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UNITED KINGDOM PROPOSALS REGARDING  
THE STATUTE OF THE PERMANENT  
COURT OF INTERNATIONAL JUSTICE

I

The United Kingdom supports generally such amendments of a formal character in the several clauses of the Statute as may be necessary to replace references to the League by references to the United Nations Organisation and its Charter, etc. Consequently, no proposals of detail will be made in the following suggestions on this purely formal matter.

The following proposals, so far as they relate to the Constitution of the Court, are directed to two main objects. Firstly, they are inspired by the conception that the object should be to elect the best possible Court, irrespective of considerations of nationality; secondly, on the other hand, they seek indirectly to realise, so far as possible, the largest representation on a geographical basis.

The scheme by which it is sought to produce this result is the following: Each Government a party to the Statute of the Court should nominate a candidate, who should be one of its own nationals, and who would automatically, by the fact of nomination, become a member of the Court. Out of the Members of the Court nine persons would be elected as Judges of the Court by the ordinary machinery of election. Those Members not elected as judges would be available at all times to serve as additional or supplementary judges or to serve as ad hoc judges in cases where their countries were involved as litigants, but had not got one of their nationals as a regular judge of the Court.

If this scheme were put into effect, it would be possible to reduce the number of regular judges of the Court



without prejudicing the principle of representation on a geographical basis and while making full provision for the possibility of judges being absent through illness, leave or other causes.

## II

The following detailed amendments to give effect to these and other points are proposed by the United Kingdom Government. (It is assumed that the necessary changes of detail will in any event be made to make the Permanent Court a part of the United Nations Organisation).

Article 1. Strike out the whole of the second sentence. It seems, under present day conditions, to be unnecessary. With regard to the first sentence of this Article all that would seem to be necessary is some simple provision to the effect that the Court shall function in accordance with the provisions of the Statute.

Article 3. This Article should be drafted on some such lines as the following: "The Court shall consist of members of the Court nominated by Governments in accordance with Article 4, of which nine shall be elected as judges".

Article 4. Nomination by the national groups in the Court of Arbitration should be replaced by nomination by Governments. This provision should be to the effect that each Government is to nominate one member, who should be one of its own nationals. The second paragraph of Article 4 would be deleted.

Article 5. The requests here mentioned should be addressed to Governments and not to the members of the Court of Arbitration.

Article 6. Substitute the word "Government" for the words "national Group".

After Article 7 insert a new Article on the following lines: "The persons thus nominated shall constitute the members of the Court, from which the judges of the Court shall be elected, in accordance with Articles 8-12. Members of the Court not elected as judges, shall be available to act as supplementary or additional judges in case of need or to make up the required number of judges under Article



25. Where any country is entitled under Article 31 to have an ad hoc national judge sitting on the Court for the hearing of a particular dispute, the member of the Court nominated by the government of that country shall automatically act as such judge.

Article 8. Substitute "judges" for "members".

Article 9. There is a certain inconsistency between this Article and Article 2, which specifies that judges should be elected regardless of their nationality, since it is hardly possible to give effect to Article 9 without having regard to considerations of nationality. The United Kingdom Government does not desire to make any definite proposal for the amendment of Article 9, but draws attention to the point and suggests that it should be considered by the Conference.

Article 10. The second paragraph should be struck out. According to the system proposed above, there can never be more than one national of any country proposed as a candidate.

Article 13. The first paragraph should be amended on the following lines: "The judges of the Court shall be elected for nine years and may ~~be~~ re-elected; provided, however, that if the judges elected at the first election of the Court, three (to be chosen by lot) shall retire at the end of three years, and, unless re-elected, shall be replaced; and that at the end of six years three more judges (to be chosen by lot from those who have not previously retired and been re-elected) shall similarly retire and, unless re-elected, shall be replaced.

Article 15. For "a member of the court" substitute "a judge of the Court".

Article 16. For "members of the Court" substitute "judge of the Court".

