that the views of the Committee should be definitely ascertained.

Sir Cecil Hurst had originally proposed that Article 31 should be amended. He now wished his interpretation to be mentioned in the Minutes and in the report. If the Committee agreed to this procedure, and if it accepted the interpretation of Article 31 proposed by Sir Cecil Hurst, M. Politis would ask that those members, including himself, who disagreed with this interpretation should also be allowed to say so in the Committee's report.

To pass from matters of procedure to a discussion of the substance of the question, M. Politis would raise the following objections to the interpretation of Sir Cecil Hurst.

In the first place, the least that the Committee would have to fear was that small countries not belonging to a combination of States such as the British Empire would hesitate and perhaps refuse to accede to Article 36 of the Statute (the optional clause). For example, his own country Greece was on the point of acceding to that clause, but would certainly not do so if the Committee accepted Sir Cecil Hurst's interpretation of Article 31. In fact, M. Politis would formally advise his Government against taking any such step. The reason was fairly obvious. Under Sir Cecil Hurst's interpretation Greece, if she had a dispute with a British Dominion, might find herself in a position of inferiority. For example, it was quite possible that after the elections in 1930 both an English and a Canadian judge would be appointed to the Court, in which case if Greece had a dispute with Australia and if Australia insisted upon her right to appoint a judge *ad hoc*, Greece would find herself faced with three judges bound together by certain ties the nature of which it was difficult to define, whereas she herself would have the right to be represented only by one judge.

Despite what Sir Cecil Hurst had said at a previous meeting in regard to the great differences existing between the legal systems and constitutions of the Dominions and Great Britain, he had not replied in any way to the main objection which M. Politis had raised. It was a fundamental rule applying to all courts that, between the judge and the party to the case, there should be no kind of bond or connection, whether private or public. If this were the case in an ordinary national court, *a fortiori* it should be the case in the highest court in the world. Such a rule was, indeed, of vital importance, for any suspicion, however ill-founded it might be, that a judge might be biassed because of his connection with a party to a case must at all costs be avoided.

For these reasons it seemed logical to M. Politis that the Committee should adopt his own interpretation of Article 31. If it did not do so, the only other course, in his view, would be to complete Article 17 of the Statute and make it possible for the parties to a case to object to the presence of, for example, an English or a Canadian judge when they were in dispute with a Dominion.

M. Politis would strongly urge the Committee to reflect on the gravity of the situation which might arise were it to adopt the interpretation of Sir Cecil Hurst without, at the same time, providing any form of palliative.

To return, in conclusion, to the question of procedure, M. Politis asked that, if the Committee inserted Sir Cecil Hurst's interpretation of Article 31 in its report, it should also insert the formal reservations which he had made to such an interpretation.

M. Fromageot considered that Sir Cecil Hurst, as well as M. Politis, had shown much wisdom and, at the same time, a good deal of ingenuity. A preliminary question should, however, be settled. Was it within the terms of reference of the Committee to give its opinion in regard to the interpretation of any article of the Statute ? M. Fromageot doubted it. Many other articles besides Article 31 might give rise to different interpretations, and if the Committee proposed to intervene it might well embarrass the Court.

To refer to the merits of the question, M. Fromageot considered that if the interpretation of Sir Cecil Hurst were adopted, the Committee would be going too far and there would be a risk of serious abuses. On the other hand, if it followed M. Politis entirely, some injustice might result for the British Dominions.

In the view of M. Fromageot a compromise might be reached from the practical point of view and from that alone. What was desired was that the Court should work easily and effectively. If a Dominion had a special point in dispute, of a nature peculiar to itself, a judge *ad hoc* belonging to that Dominion could help the Court, since it was admitted that the Court should be in a position to be helped by national judges. In this special case the presence of a judge *ad hoc* would be justified, not only from the point of view of the Dominion in question, but also from that of the Court. If, on the contrary, the question under dispute was of a more general kind and did not affect solely the interest of the Dominion in question, there was no reason why several judges belonging to the British Empire should sit upon the Court.

For example, suppose that South Africa became involved in a dispute regarding the question of the freedom of the seas. That was certainly a general question. South Africa might, however, also be a party to a dispute regarding a question which particularly concerned it, a Customs question, for example, in which case the presence of a South African judge *ad hoc* would be indicated, as much from the point of view of the Dominion as from that of the Court.

The compromise to be contemplated, therefore, would be that the solution to be adopted should depend on the circumstances. However that might be, it did not seem that the Committee was in a position to interpret the Statute regarding this matter.

M. RAESTAD agreed with M. Fromageot that the Committee was going beyond its terms of reference in seeking to interpret the Statute, all the more so as the amendments which it had made in Articles 26, 27 and 31 did not concern the point raised by Sir Cecil Hurst.

With regard to the merits of the question, however, M. Raestad thought that M. Fromageot had expressed a dangerous view, and he could not agree with him. It must be admitted in principle that, according to the Statute, all the Members of the League of Nations were placed on an equal footing. If it had been desired to make any difference between the various Members as regarded this question it should have been done in Article 10 of which the text originally proposed read as follows :

" In the event of more than one national of the same State being elected. . . "

The word "State" had subsequently been changed to "Member". Perhaps it was unwise to place all the Members on an equal footing, but as this had been done, it was impossible to escape from its logical consequences. This meant, amongst other things, that a Dominion should be in the same position as any other Member of the League, as regards its right to appoint a national judge.

The Court could not decide each case on its merits. Such a procedure would involve a change in Article 31. The most that could be done would be to apply the provisions of Article 24 which stipulated that :

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

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

M. Raestad's conclusion was that the Committee would be exceeding its competence if it adopted either the interpretation of Sir Cecil Hurst or that of M. Politis. As far as he was concerned, however, he fully subscribed to the interpretation of Sir Cecil Hurst.

M. ITO had been much embarrassed by the question raised by Sir Cecil Hurst, for matters connected with the British Empire were invariably complex. There was not sufficient information regarding the legal status of the Dominions to make it possible to express any opinion, especially in so delicate a question, involving political consequences. He would, however, point out that no actual case of the kind which Sir Cecil Hurst desired to cover had as yet arisen. That being so, there seemed no reason why reference should be made at the present juncture to the problem. Moreover, the word "nationality" had a definite meaning in international life. In international relations Australians and Canadians possessed only British nationality. His conclusion was, therefore, that it would be dangerous to adopt the views of Sir Cecil Hurst and that the Committee should make no mention of the matter in its report.

M. GAUS would express no opinion on the substance of the question. From a purely legal standpoint, however, he could not agree with the interpretation put upon the Statute by Sir Cecil Hurst. M. Gaus considered that the opposite interpretation was quite possible. That being so, he did not think the Committee could settle the question by a mere interpretation, but that it would be necessary to insert a new provision deciding the point one way or another. In the view of M. Gaus, however, the Committee was not competent to do so for two reasons. In the first place, it could not interfere with the constitution of the British Empire ; in the second place, it could equally not interfere with the constitution of the League itself.

The VICE-CHAIRMAN thought it was clear that the interpretation proposed by Sir Cecil Hurst would not be unanimously adopted. In these circumstances the Committee should, he thought, close the discussion, which would be recorded in the Minutes. That record would certainly be of great interest if the problem arose.

M. POLITIS said that he had no objection in principle to the proposal of the Vice-Chairman, which would have the effect of closing the discussion on the question raised by Sir Cecil Hurst, provided that it was recorded in the Minutes. He wondered, however, whether the President or Vice-President of the Court should not first be asked whether they had ever contemplated, in any particular case, the application of the provisions of Article 24 of the Statute.

Sir Cecil HURST said he desired to make a declaration before the Committee complied with the suggestion of M. Politis.

In his opinion, the moment it appeared that there were differences of opinion within the Committee, the solution of the problem would have to be found outside the Committee. It did not seem to him that the Committee had the necessary competence to declare an opinion on the question, unless there was unanimous agreement. The only competent authority to settle the question would be the Court itself, and it did not seem to him desirable to ask the

M. POLITIS said he did not think that the Committee had understood in that sense the reason for the language qualification. A knowledge of the official languages was especially necessary to enable the judges to follow the discussions of the Court. A judge who could not follow the pleadings or discuss the findings of the Court with his colleagues was necessarily in a position of inferiority. He thought it was indispensable that a judge should be able to understand the two official languages, though he need not be able to speak them correctly.

Sir Cecil HURST wondered whether M. Politis had quite correctly stated the position. He had assumed that the recommendation was justified by the necessity for members of the Court being able to acquaint themselves with works of law written in both languages, so that they might be familiar with the two important schools of international law based on the Continental and the Anglo-Saxon systems respectively.

M. GAUS agreed with M. Politis as to the interpretation of the motives underlying the recommendation. The recommendation could not be based on the argument that it was necessary for the judges to have studied particularly legal works in the two official languages. Important works on international law had been written in other languages, and he could not approve a draft which might leave the impression that a preponderance had been given to the legal works of any particular nation.

M. ITO said he had understood that, in requiring an adequate knowledge of the French and English languages, the Committee had desired to ensure that the judges should be able to read legal works in those languages. It would be difficult to require more than that. Otherwise it would be difficult, or even impossible, to find suitable candidates in countries where neither French nor English was spoken, and those countries must, obviously, not be excluded.

M. POLITIS said he was quite aware of the motives which had induced Sir Cecil Hurst to support the present text. He had understood, however, that the members of the Committee had agreed that it would be difficult to justify the recommendation merely on the ground that the judges should be able to read legal works in French and English. There were important legal works in other languages, and if the motives referred to by Sir Cecil Hurst were admitted, it would be necessary to include five or six languages. The justification for requiring a knowledge of the two official languages was that they were the languages in which the correspondence, pleadings and discussions of the Court took place. In order to follow the proceedings of the Court a really adequate knowledge of the two languages was necessary.

M. RUNDSTEIN suggested that the recommendation should read to the effect that the judges should " understand " both official languages.

The VICE-CHAIRMAN thought that the report quite rightly insisted on the importance of the two official languages, and, in his view, the question should be left there. The only real justification for requiring an adequate knowledge of the two languages was that the judges should be able to follow the pleadings of the Court. As the doctrines of international law were not exclusively embodied in the two official languages, the recommendation would not be justified on the ground that it was necessary for the judges to have studied the French and English literature on the subject. He would submit that the formula suggested by Mr. Root would meet the case.

Mr. ROOT, emphasising his previous arguments, enquired why it was necessary for the present Committee to have interpreters. The present Committee and the original Committee of Jurists had been appointed for their competence to advise the Council upon matters of international law, and not for their linguistic attainments. The recommendation, as it stood, set up a linguistic standard for the judges which the present Committee did not attain, and which the Council of the League itself might find it difficult to achieve.

The question of the linguistic test to be applied was a practical one. If the qualification were defined according to the terms of the present text it might prevent many candidates from presenting themselves if they conscientiously applied a standard which appeared to be more severe than that which had really been intended, and it would thus become more difficult to find suitable candidates. He would emphasise that it was more important for the Court to obtain good judges than for the judges to obtain a seat upon the Court. A judge who came to the Court was required to surrender a good many advantages and to perform arduous duties for the public good.

M. ANZILOTTI said that the principal reason for the constitution of the present Committee was to amend the Statute with a view to rendering the work of the Court easier and more rapid. From that point of view the question of language was technically of great importance, and had already caused considerable embarrassment. The absence of adequate knowledge of the official languages by the judges had undoubtedly caused loss of time. If only one judge was unable to follow the proceedings in one of the languages, the time taken in hearing the case was virtually doubled, and any rapid exchange of views between the judges themselves became difficult. Judges unacquainted with the official languages were reduced to putting forward elaborate statements which had to be translated.

Personally, he would like it to be laid down that a judge should be able to read and understand the two official languages of the Court and to be able to speak at least one, so that he would he able to follow the pleadings and discussions. Such a stipulation would undoubtedly facilitate the work of the Court.

President and Vice-President of the Court for their views on a problem which the Court might itself perhaps be called upon to settle in the ordinary course of its duties.

He was quite prepared to withdraw his request that an interpretation of Article 31 should be given in the report, but in that case he thought it would be better not to mention the subject at all in the report, in order that the position of his Government and of the Governments of the Dominions would not be in any way prejudiced by the discussions which had taken place in the Committee.

The VICE-CHAIRMAN asked whether the President of the Court was prepared to say whether Article 24 had ever been applied in practice.

M. ANZILOTTI said that Article 24 had never been formally applied.

M. POLITIS said he did not desire to press his proposal. He would add that it had never been his intention in any way to infringe upon the rights of the Dominions. He was merely anxious to preserve for the Court the high reputation of impartiality which was necessary for its efficiency and success.

Mr. ROOT said he had no wish to revive the discussion. He would like, however, to place on record the fact that the United States had recognised the separate international personality of the Dominions by exchanging Ministers with Canada and the Irish Free State.

32. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation): Examination of the Report submitted by M. Fromageot and M. Politis.

The VICE-CHAIRMAN said the Committee would now take the report on the revision of the Statute of the Court which had been prepared by M. Fromageot and M. Politis (Annex 9).

Introduction.

M. FROMAGEOT pointed out that the order of the names of the members of the Committee was not quite correct. The order would be revised in the final version.

The VICE-CHAIRMAN referred to the statement in the sixth paragraph of the Introduction to the effect that the Permanent Court created by the League was a " real judicial body ". Might it not be implied from this assertion that the Court was always to be regarded as a judge, even when it was issuing an advisory opinion ? That question had not been discussed by the Committee, and no opinion should be expressed on the subject one way or the other.

M. POLITIS said that the phrase in question had not been used in the sense attributed to it by the Vice-Chairman. The sentence was only a reflection of the whole discussion which had taken place in the Committee, during which emphasis had been laid on the fact that every endeavour should be made to assert the judicial character of the Court as a tribunal. The paragraph to which the Vice-Chairman referred was intended to emphasise the fact that the Court was a real judicial body in the sense explained in the paragraph ; in other words, that it had the necessary qualities of permanence and competence to act as a Court.

The VICE-CHAIRMAN said that M. Politis' interpretation of the paragraph gave him complete satisfaction.

Sir Cecil HURST drew attention to the fact that in the next paragraph the English text was not quite in accordance with the French text. The paragraph should read :

" It would appear that effect can be given to some of the Committee's proposals... ".

The Committee agreed.

Mr. ROOT drew attention to the wording of the recommendation which figured as a conclusion to the Introduction. In that recommendation it was laid down that persons nominated by the national groups should have an adequate knowledge of the French and English languages. Those words might, perhaps, have a wider significance than was intended. He understood that the Committee had merely desired that judges should be able to read both languages, and that they need not necessarily be able to speak them. There were large regions of the world where men of considerable learning and experience of affairs, with a knowledge of French and English literature, had never had an opportunity of speaking one or other of those languages. It would be unfortunate if a severer language test were imposed than the Committee had intended.

Was it implied by the text as it stood that a judge, in order to become a candidate, must be able to follow the oral pleadings in the Court ? He would suggest that such an interpretation would require a greater degree of proficiency than it was desirable to impose. He would suggest that some other form of expression should be used, such as " adequate reading knowledge ".

Sir Cecil HURST represented that the reason for requiring the linguistic qualifications described in the recommendation was that judges should be able to read legal works in both languages.

On the other hand, no one could fail to be strongly impressed by the arguments of Mr. Root, or fail to recognise that undue severity in applying the language test would make it difficult to find suitable judges for the Court. He was extremely reluctant to create such difficulties, but felt, nevertheless, that more than a reading knowledge of the two languages was required. He would point out, however, that an adequate reading knowledge of the two languages would constitute an improvement on the present state of affairs.

He did not think that the language qualification was justified by the argument that it was necessary for the judges to have studied the legal literature in the two official languages, but that its importance should be emphasised from the point of view of the proceedings of the Court. It was essential that the judges should be able to follow the pleadings and to take part easily in the discussions in the private meetings.

Sir Cecil HURST said that, after the observations of the President of the Court and Mr. Root, it was obvious that the solution would have to be a compromise. The fundamental object of the present Committee was to secure a good and efficient Court. It was necessary to have a Court of qualified judges, and not a Court of qualified linguists. He fully realised the difficulties to which the President of the Court had referred, but felt that it was more important, from the point of view of the Court itself, to reach right decisions than to reach decisions rapidly. There should, of course, be required a minimum knowledge of languages, and he thought that that minimum was represented by ability to read them.

He would propose the following form of words :

" And that they are at least able to read the official languages of the Court. "

M. FROMAGEOT said that the corresponding French text would be :

" ... et qu'ils sont en mesure de lire au moins les deux langues officielles de la cour. "

M. ANZILOTTI again asked that the judges should be required to speak one language and read the other.

M. URRUTIA said he could not accept the formula of Sir Cecil Hurst and M. Fromageot without a reservation. The question would be discussed again by the Assembly, and he did not know what attitude certain delegations might take on the subject. The technical ideal, as M. Anzilotti had pointed out, would be that the judges should be able to speak at least one of the official languages. It was necessary, however, to recognise the facts. It would be difficult for the national groups, in putting forward the candidature of a distinguished jurist, to verify whether he was really able to read the two official languages.

M. Urrutia felt that the whole matter might safely be left to the discretion of the national groups. The national groups realised that a knowledge of the two languages was an advantage, but they should not be precluded from putting forward a distinguished candidate, who might not have the necessary language qualifications. He would urge that a certain latitude should be left within the limits of the formula adopted in the recommendation. Otherwise, the recommendation might not be accepted by the Assembly.

M. HUBER said he appreciated the force of the arguments put forward by Mr. Root. His own view was, first, that a reading knowledge of the two languages was an absolutely necessary qualification. The documents placed before the judges were extremely voluminous. In the Danube case, for example, there had been 4,000 printed pages in the dossier. Translation into other languages on such a scale as that was practically impossible. Secondly, he felt that, though it was impossible to require that a judge should be able to speak, or even follow a discussion, in both languages, it must at least be required of him that he should be able to express himself intelligibly and to follow a discussion in one of them. A judge could not have any real influence on the discussions and decisions of the Court and could not accept the responsibility incumbent upon him unless he possessed this qualification.