Article 19. This Article is correct in principle but it was consequential on an Article in the Covenant of the League of Nations, according to which all representatives of members of the League, when engaged on the business of the League, were to enjoy diplomatic privileges and immunities. In the same way, the corresponding Article in the new Statute of the Court should be based on the Article in the Charter of the new Organisation dealing with the diplomatic privileges and immunities of the representatives of the members of the Organisation and of its officials.



Article 23. Second paragraph. For "members of the Court" substitute "judges of the Court".

Article 25. Second paragraph. For the word "eleven" substitute "nine" and after the word "Rules of Court" substitute the following for the rest of the paragraph: "may provide for calling upon one or more of the members of the Court, not elected as one of the regular judges, to sit as a judge and thus allow one or more of the regular judges according to circumstances and in rotation to be dispensed from sitting".

Article 25. Third paragraph. For "nine" substitute "seven".

Articles 26 and 27. As the special chambers for labour and transit cases have never been employed, it is suggested that these provisions should be replaced by conferring a general faculty on the Court to constitute special chambers in such cases as may seem appropriate. The Court should also have power to appoint and co-opt technical assessors to sit with it (but without the right to vote) in any case in which the Court considers that this procedure would be desirable.

The provision whereby, in labour cases, the International Labour Office was at liberty to furnish the Court with all relevant information, should be preserved and should be generalized to enable any international organ or institution to furnish the Court with information in any appropriate case.

Article 29. This provision, contemplating a summary procedure for the hearing of urgent cases, has in fact only been used twice and might well be dispensed with, since it would appear that, in general, states which submit a dispute to the Court prefer to have it adjudicated upon by means of the ordinary procedure of the Court. If the summary procedure is, as suggested, done away with, this will entail a corresponding deletion of the paragraphs in Articles 26 and 27, which have reference to this particular form of procedure.

Article 30. Delete the second sentence.

Article 31. Paragraph two. For the phrase "the other party may choose a person to sit as judge" substitute "the member of the Court nominated by the other party shall be appointed to sit as a judge of the Court for the purposes of the dispute." The second sentence of this paragraph should be struck out.



Article 31. Paragraph three. For the phrase "each of these parties may proceed to select a judge, as provided in the preceding paragraph" substitute "the members of the Court nominated by these parties shall be appointed to act as judges of the Court for the purposes of the dispute."

Article 31. Paragraph 4 should be struck out.

Article 32. First paragraph. For "members of the court" substitute "judges of the Court."

Article 32. Paragraph 4. This should be reworded so as to provide that members of the Court not being regular judges should receive an indemnity for each day on which they sit, but no regular salary or only a small one.

Article 33. The United Kingdom Government suggests that consideration should be given by the Committee to the question whether, despite the fact that the Court is to be an organ of the United Nations Organisation, its finances should not nevertheless be placed upon an independent basis, and not be part of the finances of the Organisation.

Article 36. First Paragraph. The words "all cases" should be altered to "all cases of a justiciable character." This alteration would bring this paragraph into line with the second paragraph of Article 36, in which it is clearly contemplated that the cases to be submitted to the Court shall be of a legal character.

One question which will arise in connection with Article 36, is what action should be taken concerning the existing acceptances of the "optional clause", by which a number of countries have, subject to certain reservations, bound themselves to accept the jurisdiction of the Court as obligatory. Should these acceptances be regarded as having automatically come to an end or should some provision be made for continuing them in force with perhaps a provision by which those concerned could revise or denounce them.

### III Procedure

There are a number of provisions in this Chapter, for instance Articles 45, 47, 48, 49, 51, 52, and 54, which might well form the subject of rules of the Court rather than figure, as they do at present, in the substantive Articles of the Statute. Consideration should be given to the question of transferring such provisions to the rules of the Court.