M. RUNDSTEIN thought that all reference to the language qualification might be suppressed. It was already laid down in the recommendation that the persons nominated by the national groups should possess recognised practical experience in international law. Was it possible for persons to have acquired such practical experience if they could not understand and read works in French and English ?

The VICE-CHAIRMAN agreed that the solution of the problem would necessarily be a compromise. He would suggest that the qualifications required should be a reading knowledge of both languages, and an ability to speak one of them. He would point out that it was only a question of a recommendation.

Mr. ROOT said he was prepared to accept the suggestion of the Vice-Chairman.

The Committee accordingly *decided* to adopt the following formula :

" And that they are at least able to read both official languages of the Court and speak one of them."

M. RUNDSTEIN asked what were the " required qualifications " referred to in paragraph 9 of the introduction. Were they the qualifications referred to in Article 2 of the Statute, or did they include the qualifications which had just been discussed ?

M. FROMAGEOT explained that it was naturally impossible to require that the statement of qualifications referred to in the paragraph in question should include a knowledge of languages.

M. POLITIS agreed. The qualifications referred to related to the general experience and career of the candidate. He observed that, in this connection, it would be necessary to amend the following paragraph, in order to bring it into conformity with the amended text of the recommendation :

The Committee decided to amend the paragraph as follows :

" Further, as the official languages of the Court are French and English, it would appear essential that judges should at least be able to read both of them, and to speak one of them. "

1. *Composition of the Court.*

Adopted.

2. *Election of Judges.*

Adopted.

3. *Resignation of a Judge.*

M. ANZILOTTI pointed out that the words " if desirable " should be inserted after the words " that he may " in the last sentence of the first paragraph of this section.

The Committee agreed.

4. *Filling of occasional vacancies.*

Sir Cecil HURST pointed out that it would be necessary to insert the word " even " after the word " filling " in the first sentence of the second paragraph of this section.

The Committee agreed.

5. *New Article* 15.

Adopted.

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

M. HUBER suggested that the words at the end of paragraph 1, following the word " conciliators ", should be deleted, and replaced by a provision to the effect that the judges should not accept any duties which might make it impossible for them to sit on the Court at a subsequent date, owing to the fact that they had already been implicated in the case. A judge by agreeing to act as conciliator in a given case might find himself unable to sit on the Court, in the event of that case coming before the Court at a subsequent stage of the proceedings. He would suggest a formula to the effect that any duties which a judge might agree to perform as conciliator should not be such as might make it impossible for him to sit later as a judge of the Court in accordance with Article 17.

M. GAUS enquired whether this proposal did not go too far. There was always a possibility that a case which came before a conciliator might subsequently come before the Court. The question to be decided was whether there was a reasonable expectation of such a case coming before the Court.

He thought it undesirable to make the rule too severe, as experience showed how difficult it was to find suitable men to act as arbitrators or conciliators or to sit as members of an arbitration committee. A judge should be excluded from performing those duties only if he had every reason to believe that the case which he was invited to decide would, under a treaty or some other arrangement, come before the Court at a later stage.

The VICE-CHAIRMAN said that a judge could always act as arbitrator in such cases, on the understanding that he would not sit on the Court if the case were brought before the Court.

M. ITO asked whether there were not cases of conciliation which might have political consequences, and in which the agreement of a judge to sit as conciliator would be incompatible with his duties as a member of the Court.

M. FROMAGEOT suggested the following formula :

" . . . on condition, however, 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 ".

Agreed.

M. RUNDSTEIN asked whether the expression " arbitrator or conciliator " immediately preceding the formula which had just been adopted was sufficiently wide. Did this description include any member of an international tribunal ?

M. POLITIS said that the word " arbitrator " interpreted in its widest sense might be taken to cover any member of an international tribunal.

FIFTEENTH MEETING.

Held on Tuesday, March 19th, 1929 at 3.30 p.m.

Jonkheer VAN EYSINGA (Vice-Chairman) in the Chair.

Present : All the members of the Committee, with the exception of M. Scialoja and M. Osusky.

33. Question of the Revision of the Statute of the Permanent Court of International Justice : Examination of the Report submitted by M. Fromageot and M. Politis (continuation).

7. *Article* 17.

At the request of M. ANZILOTTI and M. HUBER, who considered that the original text of paragraph 2 (Annex 9) implied criticism of the practice of the judges of the Court hitherto, the Committee agreed to delete the last sentence of the paragraph reading : " This seemed too obvious..., and to replace the words " it would not be possible to infer *a contrario* " by the words " it will not henceforth, in view of the new Article 16, be possible to infer *a contrario* ".

Section 7 was adopted with the foregoing and certain other textual amendments.

8. *Permanent Functioning of the Court.*

M. RAESTAD drew attention to the wording of the sixth paragraph in which it was said,

" 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. "

M. Raestad considered that if the Court had to meet, all the members should be convened and not merely a quorum of the Court, since it had been agreed by the Committee that all members were always to be at the disposal of the President.

M. ANZILOTTI pointed out that this provision might in certain cases refer to the convening of certain members who made up the special chambers.

M. FROMAGEOT considered that the case mentioned by M. Raestad was met by the words " to discharge its duties ".

M. ANZILOTTI observed that, according to the last paragraph, it would be the Court's duty to provide in its rules for the constitution of a vacation chamber. He did not think that, according to the terms of the present Statute, the Court was competent to constitute a vacation chamber and therefore suggested that the passage should be modified to read : " It would also be for the Court to regulate the manner in which it will carry out its duties during the vacations. "

M. FROMAGEOT proposed the following wording :

" It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which... "

Section 8 was adopted with the amendment proposed by M. Fromageot and certain other textual modifications.

9. *Manner of forming the Court.*

Section 9 was adopted with an amendment to the English text proposed by Mr. Root.

Sections 10 (Article 26) and 11 (Article 27) were adopted with certain textual modifications.

12. *Chamber for Summary Procedure.*

The Committee decided to add the following sentence at the end of the first paragraph :

" 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 was drafted to 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.*

M. FROMAGEOT proposed that the last paragraph of the new Article 31 should be amended to read :

" Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (para. 2), 20 and 24 of this Statute... "

The reason for which he proposed to omit the reference to Article 16 was that it seemed to him to be difficult to exclude a judge appointed *ad hoc* from " exercising any political or administrative function or engaging in any other occupation of a professional nature ", except, of course, while he was serving as a judge appointed *ad hoc.*

M. RAESTAD thought that it would perhaps have been possible to retain something of what had been stipulated in Articles 16 and 17 paragraph 1, in regard to the deputy judges, and regretted that the question had not been raised sooner.

Section 13 *was adopted with the amendment proposed by M. Fromageot.*

Section 14 *(Article* 32*) and the draft resolutions attached were adopted, with certain amendments proposed by M. Hammarskjöld,* (Registrar of the Court.)

Sections 15-20 *were adopted with minor amendments.*

The VICE-PRESIDENT wondered whether the report of M. Fromageot and M. Politis on the revision of the Statute of the Court should not be completed by a statement concerning the formalities required for the adoption and putting into force of the revised Statute, as Sir Cecil Hurst had done at the end of his report on the adhesion of the United States to the Protocol of Signature of the Statute of the Court. He urged the importance of causing both documents — the revised Protocol of 1926 and the new Statute of the Court — to come into force at the same time.

Mr. ROOT, while hoping that, as the Vice-Chairman had just said, the two Conventions would come into force at the same time, thought it, however, preferable to say nothing in the report. It was impossible to know in advance whether all the amendments proposed by the Committee would be accepted. It would be better to submit the two instruments separately.

M. ANZILOTTI referred to the report on the revision of the Statute of the Court adopted by the Council at its meeting on December 13th, 1928, in which it was laid down that it would be for the Committee to obtain the advice of the Permanent Court of International Justice in regard to the manner in which it performed its duties.

As M. Huber and he had not taken part in the work of the Committee as official representatives of the Court, he thought that it would perhaps be in order to submit the draft revised Statute and the corresponding report to the Court in May, since the Court would meet during that month, while the Council would not meet until June.

Sir Cecil HURST took the view that the Council alone could decide whether the draft of the revised Statute should be submitted to the Court after it had been approved by the Council.

M. POLITIS considered that the Council resolution did not in any way bind the Committee to submit the revised draft to the Court. It was left to the discretion of the Committee to obtain the views of the Court in one way or another.

The VICE-PRESIDENT thought that it was impossible to ask for the formal views of the Court at the time when the Committee, with the valuable collaboration of M. Anzilotti, M. Huber and M. Hammarskjöld, had finished its work and was about to break up. If the Council wished to submit the draft report to the Court when it had approved it, it was free to do so.

Sir Cecil HURST thought it would be useful to draw the attention of the Council to two other points :

1. If the Council approved the drafts submitted by the Committee, it would be its duty to take urgent measures to endeavour to ensure that they would enter into force before the session of the Assembly of 1930.

2. If, on the other hand, it proved impossible to obtain a sufficient number of ratifications before that date, it would be necessary for the Council, owing to the difficulties to which Sir Cecil Hurst had referred during the general discussion, to take steps to secure that the entry into force of the revised Statute of the Court should only take place at the moment when the membership of the Court would be renewed, that was to say, in 1939.

If the new Statute entered into force two or three years after the election of the judges in 1930, the amendments concerning incompatibilities and the number of judges might create an impossible position.

M. ITO thought it night perhaps be useful to propose that the Council should recommend the various States to send to the Assembly of 1930 delegates with full powers not only to accept the revised drafts of the Statute and the Protocol, but to sign the diplomatic instrument if that should be drawn up.

The VICE-PRESIDENT wondered whether it would not be a bad policy to contemplate in the report even the possibility that the two drafts might not be accepted in 1930.

M. POLITIS proposed that a recommendation should be made to the Council to the effect that it should be stipulated that the drafts, if they were to enter into force only after 1930, should not be actually applied until the time came to renew the Court.

To take account of the various observations made, M. FROMAGEOT proposed to add the following passage to his report :

" 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 the next Assembly.

" On this point the Committee must call the attention of the Council to the necessity of 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. "

The Committee adopted the report with the various amendments proposed and the final passage submitted by M. Fromageot.

The VICE-PRESIDENT proposed that the Committee should communicate the draft revised Statute to the Press and the reports on that draft and on the draft revised Protocol for 1926, which had already been communicated.

This proposal was adopted.

34. **Death of Lord Phillimore.**

Mr. ROOT spoke as follows :

" Mr Chairman, I beg your indulgence for a few words of respect and regret upon the death of Lord Phillimore who has come to the end of his long and useful life during our session — while we have been reviewing the work done by him in the Committee which framed the Statute of the Court. In that Committee he represented the system of jurisprudence built up on the common law of England. His services were invaluable. His serene and lovable character created in the Committee room an atmosphere of kindly consideration favourable to agreement. His superior intelligence trained by long judicial experience at once informed and clarified our thought. He was a very noble gentleman. His death is a great loss to a world in which he was always earnest and active for every good cause. "

Sir Cecil HURST asked that he might be allowed to forward to his Government the moving words spoken by Mr. Root and those of M. Anzilotti spoken at the beginning of the session in regard to Lord Finlay.

35. **Close of the Session.**

M. ANZILOTTI, as President of the Court and in the name of M. Huber, made the following declaration :

" Mr. Chairman, the Permanent Court of International Justice has formed the subject of your discussions for the period of some ten days that has just elapsed. You have sought for the means to enhance its efficacy as an international judicature and its scope as a " Judicial Association of civilised nations ", if I may use the words of our old master, Léon Bourgeois. It will therefore not be out of place if the President and Vice-President of the Court, whom the Council courteously invited to take part in your proceedings, express in a few words the impression left upon them by the results at which you have arrived.

" May I first say how happy my colleague M. Huber and myself have been, one of us to make the acquaintance of Mr. Elihu Root, whom the Court regards as its spirtual father, and the other to strengthen the ties which he has had with Mr. Root ever since 1920 when the Statute which we have been considering first saw the light of day. On learning that Mr. Root had consented to make this long journey and to come to Europe to take part in the revision of the Statute ordered by the Assembly, we felt hopeful that his genius, thanks to which in 1920 he succeeded in overcoming the difficulties which formerly made the foundation of an international court impossible, would in 1929 enable us to find the right method for solving those difficulties which had hitherto prevented the United States from taking their full part in the " judicial association " of the States which afford the Court their moral and material support.

" We have not been disappointed in our hope. The text which the Committee has just drawn up on the basis of the ideas contributed by Mr. Root, ideas which in their magnificent simplicity recall those which previously resulted in the foundation of the Court, does beyond all question open a way which may lead to the accession of the United States of America to the international agreement to which the Court owes its independent existence. The Court can only welcome with the keenest satisfaction that event as well as the great increase in moral authority implied in the accession of the United States, especially since that increase in authority, speaking humanly, will not have been bought at the price of the abandonment, either in law or in fact, of one of the branches of the Court's work, and a branch that is destined to bear many fruits for the better advancement of the realisation throughout the world of the idea of peace by law, of which the Court is the supreme guardian.

" The second part of your proceedings was also devoted to perfecting the Court as an instrument of international justice, but from a different point of view. To what degree your endeavours in this domain have been crowned by success experience alone can show. It would in any case be premature to hazard an opinion on this subject at a time when the analysis and synthesis which you have undertaken in the past few days are scarcely concluded, when consequently we are not yet sufficiently far removed to be able to estimate the results; but it is at any rate possible to say now that, if the will to do good work, a sincere desire to reach results and an atmosphere of sympathy are powerful factors in success, there is every ground for thinking that you will have been successful. I wish, therefore, on M. Huber's behalf and on my own, merely to pay a tribute to the great ability with which you have devoted yourselves to the achievement of your task and to thank you for the warm welcome which you have given to the part we have taken in your discussions.

" I must, however, say one thing more. Anything we have said here, as I stated at the beginning of your proceedings, represents nothing but our own personal opinion and must in no way be held to express the views of the Court. "

The VICE-CHAIRMAN spoke as follows :

" I much regret that the person who so ably presided over the Committee during the first part of its work, M. Scialoja, has been prevented from remaining to the end of the session. Apart from that, however, my feelings are those of joy and satisfaction.

" The greatest satisfaction lies in the fact that the work of this Committee makes it possible that the United States of America will be able to take a new step to bring it once more into what is called world international organisation. From the first moment when the United States became an independent State, the world has become so accustomed to see that great Republic in the forefront of the development of international organisation, that it was regarded as a great misfortune when, in 1920, the United States seemed to stand somewhat aloof. It was not easy to link together again, after the events of 1920, the United States of Northern America and the peoples which may be described as the United States of the League of Nations. Much good-will has been shown on both sides in all attempts to re-establish a closer co-operation. After the United States Senate had adopted its resolution in January, 1926, a draft Protocol was drawn up at Geneva in September of that year. On both sides the difficulty consisted in the fear that there might be possible interference in the internal affairs either of the United States or of the League of Nations, and in 1926 we were still inclined to regard the second part of the fifth of the United States reservations as something which amounted to a right to veto important affairs of the League.

" After these two attempts and after more than two years' silence, it was clear that in order to find a solution a *deus ex machina* was needed; that *deus ex machina* arose; by immediately shifting the problem from the abstract to the concrete, Mr. Root brought us what is called in German ' das erlösende Wort '.

" May I, Mr. Root, express to you in the name of the whole Committee the feelings of the profoundest and deepest admiration and gratitude we have towards you. Long before 1914 you were considered all over the world as one of those exceptional statesmen and lawyers whom the world needs so much, and who use all their gifts and influence for the greater good of the organisation of humanity. After having played the principal part in solving in 1920 the difficult puzzle of the composition of a permanent world-court, you have now brought us the one link in the chain which was missing. When you return to your country, not only can you feel satisfied with the manner in which you have accomplished your task, but everyone will say of you that you have deserved well not only of your fatherland but also of the whole world.

" We must not forget that the fact that the Committee has been able to accomplish the second part of its task is in great part due to the efforts made by M. Fromageot to induce the Assembly, at its last session, to establish this Committee, with the object of re-examining the Statute of the Court, and to the proposals he has laid before our Committee On these grounds I thank M. Fromageot most cordially, and I also thank him as well as Sir Cecil Hurst and M. Politis for the very considerable work as Rapporteurs which they have so competently performed in so short a time.

" On behalf of the Committee I equally express our warmest thanks to the President, the Vice-President and the Registrar of the Permanent Court of International Justice, and to M. Osusky, who has been a sure guide in all financial questions, for their extremely valuable co-operation. I also thank the members of the Legal Section of the Secretariat as well as all the officials of the Secretariat who have worked so hard to facilitate our task, and I wish to repeat our regrets that we were obliged to ask them to continue their work even on Sunday. May I also thank all the members of this Committee for the manner in which they have contributed to the accomplishment of its work.

" I declare the session of the Committee to be at an end. "

ANNEX 1.

C.R.S.C.1.

NOTE REGARDING THE APPOINTMENT AND COMPOSITION OF THE COMMITTEE.

The circumstances in which the Committee has been appointed appear from the report of M. Scialoja, adopted by the Council on December 13th, 1928, the terms of which were as follows :

" 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 order to enable it to formulate the proposals to be submitted by it to the Assembly in accordance with the above resolution, it would seem that the Council might with advantage appoint a small Committee of Jurists to make a preliminary study of the subject.

" 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.

" The Committee would, of course, be competent to examine such suggestions as may reach it during its work from authoritative sources. Further, 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.

" If the preceding suggestions are accepted by my colleagues, I will venture at a subsequent meeting to submit to them a resolution which will deal also with the composition of the Committee which I propose. "

The Council accepted the suggestion that the Rapporteur should submit a draft resolution on this question at a later meeting.