Articles 56 and 57. The present system under which there is one opinion representing the judgment of the Court, while, on the other hand, there may be as many dissenting opinions as there are dissenting judges, is not entirely satisfactory. Each dissenting judgment, being the work of one particular person, forms a coherent whole, whereas the opinion which represents the judgment of the Court is an amalgamation of the views of a number of judges. The result in the past has not infrequently been that the dissenting judgments read more convincingly than the judgment of the Court itself. It is suggested that a better system for the future would be to require every judge, whether of the majority or of the minority view, to set forth the reasons for his view in a separate opinion.

#### IV Advisory Opinions

Article 65. The jurisdiction to give advisory opinions is at present limited to those cases in which such an opinion is requested by the appropriate body of the International Organisation. There does not appear to be any sufficient ground for this limitation and it is suggested that the faculty to give advisory opinions, which has proved in the past to be of great value, should be extended to two further classes of cases. In the first place, it should be open to any recognised and properly constituted International Organisation to apply directly to the Court with a request for an advisory opinion. Secondly, it is suggested that it would also be of great value if States, by agreement amongst themselves (not, of course, unilaterally), were able to apply to the Court for an advisory opinion. They would thus, in many cases, obtain advice as to their legal position which would prevent an eventual dispute leading to litigation.

If the foregoing suggestions concerning advisory opinions were adopted, it would, of course, be necessary to introduce safeguards, with a view to ensuring that the requests addressed to the Court were confined to matters of a strictly justiciable nature, and, moreover, related to actual matters of fact which had arisen between the parties concerned. To achieve this, it would be desirable to confer on the Court a right to reject any request for an advisory opinion, if the Court considered that, in the circumstances, the request was not one to which it, as a court of law, ought to accede.

New Article. Suitable provision should be made for enabling the Statute of the Court to be amended without the necessity of obtaining the unanimous consent of all the parties.



THE UNITED NATIONS  
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED  
Jurist 15  
G/10  
April 10, 1945

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SUMMARY OF SECOND MEETING

Interdepartmental Auditorium, Conference Room B  
Tuesday, April 10, 1945, 10:15 a.m.

The meeting was opened by the Chairman, Mr. Hackworth, who spoke of the desirability of completing the Committee's work before the opening of the San Francisco Conference, and raised in this connection the question of the hours during which the Conference would sit.

After a short discussion, it was decided that the Committee would meet from 10:00 to 1:00 in the morning and from 2:30 to 5:30 in the afternoon. The question was raised whether advisers to the delegate would be permitted to speak during the meetings. It was noted that some advisers were sitting in the absence of the delegate of his country. It was agreed that it would be proper for a delegate to designate an adviser to sit in his place during his absence and that this should be announced. It was also agreed that a delegate might authorize an adviser to speak.

The Chairman stated that the United States had prepared a revised Statute, which was distributed (U.S. Jur 1, G/1, April 2). The Chairman said that the French text would be supplied and explained that the draft was a suggestion to aid the Committee in its discussions.

Mr. Castro (El Salvador) suggested that short minutes of the meetings be made available. The Chairman said that it was hoped that such minutes could be distributed each morning covering the proceedings of the day before. The Chairman suggested that the Committee begin with Article 1 of the Statute and that when difficult questions were encountered they be referred to subcommittees.

Mr. Ramadan (Egypt), acknowledging that, according to the Dumbarton Oaks Proposals, the Statute is to be a part of the Organization, inquired whether it would not, nevertheless, be better to separate the two and thus to keep the Court free from political questions.



The Chairman, noting the connection between the two under the provisions of the Dumbarton Oaks Proposals, was of the opinion that the question thus raised was political and not to be decided in this Committee.

Mr. Garcia (Peru) thought that the question was important for the future of the Organization. While agreeing that it should be decided at San Francisco, he concurred in the view that the Court should be independent of the Organization in order that it be freed of political influence.

Mr. Ramadan expressed the belief that no decision could be made in the Committee--that its function is to make recommendations to the various governments. He thought that the Committee should not refrain from making recommendations on matters coming within its province.

Ambassador Cardova (Mexico) expressed the view that the San Francisco Conference was the proper body to decide the relationship between the Permanent Court and the Organization. The Mexican Government did not envisage a danger that the Court would be submitted to political considerations and felt that its independence would be assured by the terms of its Statute. He felt that recommendations by this Committee would have value.

Mr. Nisot (Belgium, Alternate) suggested that it would resolve any difficulty as to the power of this Committee if the Rapporteur would include in the final report a statement that all proposals were merely recommendations to the San Francisco Conference.

The Chairman observed that the Committee should not spend much more time discussing the question of the Court's relationship to the general Organization, and proposed that it be deferred until the end of the meeting of the Committee of Jurists, at which time the Committee might, if it wished, vote on a recommendation to be made to the San Francisco Conference.

Mr. Gavrilovic (Yugoslavia) expressed agreement with the Chairman, but added that in his view the International Court could not function properly other than as an organ of the general International Organization.

Mr. Basdevant (France) was willing to recognize that the Committee's views on this question could only be recommendations for San Francisco, and assented to postponement of further discussion. He thought it well, however, that the question had been brought up at this time, and wished



to point out its importance. The Dumbarton Oaks Proposals call for a Court as the judicial organ of a general International Organization. There arise several questions concerning the connection of the two bodies. Should the judicial organ be attached to the political organ of the United Nations? This is a political problem, but it has juridical aspects which must be considered. One question is, whether the Statute of the Court should be annexed to the Charter of the political Organization, so that any State joining the latter would automatically become a member of the former. Another question is, whether States not members of the United Nations will be permitted to adhere to the Court. A juridical problem here grows out of the fact that some members of the United Nations have obligations under the Statute of the old Court toward States which are not among the United Nations and which, therefore, presumably will not be members of the political Organization.

Several points of contact have existed between the League of Nations and the Permanent Court of International Justice, and these must be taken into account. One such point of contact is the participation by the League's Council and Assembly in the election of judges for the Court. A second is found in the provisions for financing the Court through the League. A third is the provision in the Statute of the present Court which permits the Council and the Assembly to request advisory opinions of the Court. It must be decided whether these relationships shall be changed and, if so, what arrangements are to be substituted for them.

These are questions of political importance, but the Committee must consider them from a juridical standpoint. There is no objection to reserving them to the end of the meetings, but the Committee ought to keep them in mind.

Mr. Spiropoulos (Greece) considered that, so far as the Committee was concerned, the question had already been decided in the Dumbarton Oaks agreement, and that further policy decisions were for the San Francisco Conference.

The Chairman agreed, stating that it was the first duty of the Committee to draft a Statute, and that the Committee could make recommendations later if it desired. Mr. Hackworth had Article 1 of the United States Proposal distributed in English and French texts as follows:



STATUTE OF THE PERMANENT COURT  
OF INTERNATIONAL JUSTICE WITH  
PROPOSED REVISIONS

[The barred words are omitted, and the underscored words are added by the proposed revisions.]

Article 1.

"~~4~~ The Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations, established by the Protocol of Signature of December 16, 1920, and the Protocol for the Revision of the Statute of September 14, 1929, functioning under this Statute, shall be the principal judicial organ of The United Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

\* \* \*

STATUT DE LA COUR PERMANENTE  
DE JUSTICE INTERNATIONALE  
AVEC LES REVISIONS PROPOSEES

[Les mots barrés sont supprimés et les mots soulignés sont ajoutés par les révisions proposées.]

Article 1.

Indépendamment de la Cour d'arbitrage, organisée par les Conventions de La Haye de 1899 et 1907, et des Tribunaux spéciaux d'arbitres auxquels les Etats demeurent toujours libres de confier la solution de leurs différends, conformément à l'article 14 du Pacte de la Société des Nations, la Cour Permanente de Justice Internationale, établie par le Protocole de signature du 16 Décembre 1920, et le Protocole pour la révision du Statut du 14 Septembre 1929, sera pour répondre aux besoins des Nations Unies, l'organisme judiciaire principal des Nations Unies."