At a subsequent meeting, on December 14th, the Council adopted the following resolution :

" Referring to the report of the representative of Italy adopted on December 13th, 1928, the Council entrusts the study contemplated by this report to a Committee to be composed as follows : M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA, Jonkheer VAN EYSINGA.

" The Committee will, in addition to the above members, contain a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur.

" The Council further invites the President and Vice-President of the Court, M. ANZILOTTI and M. HUBER, to participate in the work of the Committee.

" If unable to attend, a member of the Committee may appoint a substitute to take his place.

" The Council further decides that, up to the amount of 30,000 francs, the expenses occasioned by the work of the Committee shall be charged to Item 3, Chapter I, of the budget : ' Unforeseen expenditure (subject to a special decision of the Council '."

As a result of the above resolution, Mr. Elihu Root has accepted membership of the Committee. The invitation addressed to M. Anzilotti and M. Huber by the Council was accepted by them. The Chairman of the Supervisory Commission has also been asked on behalf of the Council and has agreed to give his assistance in the work of the Committee.

By a resolution of March 9th, 1929, the Council appointed M. Massimo Pilotti as a member of this Committee.

* * *

In addition, the Council adopted on March 9th, 1929, the following proposal and draft resolution submitted by the representative of the British Empire :

" My Government received a few days ago a note from the Secretary of State of the United States of America relating to the accession of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice. I understand that similar notes have been received by the Governments of the other signatories.

" The Secretary of State's communication relates more particularly to the reply made to the communication of 1926 by twenty-four Governments as a result of the Conference which was held at the end of that year at Geneva.

" My Government has observed with satisfaction that the United States Government feels that a further informal exchange of views, such as was contemplated by the Conference, ought to lead to an agreement which would be satisfactory to all parties.

" The Secretary of State's note has reached the Governments at the moment at which the Committee of Jurists appointed under the Council's resolution of December 14th, 1928, is about to commence its study of the question of eventual amendment of the Statute of the Court. The task with which this Committee has been entrusted makes it, in my opinion, possible that it might be able to furnish valuable assistance towards reaching the agreement which is contemplated in the Secretary of State's note, and which I am sure is greatly desired by all the present signatories of the Protocol of Signature of the Court's Statute.

" I venture, therefore, to suggest that the Council should invite the Committee to examine this question and to offer any advice upon it which it feels it can usefully give.

" *Resolution.*

" The Council requests the Committee appointed by its resolution of December 14th, 1928, to consider the present situation as regards accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice and to make any suggestions which it feels able to offer with a view to facilitating such accession on conditions satisfactory to all the interests concerned. "

ANNEX 2.

C.114.M.40.1929.V.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

LETTER FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE SECRETARY-GENERAL OF THE LEAGUE.

Washington, February 19th, 1929.

I have the honour to refer to the communication of this Department dated March 2nd, 1926, informing you of the resolution of the Senate of the United States setting forth the conditions and understandings on which this Government might become a signatory to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and to inform you that I am to-day transmitting to each of the signatories of the Protocol a communication which, after referring to my previous communication on the subject, reads as follows :

" Five Governments unconditionally accepted the Senate reservations and understandings ; three indicated that they would accept but have not formally notified my Government of their acceptance ; fifteen simply acknowledged the receipt of my Government's note of February 12th, 1926 ; while twenty-four have communicated to my Government replies as hereinafter indicated.

" At a Conference held in Geneva in September 1926 by a large number of the States signatories to the Protocol of Signature of the Statute of the Permanent Court of International Justice, a Final Act was adopted in which were set forth certain conclusions and recommendations regarding the proposal of the United States, together with a preliminary draft of a Protocol regarding the adherence of the United States, which the Conference recommended that all the signatories of the Protocol of Signature of December 16th, 1920, should adopt in replying to the proposal of the United States. Twenty-four of the Governments adopted the recommendations of the Conference of 1926 and communicated to the Government of the United States in the manner suggested by the Conference. By these replies and the proposed Protocol attached thereto, the first four reservations adopted by the Senate of the United States were accepted. The fifth reservation was not accepted in full, but so much of the first part thereof as required the Court to render advisory opinions in public session was accepted, and the attention of my Government was called to the amended Rules of the Court requiring notice and an opportunity to be heard.

" The second part of the fifth reservation therefore raised the only question on which there is any substantial difference of opinion. That part of the reservation reads as follows :

" . . . Nor shall it (the Court) without the consent of the United States entertain 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 Carelia 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 Gen va 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 Carelia 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 3.

RESOLUTION ADOPTED BY THE UNITED STATES SENATE ON JANUARY 27TH, 1926.

LETTER FROM THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA TO THE SECRETARY-GENERAL OF THE LEAGUE.

Washington, March 2nd, 1926.

I have the honour to refer to the communication of this Department, dated August 15th, 1921, acknowledging the receipt of a certified copy of the Protocol of Signature relating to the Statute of the Permanent Court of International Justice, and take pleasure in informing you that the Senate of the United States of America, on January 27th, 1926, gave its advice and consent to the adherence on the part of the United States to the Protocol of

Signature of the Statute for the Permanent Court of International Justice, dated 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 the said Statute, on the condition of the acceptance by the Powers signatory to the Protocol of the conditions, reservations and understandings contained in the Senate resolution, which reads as follows :

" 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. "

I have the honour, therefore, to inform you that the signature of the United States will not be affixed to the said Protocol until the Governments of the Powers signatory thereto shall have signified in writing to the Government of the United States their acceptance of the foregoing conditions, reservations and understandings as a part and a condition to the adherence of the United States to the said Protocol and Statute.

I have addressed a communication to the representative of each of the Governments of the Powers signatories of the Protocol asking these several Governments to be good enough to ascertain and to inform me in writing whether they will accept the conditions, reservations and understandings contained in the resolution as a part and condition of the adherence of the United States to the said Protocol and Statute.

(Signed) Frank B. KELLOGG.

ANNEX 4.

CONFERENCE OF STATES SIGNATORIES OF THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

FINAL ACT.

1. The Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice (Protocol of December 16th, 1920) met at the International Labour Office in Geneva on September 1st, 1926.

2. The occasion of this Conference was the letter of March 2nd, 1926, by which the Secretary of State of the United States of America informed the Secretary-General of the League of Nations that the United States was disposed to adhere to the Protocol of Signature of December 16th, 1920, on condition that each of the States signatories of the said Protocol should previously accept five reservations and conditions as follows :

> " I. 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.
>
> " II. 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.
>
> " III. 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.
>
> " IV. 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.
>
> " V. 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. "

This letter gave rise to the resolution of the Council of the League of Nations of March 18th, 1926, suggesting that a Conference of the delegates of the States signatories of the Protocol should be convened at Geneva, in which the Government of the United States was also invited to participate. The Conference was charged with the task of studying the way in which the Governments of the signatories of the Protocol above mentioned might satisfy the five reservations and conditions proposed by the Government of the United States of America.

3. The Government of the United States, for the reasons set forth in a letter of April 17th, 1926, addressed by the Secretary of State of the United States to the Secretary-General of the League of Nations, declined the invitation to take part in the Conference. The signatory States enumerated below designated as their delegates to the Conference :

[*Here follows the list of Delegates.*]

In the course of its first meeting on September 1st, 1926, the Conference elected as President, Jonkheer W. J. M. VAN EYSINGA, delegate of the Netherlands, and as Vice-Presidents, His Excellency M. César ZUMETA, delegate of Venezuela, and the Right Honourable Sir Francis Henry Dillon BELL, delegate of New Zealand.

4. In the course of its sessions, continued from September 1st, 1926, to September 23rd, 1926, the delegates named above, while regretting that they have not had the assistance of a representative of the Government of the United States, have studied the reservations and conditions of the United States with a strong desire to satisfy them in the largest possible measure. The Conference has unanimously welcomed the proposal of the United States to collaborate in the maintenance of the Permanent Court of International Justice ; such collaboration has been awaited with confidence by the States which have accepted the Statute of the Court. The Conference has taken full account of the great moral effect which the participation of the United States in the maintenance of this institution of peace and justice would have on the development of international law and on the progressive organisation of world society on the basis of a respect for law and the solidarity of nations. Norhas it been unmindful of the valuable American contributions to the progress of international justice in the course of the 19th and 20th centuries, notably in the fruitful participation of the delegates of the United States in the two Hague Peace Conferences and more recently in the large part taken by an eminent American jurist in the preparation of the Statute of the Court.

5. The Conference has recognised that adherence to the Protocol of Signature of December 16th, 1920, by the United States under special conditions necessitates an agreement between the United States and the signatories of the Protocol.

6. The Conference has formulated the following conclusions as the basis of the replies to the letter addressed by the Secretary of State of the United States to each of the States signatories of the Protocol of December 16th, 1920, by which the signatory States would declare their views as to the acceptance of the reservations and conditions proposed by the United States:

Reservation I.

It may be agreed that the adherence of the United States to the Protocol of December 16th, 1920, and the Statute of the Permanent Court of International Justice annexed thereto 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 Peace of Versailles of June 28th, 1919.