Mr. Jessup (United States, Adviser) stated that the French text of this Article should be changed so that the phrase "as adapted to the purposes of the United Nations" will correspond to "the chief judicial organ of the United Nations."

The Chairman invited discussion on Article 1.

Mr. Fitzmaurice (United Kingdom) suggested that the phrase "principal judicial organ of the United Nations", appearing in this Article should be deleted in this Article, since this provision should properly appear in the Charter of the United Nations.

For the same reason he suggested omitting Article 1 entirely. The second sentence of this Article he felt could be struck out as superfluous.

Mr. De Visscher (Belgium) and Mr. Escalante (Venezuela) indicated their agreement as to omitting the discussion of Article 1, and the Chairman, after referring the matter to the Committee, announced that this was generally agreed to, for the time being.

The Chairman went on to say that if the Permanent Court of International Justice is to be continued many Articles of its Statute will require no change. He suggested that the question of continuing the Court be discussed, noting at the same time that it was a political question for consideration at the San Francisco Conference.

Mr. Jorstad (Norway) thought it would be preferable to retain Article 1 in some form appropriate to the Dumbarton Oaks Proposals. Otherwise the numbering of the whole Statute would be confused.

The Chairman then called for discussion of Article 2.

Mr. Escalante proposed the following revision of Article 2 (distributed as document Jurist 7, April 10.):

"PROPOSED REVISION OF ARTICLE 2 OF THE STATUTE  
OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE,  
SUBMITTED BY THE REPRESENTATIVE OF VENEZUELA

Article 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected on the exclusive basis of their technical qualifications and personal reputation.

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REVISION DE L'ARTICLE 2 DU STATUT  
DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE  
PROPOSEE PAR LE REPRESENTATIVE DU VENEZUELA

Article 2. La Cour Permanente de Justice Internationale est un corps de magistrats indépendants, élus exclusivement en raison de leurs qualités techniques et de leur réputation personnelle."

The Chairman then called for discussion of Article 3.

Mr. Fitzmaurice stated that his Government wished to suggest the reduction of the number of judges in combination with certain proposals relating to nomination and election. He expressed the desire to have the best possible Court as a court and felt that there were inherent disadvantages in a large court. He pointed out that most high courts throughout the world sit in small chambers of from seven to nine members.

Mr. Wang (China) felt that the nominating procedure under the old Statute is rather complicated and favored the direct nomination of one candidate by each Government. Mr. Wang also thought that the election procedure should be simplified.

Ambassador Cordova was opposed to the nomination of non-national candidates, since, under this system some candidates were practically elected in advance by receiving concerted nominations by a number of States. He felt that the candidates should be on an equal footing.

The Mexican delegate also favored election of judges by the Assembly only.

Mr. Novikov (Soviet Union) indicated approval of direct nomination by Governments.

Mr. De Visscher inquired why the draft provided for election by the Assembly and Council "of The United Nations" rather than "the Organization of the United Nations". The Chairman explained that this phraseology involved an assumption and that changes would be made in accordance with decisions reached at San Francisco.

Mr. Basdevant declared that the existing method of making nominations had not proved inconvenient; in his view it should be retained. So far as election was concerned, he thought the simultaneous participation by both Assembly and Council was a safeguard which tended to assure wise



selections and that it, too, should be continued.

Ambassador Mora (Chile) favored direct nomination by Governments. He thought that under the old system there had been some instances of dissatisfaction.

Mr. Spiropoulos stated that a distinction should be made between two questions under discussion. As to the method of election, he felt that the proposal to have only the Assembly participate in election of the judges raised a political question, and ought not to be considered. As to the method of nomination, he was in favor of direct nomination by Governments.

Dr. Escalante and Mr. Star-Busmann (Netherlands) declared themselves in favor of the direct system of nominations.