Reservation II.

It may be agreed that the United States may participate, through representatives designated for the purpose and upon an equality with the other 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, or for the filling of vacancies.

Reservation III.

It may be agreed that the United States 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.

Reservation IV.

A. It may be agreed that the United States may at any time withdraw its adherence to the Protocol of December 16th, 1920.

In order to assure equality of treatment, it seems natural that the signatory States, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol in the second part of the fourth reservation and in the fifth reservation. In this way the *status quo ante* could be re-established if it were found that the arrangement agreed upon was not yielding satisfactory results.

It is to be hoped, nevertheless, that no such withdrawal will be made without an attempt by a previous exchange of views to solve any difficulties which may arise.

B. It may be agreed that the Statute of the Permanent Court of International Justice annexed to the Protocol of December 16th, 1920, shall not be amended without the consent of the United States.

Reservation V.

A. In the matter of advisory opinions, and in the first place as regards the first part of the fifth reservation, the Government of the United States will, no doubt, have become aware, since the despatch of its letters to the various Governments, of the provisions of Articles 73 and 74 of the Rules of Court as amended by the Court on July 31st, 1926. It is believed that these provisions are such as to give satisfaction to the United States, having been made by the Court in exercise of its powers under Article 30 of its Statute. Moreover, the signatory States might study with the United States the possible incorporation of certain stipulations of principle on this subject in a protocol of execution such as is set forth hereafter, notably as regards the rendering of advisory opinions in public.

B. The second part of the fifth reservation makes it convenient to distinguish between advisory opinions asked for in the case of a dispute to which the United States is a party and that of advisory opinions asked for in the case of a dispute to which the United States is not a party but in which it claims an interest, or in the case of a question, other than a dispute, in which the United States claims an interest.

As regards disputes to which the United States is a party, it seems sufficient to refer to the jurisprudence of the Court, which has already had occasion to pronounce upon the matter of disputes between a Member of the League of Nations and a State not belonging to the League. This jurisprudence, as formulated in Advisory Opinion No. 5 (Eastern Carelia), given on July 23rd, 1923, seems to 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, and as regards questions, other than disputes, in which the United States claims an interest, the Conference understands the object of the United States to be to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to. But the fifth reservation appears to rest upon the presumption that the adoption of a request for an

advisory opinion by the Council or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient. In any event the United States should be guaranteed a position of equality in this respect ; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right.

Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give as provided for in the Covenant. The Conference is confident that the Government of the United States entertains no desire to diminish the value of such opinions in connection with the functioning of the League of Nations. Yet the terms employed in the fifth reservation are of such a nature as to lend themselves to a possible interpretation which might have that effect. The Members of the League of Nations would exercise their rights in the Council and in the Assembly with full knowledge of the details of the situation which has necessitated a request for an advisory opinion, as well as with full appreciation of the responsibilities which a failure to reach a solution would involve for them under the Covenant of the League of Nations. A State which is exempt from the obligations and responsibilities of the Covenant would occupy a different position. It is for this reason that the procedure to be followed by a non-member State in connection with requests for advisory opinions is a matter of importance and in consequence it is desirable that the manner in which the consent provided for in the second part of the fifth reservation will be given should form the object of a supplementary agreement which would ensure that the peaceful settlement of future differences between Members of the League of Nations would not be made more difficult.

The Conference ventures to anticipate that the above conclusions will meet with acceptance by the United States. It observes that the application of some of the reservations of the United States would involve the conclusion of an appropriate agreement between the United States and the other States signatories of the Protocol of December 16th, 1920, as was indeed envisaged by the Secretary of State of the United States in his reply to the Secretary-General of the League of Nations dated April 17th, 1926. To this end, it is desirable that the States signatories of the Protocol of December 16th, 1920, should conclude with the United States a protocol of execution which, subject to such further exchange of views as the Government of the United States may think useful, might be in the form set out below.

PRELIMINARY DRAFT OF A PROTOCOL.

The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States.

Article 1.

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 2.

No amendment of the Statute annexed to the Protocol of December 16th, 1920, may be made without the consent of all the Contracting States.

Article 3.

The Court shall render advisory opinions in public session.

Article 4.

The manner in which the consent provided for in the second part of the fifth reservation is to be given, will 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 States signatories of the Protocol of December 16th, 1920, will be informed as soon as the understanding contemplated by the preceding paragraph has been reached.

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.

Article 5.

Subject to the provisions of Article 7 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute annexed to the Protocol of December 16th, 1920.

Article 6.

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 the States which have ratified the Protocol of December 16th, 1920, including the United States, have deposited their ratifications.

Article 7.

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 Contracting States may at any time notify the Secrrtary-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, in the second part of its fourth reservation and in its fifth reservation. 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 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.

Article 8.

The present Protocol shall remain open for signature by any State which may in the future sign the Protocol of Signature of December 16th, 1920.

DONE at....., the ..... day of ....., 19..., in a single copy, of which the French and English texts shall both be authoritative.

7. The Conference recommends to all the States signatories of the Protocol of December 16th, 1920, that they should adopt the above conclusions and despatch their replies as soon as possible. It directs its President to transmit to the Governments of the said States a draft letter of reply to the Secretary of State of the United States.

In faith of which the Delegates have signed the present Act.

DONE at Geneva, the twenty-third day of September nineteen hundred and twenty-six, in a single copy, of which the French and English texts shall both be authoritative, and which shall remain deposited in the archives of the League of Nations. A certified copy shall be sent to each of the States signatories of the Protocol of December 16th, 1920, as well as to the Council of the League of Nations, which convoked the Conference.

ANNEX 5.

C.R.S.C. 2.

CO-ORDINATION OF THE TERMS OF ARTICLE 14 OF THE COVENANT AND ARTICLE 423 OF THE TREATY OF VERSAILLES.

MEMORANDUM BY THE INTERNATIONAL LABOUR OFFICE.

In view of the possible revision of the Statute of the Permanent Court of International Justice, the International Labour Office desires to call attention to a question which is of great importance from the point of view of the working of the International Labour Organisation.

Under Article 14 of the Treaty of Versailles (Covenant of the League of Nations), the Permanent Court of International Justice is invested with a twofold function. In the first

place, it possesses a judicial function and is competent " to hear and determine any dispute of an international character which the parties thereto submit to it ". Secondly, the Court possesses an advisory function and gives " an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly ".

In Part XIII, the Treaty of Versailles established the permanent Labour Organisation, and Article 423 provides that :

> " Any question or dispute relating to the interpretation of this part of the present Treaty or of any subsequent Convention concluded by the Members in pursuance of this part of the present Treaty shall be referred for decision to the Permanent Court of International Justice. "

Between Article 14 and Article 423 of the Treaty of Versailles there is, if not a discrepancy, at least an absence of co-ordination which is worthy of notice.

How, indeed, are the extensive powers conferred on the Court by the very general terms of Article 423 to be exercised ?

In the judicial sphere, these powers only come into play if a " dispute " arises between two or more States. In this case, Article 423 is the clause by which the States Members of the International Labour Organisation have agreed in advance and as a general principle to submit their disputes to the Court for decision. Such a case, however, has never yet arisen since the International Labour Organisation has been in existence, and, though it is evidently not unlikely, it will probably only occur in comparatively rare circumstances.

It is rather in its advisory capacity that the competence of the Court, as laid down in Article 423, may be expected to come most frequently into play. This is indicated by the wording of the clause, which provides for the settlement of "toutes questions ou difficultés" and, in the English text, reproduces the terminology employed in Article 14 in connection with the advisory procedure (" any question or dispute "). In practice, moreover, the Court has already been called upon to pronounce four times since 1922 on questions connected with the working of the International Labour Organisation, and each time the matter has been referred to it by the advisory procedure.

It may therefore be affirmed that the competence conferred on the Court by Article 423 may be expected to come into play in the great majority of cases in an advisory form.

Now the legal basis of the advisory function is to be found in Article 14 of the Covenant, and this article is so worded as to give only the Council and the Assembly of the League of Nations the right to ask the Court for an advisory opinion. When a question arises concerning the International Labour Organisation (apart from the exceptional case of an actual dispute between States), the competent organs of the permanent Labour Organisation and the Governments concerned are debarred from referring the matter directly to the Court ; they are obliged to apply to the Council or to the Assembly, which are alone competent to call into play the advisory functions of the Court.

This system does not seem entirely coherent, and there is a regrettable absence of co-ordination between Articles 14 and 423 of the Treaty of Versailles. The application of the latter article, which ought to give free access to the Court to the organs of the permanent Labour Organisation or to the Governments whenever a difficulty arises in regard to labour, actually depends on the pleasure of the Council or the Assembly. In practice, no doubt, no obstacle has hitherto been placed in the way of the consultation of the Court on questions concerning labour ; the Council has transmitted without objection questions submitted to the Court by the Labour Conference or by the French Government or by the Governing Body of the International Labour Office, on which Advisory Opinions Nos. 1, 2, 3 and 13 have been given. But it is not impossible to imagine circumstances in which the Council or the Assembly might be led to refuse to refer a question to the Court. However unlikely such an eventuality may appear, that it should even be possible shows that the present system is not satisfactory. Both from the practical and from the theoretical point of view, it is hardly admissible that the fundamental provisions of Article 423 should run the risk of remaining a dead letter, and that the organs and Members of the International Labour Organisation might be refused access to the jurisdiction provided for in the Treaties.