Ambassador Cordova suggested that the two questions, that as to nominations and that as to elections, be considered separately and voted upon accordingly.

Ambassador Mora wished to reply to the remark of the delegate from Greece that the method of election was a political question. If the Committee takes this attitude, he declared, it will not make much progress in its deliberations. Most of the articles of the Statute have their political aspects, but the Committee must give its opinion on them notwithstanding that fact. The Committee should decide now whether it will express its opinion on each part of the Statute, even though there may be political implications to the problem. If it does not decide to do so its report will be very incomplete.

Mr. Jorstad supported retention of the existing systems of nomination and election.

Mr. Simpson (Liberia) inquired whether the Council or the Assembly initiated the election under the language of Article 4, "the members of the Court shall be elected by the Assembly and by the Council".

The Chairman explained that under the present Statute the Council and Assembly voted simultaneously, independently of each other. The Chairman then stated that a number of the delegates appeared to be in favor of a system of direct nomination, and enumerated those who had so expressed themselves. (These included the delegates of Chile, China, Greece, Mexico, Netherlands, Union of Soviet Socialist Republics, United Kingdom, and Venezuela.) He proposed that these delegates should meet and frame a text to present to



the Committee. On the question of the method of election, the Chairman regarded the Committee as bound by a provision in the Dumbarton Oaks Proposals calling for joint election by Council and Assembly. This was an error which the Chairman noted in the afternoon session. He suggested that if the Committee felt strongly that only the Assembly should participate in the election, it might put in brackets, in the final report, the words giving the Council a role in the election, and append a note explaining its action to the San Francisco conference.

Mr. Benes (Czechoslovakia) observed that, in considering whether to perpetuate the old system of election, the Committee should bear in mind that the Council and the Assembly were not related in the same way under the Dumbarton Oaks Proposals as under the League of Nations.

Ambassador Cordova said that he would submit in writing his proposal regarding elections. But he saw no reason why, if the Committee decided that the Assembly alone should elect, its conclusion should be placed in brackets in the report. The Rapporteur could of course record the vote.

Mr. Read (Canada) pointed out that if Article 1 were eliminated, the reference in Article 4 to the Permanent Court of Arbitration should probably be made more complete. He wished to inquire whether the question of the number of judges was to be discussed later, for he wished to make objections to decreasing the number.

Mr. Read also declared that his Government, and the Bench and Bar of Canada, were strongly in favor of retaining the existing method of nominating judges for the Court. (He referred to Recommendation 3 of a statement prepared by the Canadian Bar which he proposed to circulate.) It was their view that the present system enables a country to have a share in the nomination and election of the Court even though one of its own nationals is not chosen. Thus, under the existing system, Canada has taken pride in nominating several distinguished jurists of other countries who were elected to the Court, even though no Canadian has yet been on the Court.

The Chairman observed that the question of the number of judges had been left open pending the distribution of certain proposals.

With reference to a suggestion that the vote be taken on the method of nomination, Mr. Fitzmaurice suggested that this be deferred pending the distribution of his Government's



proposal. He went on to explain briefly that under this proposal each Government would nominate one candidate and that all persons thus nominated would become members of the Court. The active judges of the Court would be elected from this body. This would permit a smaller Court since there would be a large and representative body of potential judges who would also be available to serve as ad hoc judges. This plan was intended to meet the dual problem of a small Court and of securing adequate representation.

The Chairman observed that the Government of the United States took the position along with the Government of Canada of retaining the present system of nominating judges. On the question of election, he observed that the Dumbarton Oaks Proposals called for continuing the system of the old Statute. He thought that if it was desired to change this method by eliminating the Council this could best be done in accordance with the Dumbarton Oaks mandate by including the word "Council" in brackets and including the views of the Committee in its report to be presented to the San Francisco Conference.