This danger would become particularly serious if the principle were generally admitted that the Council or the Assembly could only make a request to the Court for an advisory opinion by a unanimous decision. The International Labour Office cannot presume to settle the delicate question whether unanimity is a necessary condition for the Council or the Assembly to be able to request the Court for an advisory opinion. It must point out, however, that, if this question were settled affirmatively for all cases, the result would be to confer on each member of the Council an individual and absolute veto which would allow him to obstruct the application of a formal provision of Part XIII of the Treaty of Versailles. The same applies as regards the fifth reservation attached by the United States Government to its accession to the Statute of the Court ; the acceptance of this reservation in the form in which it stands would have the effect of making the application of Article 423 conditional on the consent of a Power outside the International Labour Organisation.

It seems unnecessary to stress the foregoing considerations. It is enough to mention them to show the necessity of explicitly and clearly reconciling Article 14 and Article 423 of the Treaty of Versailles. Nevertheless, the solution of this problem is no easy matter, since it is hardly possible to contemplate a modification of the terms either of Article 14 of the Covenant or of Article 423.

As regards the Statute of the Court, it contains no clause relating to the Court's advisory functions, but it is possible that the proposed revision may lead to the introduction of certain

clauses dealing with this point into the Statute. Any attempt to forecast at the present juncture the sense and scope of such clauses would seem to be premature, and the International Labour Office cannot at present offer any opinion on the subject. The only observation it wishes to make is that it trusts that Article 423 of the Treaty of Versailles will not be overlooked if the Statute of the Court is revised, and that in the revision no formula will be introduced which could interfere with the exercise of the Court's jurisdiction of labour questions. The force of this recommendation, however, is in a sense merely negative. Whatever may be the tenor of the revised Statute of the Court, it seems hardly possible that Articles 14 and 423 of the Treaty of Versailles can be brought into harmony by the Statute. The latter is, after all, a separate international treaty, and it would appear difficult, if not impossible, in law that it should bind the Council and the Assembly to observe a clause in another treaty.

In the view of the International Labour Office, the true solution of the problem of co-ordinating Articles 14 and 423 of the Treaty of Versailles is to be found in an interpretation of these two articles in combination. According to this combined interpretation, it would be the duty of the Council or the Assembly, under Article 14 of the Covenant, to refer to the Court any request for an advisory opinion in regard to the interpretation of Part XIII of the Treaty of Versailles or to the interpretation of the international labour conventions. Such requests for advisory opinions, however, made by the appropriate organs of the permanent Labour Organisation or by the States which are Members of that Organisation, find their true legal justification, not in any specific decision of the Council or the Assembly, but in a general provision in the Treaties. The authority for the reference of such requests for advisory opinions to the Court is to be found in Article 423 of the Treaty of Versailles, and not in any action taken by the Assembly or the Council on its own initiative. The real fact is that, if the Council or the Assembly is requested to ask the Court for an opinion on a labour question under Article 423, they are not free to accept or refuse such a request, but are legally bound to comply therewith. The Council and the Assembly are not called upon to take any " decision " in the strict sense of the term. They are called upon to discharge a constitutional function with which they have been invested by the Treaties, and the performance of this function does not even seem to require a formal vote.

At the very least, if the view were taken that the reference of a request for an advisory opinion to the Court under Article 423 should be based on a resolution of the Council or the Assembly, it is quite plain that such a resolution would not need to be passed unanimously. Whatever general solution may be found for the problem of the procedure in respect of requests for advisory opinions, it is hardly possible to contemplate unanimity as a necessary condition in the special case under consideration here. Paragraph 1 of Article 5 of the Covenant makes unanimity necessary only for " decisions " of the Council and Assembly, and it is doubtful whether the transmission of a request for an opinion under Article 423 can be regarded as a " decision ". Even if it is so regarded, Article 5 requires unanimity only except where otherwise provided in the Covenant or in the treaty ; whereas, in paragraph 2 of the same article, it is stipulated that " all matters of procedure . . ., including the appointment of Committees to investigate particular matters ", shall be regulated by the Council or the Assembly by a majority vote. The transmission of a request for an opinion from the Court under Article 423 can scarcely be held to be more than a " matter of procedure " ; and if the appointment of a Committee of Enquiry on the spontaneous initiative of the Council or the Assembly does not require a unanimous vote, it is hard to see why unanimity should be necessary for the application of an imperative and permanent provision such as Article 423.

In short, according to the combined interpretation of Articles 14 and 423 of the Treaty of Versailles, it is for the Council or the Assembly to refer to the Court requests for advisory opinions made under Article 423. At the same time, the reference of such requests for opinions does not represent, properly speaking, a decision on the part of the Assembly and the Council, but constitutes the discharge of a duty which they could not evade without disregarding the jurisdiction vested in the Court by Article 423.

The International Labour Office considers that the establishment of this interpretation as definite and incontestable would be a most valuable step. While it seems difficult from the legal point of view to formulate this interpretation in an amendment to the Statute of the Court, there is a procedure which appears admirably suited to produce a similar result. The Permanent Court of International Justice is the proper authority to interpret Article 423, by virtue of the provision of that very article. The International Labour Office, while reserving its freedom to call, if necessary, for a consultation of the Court on this point, thinks that it would be a desirable step for the Committee appointed to consider the possible revision of the Statute of the Court to suggest such a consultation to the Council.

It is of the utmost importance for the efficiency of all the institutions of the League that Articles 14 and 423 of the Treaty of Versailles should be brought into harmony. The object of this memorandum is to call the attention of the Committee of Jurists appointed to consider the possible revision of the Statute of the Permanent Court of International Justice to the difficulties that would result from the existence of divergent interpretations of Articles 14 and 423. In this connection, the International Labour Office is of opinion that the Permanent Court is the proper body to formulate an authoritative interpretation, bringing these two clauses into line. The Labour Office considers it desirable that the Court should be consulted on this question, and sincerely trusts that, when examining the Statute of the Court, the Committee of Jurists will make a recommendation in this sense to the Council.

March 7th, 1929.

ANNEX 6.

C.R.S.C. 11.

QUESTION OF THE EXTENSION OF THE JURISDICTION OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE AS A COURT OF APPEAL.

MEMORANDUM BY M. RUNDSTEIN.

[*Translation.*]

Practical experience of arbitration shows that States very frequently entrust the solution of their disputes to special arbitral tribunals ; the disputes consequently do not come within the jurisdiction of the Permanent Court of International Justice.

In practice, special arbitrations may result, and have already resulted, in conflicts which may sometimes be very unfortunate, particularly in the case in which the question arises of the tribunal having exceeded its competence.

To escape from the disadvantages of situations which cause litigation on points of law to produce political conflicts, it might perhaps be convenient to contemplate an extension of the jurisdiction of the Permanent Court.

Such an extension would in no way require any modification of the Statute of the Court.

States preferring to have recourse to a special jurisdiction for certain disputes would be free, by making declarations on their respective accounts, to recognise the Permanent Court of International Justice as having obligatory jurisdiction as an appeal tribunal from awards given by special arbitral tribunals.

By signing such declarations, the States would accept the Permanent Court as exercising obligatory appellate jurisdiction in all the cases in which they might submit any disputes which might arise to a special arbitral or judicial procedure. Such recourse to the Court could only be excluded by an express provision inserted in the particular convention. It would follow that acceptance of an appellate jurisdiction of the Permanent Court would not be unconditionally binding upon the States : a State accepting the above principle, and signing a special arbitration convention with a State which did not recognise the admissibility of the appeal, would find itself in a very difficult situation if it were not free to exclude the possible consequences of the general declaration.

The basic provisions of such a declaration might be formulated as follows :

1.

Where a dispute arising between signatory States is submitted to a procedure of arbitration or judicial settlement outside the jurisdiction of the Permanent Court of International Justice, recourse may be had by each signatory party to the Permanent Court as a jurisdiction of appeal.

2.

The appellate jurisdiction of the Permanent Court of International Justice may be excluded by a provision inserted in the treaties or conventions providing for arbitration or judicial settlement.

3.

The appeal will lie as regards :

(a) Violation of a rule of international law ;
(b) Exceeding of its competence by the tribunal.

4.

The appeal must be made to the Permanent Court of International Justice within the two months following the notification of the award by way of an application addressed to the Registrar.

5.

Eventual revision of an award belongs to the competence of the international arbitral or judicial tribunal which has been established by the signatory parties, except where they confer on the Permanent Court of International Justice jurisdiction as a tribunal for revision.

An application for revision may only be made in accordance with the provisions of Article 61 of the Statute of the Court.

6.

Where an international arbitral or judicial tribunal is open to private persons, any appeal or application for revision must be made by the State of which the person concerned is a national.