The Chairman then read the following letter received by him from the Carnegie Endowment for International Peace:

"The Carnegie Endowment for International Peace has been greatly interested for many years in the Permanent Court of International Justice and has issued several publications on the subject and assisted in the issuance of others. In your capacity as a member of the United Nations Committee of Jurists to consider this subject, I have the honor to send you, with the compliments of the Endowment, the following publications:

The Permanent Court of International Justice,  
by Judge Manley O. Hudson  
International Tribunals Past and Future, by  
Judge Manley O. Hudson  
Instruments relating to the Permanent Court  
of International Justice. International  
Conciliation pamphlet No. 388  
The International Court of the United Nations  
Organization. A Consensus of American  
and Canadian Views



Statement of Principles and Joint Action by  
the Canadian Bar Association and the  
American Bar Association  
American Bar Association Journal for  
April 1945

In sending these publications, please also  
accept my personal compliments.

(Signed) Geo. A. Finch, Director."

The meeting then adjourned.



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MEMORANDUM PRESENTED BY THE DELEGATION OF VENEZUELA  
ON BASES FOR THE ORGANIZATION OF THE  
INTERNATIONAL COURT OF JUSTICE

Among the resolutions adopted at Dumbarton Oaks was one recognizing the need of setting up an international court of justice as the juridical body of the organization contemplated by said Proposals.

The antecedents available from the Permanent International Court of Justice of The Hague are widely known. The meritorious work done by it through the years, and the modifications from time to time sustained by it constitute a fund of valuable experience for adaptation of that legal organization, in its entirety, to the new needs of the community of nations.

These reasons were taken into account at Dumbarton Oaks, when proposing the alternative either that the statute of the Court there contemplated become the present statute of the Permanent International Court of Justice, which would continue in force with such changes as might be expedient, or otherwise that a new statute be adopted which would be structurally based upon the former.

The mission that will have to be discharged by the International Court of Justice in the future organization will be one of the most serious and transcendent for the maintenance of peace among the nations. It would seem indispensable to enhance its prestige and authority, by clearly determining the scope of its jurisdiction and the machinery of its operation, in everything connected with the peaceful settlement of controversies. It would also be advisable to define just what its connection with other bodies appertaining to the organization would be, to support its interposition in conflicts of a political nature so as to secure its opinion on the legal points arising in such controversies and to procure universality of the court by all pertinent means. The method of electing the members of the court and the extension of its competence to the international administrative field are also important



aspects which it would be advisable to take into account.

The Government of Venezuela has carefully studied these problems taking into consideration the resolutions adopted at the Dumbarton Oaks Conference and, very specially, the report of the un-official Inter-Allied London Committee on the future of the Permanent International Court of Justice. As a result of this study, it submits to the consideration of the United Nations Committee of Jurists the following

## BASES FOR THE ORGANIZATION OF AN INTERNATIONAL COURT OF JUSTICE

### I.- GENERAL PROBLEMS

1.- The court should be the essential integrating element of the international organization.

2.- The members of the international organization would, for all purposes, be members of the court. The States which are not members of the organization would also not be members of the court, in that they would not participate in its organization or in the designation of its membership; provided, however, that they should have some relation with the said entity, so as to submit themselves to, or fall under, its jurisdiction.

3.- The statute of the court should be substantially the same as that of the permanent international court of justice, with the changes required by the new international conditions.

4.- The statute of the court should be approved and ratified together with the general agreement for the establishment of the organization, and as an instrument complementary to it.

5.- There should be only one court, and its decision should not be subject to appeal. This would not prevent recourse to review, just as was the case with the permanent international court of justice.

6.- Notwithstanding the secondary nature of these problems, it seems desirable to recommend that the court have its seat in a territory other than that where the political bodies of the organization meet regularly--the seat might continue to be at The Hague. It would be desirable that provision be made to enable the Court to convene outside of its permanent seat, in exceptional cases. The



name adopted at Dumbarton Oaks seems to be adequate: Court or Tribunal of International Justice.