7.

The Court shall determine by Rules of Court the manner in which it will exercise its functions in cases of appeal or revision.

8.

The signatory parties may extend the application of the preceding provisions to treaties and conventions for arbitration or judicial settlement which were concluded before the entry into force of their respective declarations.

ANNEX 7.

C.R.S.C. 17.

REVISED DRAFT OF THE PROTOCOL OF 1926.

The States signatories of the Protocol of Signature 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 annexed to the Protocol of December 16th, 1920, 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 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 interest of the United States, proceedings shall be stayed for a period sufficient to enable 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, 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.

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 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 (in the second part of its fourth reservation and in its fifth reservation). 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 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.

Article 9.

The present Protocol shall remain open for signature by any State which may in the future sign the Protocol of Signature of December 16th, 1920.

DONE at ....., the ..... day of....., 19....., in a single copy, o which the French and English texts shall both be authoritative.

ANNEX 8.

C.R.S.C. 19.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

DRAFT REPORT SUBMITTED BY SIR CECIL HURST.

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 stipulations 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 in the Committee has enabled it to re-examine 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 turn out 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 the time is not yet ripe for 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 questions to be submitted to the Court which the parties to a dispute were for various reasons unwilling themselves to submit to it in the form of international litigation.

The Committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. Nor is it expedient to attempt to force this question of unanimity to a decision at the present time. It would be premature to do so. 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 and to leave the major issue to be settled by the gradual evolution of a recognised and obligatory practice.

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.

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 Protocol now submitted.

The next three articles reproduce without substantial change the corresponding article of the draft of 1926.

The fifth article provides machinery by which the United States will be made aware of any proposal in the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that

the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions to the Secretary-General 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.

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 necessary 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.

It should also be communicated to the Assembly in which the proposal for 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 channal 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.

ANNEX 9.

C.R.S.C. 18.

AMENDMENT OF THE STATUTE OF THE COURT.

REPORT ON THE WORK OF THE COMMITTEE SUBMITTED BY M. FROMAGEOT AND M. POLITIS.

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. PILOTTI, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected Mr. Elihu ROOT. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKÝ, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

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

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

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

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

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

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

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

Further, as the official languages of the Court are French and English, it appears essential that the judges should possess an adequate knowledge of these two languages. 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 have an adequate knowledge of the French and English languages ; 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 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 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 occurence 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, under they would never be able to take part in deciding a case in which they had participated in one of the capacities mentioned.

With the disappearance of the deputy-judges, the second sentence of paragraph 1 of Article 17, 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 would not be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. This seemed too obvious for it to be 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 rule 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, so long 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.

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.* "

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, 16, 17, 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 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 with out being re-elected, his pension may be made payable to him as from the date on which his functions cease. The decision shall be taken by the Court. "

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 to their accession to the Protocol of Signature, paragraph 3 of Article 35 should not apply to the special case of the United States.

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 is necessary 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 " 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 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 VI. — 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.

" 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.

" *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 addition to Articles* 65, 66 *and* 67 *the Court, in the exercise of its advisory functions, shall 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 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.

ANNEX 10.

[C.R.S.C.18 (1).]

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF AMENDMENT 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. OSUSKÝ, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

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

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

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

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

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

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

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

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

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

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

13. National Judges.

The Committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain States as one of the essential principles of the organisation of the Court.

It also considered that, in view of the importance which certain States attach to this system, its application should not be limited, as is at present done in Article 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the Committee proposes to insert as a fourth paragraph in Article 31 a provision making the system of national judges apply to the Special Chambers for Labour, for Communications and Transit and for Summary Procedure (Articles 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting paragraph 2 of Article 31. There must be a slight change in paragraph 2 and changes of minor importance in paragraphs 3 and 5 of Article 31.

The new Article 31 would read as follows :

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

" *If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles* 4 *and* 5.

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

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

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

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

14. Salaries of Judges.

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which, in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the Committee proposes to redraft Article 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18th, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the travelling expenses of members attending the Court or their travelling expenses while on duty.

In the Committee's view, it is for the Assembly to lay down special regulations on this point. The Committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Article 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision ; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the Committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting paragraph 5 of Article 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Article 32 and the accompanying draft resolutions, referred to above, would be as follows :

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

" *The President shall receive a special annual allowance.*

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

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

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

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

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

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

Draft Resolution concerning Salaries.

" In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :

	Dutch florins	
" President :		
Annual salary	45,000	
Special indemnity	15,000	
" Vice-President :		
Annual salary	45,000	
Allowance for each day on duty (100 × 100).	10,000	(maximum)
" Members :		
Annual salary	45,000	
" Judges referred to in Article 31 of the Statute :		
Indemnity for each day on duty	100	
Allowance for each day of attendance . . .	50 "	

Draft Resolution amending Paragraph 5 of Article 1 of the Regulation regarding Pensions.

" The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease. "

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 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.

" 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.

" 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 the 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 occurence 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.

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[1] This subdivision (Chapter IV) is entirely new.

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 which-limits 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 1 OF THE REGULATION REGARDING PENSIONS.

The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. *Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.*

ANNEX 11.

[C.R.S.C. 19 (1).]

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 in 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 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 apprenhensions 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.

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

[1] Rapporteur : Sir Cecil Hurst.

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, next page).

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

The next three Articles reproduce without substantial change the corresponding articles of the draft of 1926.

The fifth Article provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this Article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of view 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 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.

[C.R.S.C. 17 (1).]

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 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 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....., the..... day of....., 19....., in a single copy, of which the French and English texts shall both be authoritative.

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 constructed 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 12.

LETTER FROM THE VICE-CHAIRMAN OF THE COMMITTEE OF JURISTS TO THE SECRETARY-GENERAL OF THE LEAGUE.

[*Translation.*]

Geneva, March 20th, 1929.

By resolutions of December 13th and 14th, 1928, the Council of the League of Nations appointed a Committee of Jurists to study the question of revision of the Statute of the Permanent Court of International Justice. By a subsequent resolution of March 9th, 1929, the Council, with reference to a letter of the Secretary of State of the United States of America dated February 19th, 1929, further requested the Committee to consider the present situation as regards accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and to make any suggestions which it might feel able to offer with a view to facilitating such accession on conditions satisfactory to all the interests concerned.

As you are aware, the Committee met from the 11th to the 19th of this month at the Secretariat. It was presided over by M. Scialoja and, after he was obliged to leave, by myself in my capacity of Vice-Chairman.

I have the honour to forward to you herewith for transmission to the Council the two reports[1] made by the Committee of Jurists to the Council. The one report relates to the question of the amendments which might eventually be introduced in the Statute of the Court. The other, which carries out the second part of the Committee's terms of reference, relates

[1] See Annexes 10 and 11.

to the accession of the United States of America to the Statute and, as you will see, is accompanied by a draft Protocol. The Committee has felt that it should draw the Council's attention to the desirability of annexing the resolution adopted by the Senate of the United States on January 27th, 1926 (which contains the text of the American reservations), to the letter by which the draft Protocol would be communicated to the States signatories of the Protocol of December 16th, 1920, if the Council should adopt the proposal to that effect contained in the Committee's report.

In the same connection, I beg you to be so good as to transmit also to the Council of the League of Nations, together with the memorandum (C.R.S.C. 2) presented to the Committee of Jurists by the International Labour Office, the letter of which a copy is annexed, by which the Committee has informed that Office of its point of view. [1]

Finally, the Committee has thought it desirable that the considerations set out by one of its members, M. Rundstein, in the memorandum reproduced in document C.R.S.C. 11 should also be brought to the attention of the Council.

(Signed) VAN EYSINGA,
Vice-Chairman of the Committee.

ANNEX 13.

LETTER FROM THE VICE-CHAIRMAN OF THE COMMITTEE OF JURISTS TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE.

Geneva, March 20th, 1929.

By resolutions of December 13th and 14th, 1928, and March 9th, 1929, the Council of the League of Nations instructed a Committee of Jurists to make a study of the Statute of the Permanent Court of International Justice.

In a most interesting memorandum dated the 7th instant, the International Labour Office was good enough to bring to the notice of the Committee certain considerations regarding Articles 14 and 423 of the Treaty of Peace of Versailles. The memorandum contained the following conclusion :

> " In this connection, the International Labour Office is of opinion that the Permanent Court is the proper body to formulate an authoritative interpretation, bringing these two clauses into line. The Labour Office considers it desirable that the Court should be consulted on this question, and sincerely trusts that, when examining the Statute of the Court, the Committee of Jurists will make a recommendation in this sense to the Council. "

I have the honour to inform you that the Committee of Jurists has given careful attention to this question ; as a result, it does not consider itself competent to give expression to the recommendation suggested above. The Committee thought, however, that the Council's attention should be drawn to the matter ; it has therefore decided to bring the memorandum to the notice of the Council.

(Signed) VAN EYSINGA,
Vice-Chairman of the Committee of Jurists.

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[1] The memorandum and letter here referred to have been communicated separately to the Council : document C. 146. 1929. V.