II.- PROBLEMS RELATIVE TO THE ORGANIZATION AND PROCEDURE OF THE COURT

1.- It would be desirable to cut the number of active members of the court to nine, and to establish a quorum of seven members for its operation.

2.- It also seems desirable to retain the same term of office of the judges (nine years), but provision should be made for their partial replacement every three years, that is, that every three years three judges should be elected. It would be desirable to consider the adoption of compulsory retirement of the judges upon reaching the age of 70.

3.- It seems desirable, further, to recommend a procedure of election based on the following plan:

1).- The government of each member state of the organization shall appoint two representatives. The governments should be urged to appoint jurists with technical qualifications and recognized reputations, and, in making such appointments, to hear the opinion of the law schools, of the highest courts, and, in general, of the representative organizations of the national juridic science.

2).- The representatives appointed by the governments shall constitute an international electoral college; their term of office shall be nine years; and they shall function in the college in accordance with their free individual opinions.

3).- The electoral college referred to shall name five candidates for each vacancy for the office of judge which is to be filled. These candidates shall be appointed by a majority of votes, for which purpose each representative shall cast one vote. When it is necessary to fill a vacancy caused by the completion of the term of a judge, the college shall place the name of the outgoing judge at the top of the above-mentioned list. The ballots of the representatives may be cast in person or by mail, and the Secretariat of the court shall act as the Secretariat of the college.

4).- The general assembly shall appoint a



regular judge and two alternates, from the list of five candidates submitted to it by the college.

5).- The candidates designated by the college may or may not be members of the college, and they shall be elected on the exclusive basis of their technical qualification and personal reputation.

4.- In the event that, in a question brought before the court, one of the judges has the same nationality as one of the parties, the other party would have the right to appoint a supplementary judge to the membership of the electoral college.

5.- The court may not have more than two judges with the same nationality.

### III.- PROBLEMS RELATIVE TO THE DUTIES AND OPERATION OF THE COURT

#### A) Jurisdiction

1.- The court would be competent for any question that the parties might submit to its jurisdiction.

2.- The jurisdiction of the court would be compulsory for the members of the general organization in conflicts of a juridical nature. In this connection, it would be desirable to give to such conflicts a general designation, to be followed, as an explanatory title, by a reference to the cases foreseen in Article 36 of the Statute of the Permanent International Court of Justice and in the second paragraph of Article 13 of the Covenant of the League of Nations.

3.- The court shall determine the limits of its competence. In consequence, exceptions relative to political conflicts and to questions falling under the internal jurisdiction of a State should be heard as exceptions before the court.

4.- The court shall hear a case whenever any other means of pacific settlement may have failed or may not have been made effective, and this course may be followed at the request of any of the parties.

5.- It seems desirable to allow the court to hear a case suggested to it by the Council.

6.- In the event of a conflict between States which are not members of the organization, in the assumption that the general organization is not made universal,



it seems desirable to establish:

- a) that a State which is not a member be enabled to go before the court against a member State;
- b) that a member State should be enabled to go before the court against a non-member State;
- c) that provision be made for the possibility that non-member States subscribe to a clause of submission to the jurisdiction of the court; and
- d) that the council may transmit to the court juridical conflicts to which non-member States are parties.

7.- The council should be empowered to dictate precise measures to impose the jurisdiction of the court or to execute its decisions. In such action by the council the requirements of the procedure relating to a unanimous vote or to an excessively qualified vote should be eliminated or reduced as much as possible; in any event the possible existence of the power of suspensive veto on the part of a great power concerned should be eliminated.

8.- A study should be made of a way to differentiate clearly, in the matter of treatment, between a State submitting to the jurisdiction and decisions of the court and a State repudiating them. It seems desirable to recommend that a State repudiating the jurisdiction or decision of the court be suspended from the enjoyment of the rights inherent to membership in the international organization.

9.- It seems desirable to recommend that the obligation of the council, in regard to the imposition of the jurisdiction and decisions of the court, be especially compelling in those cases in which the court has acted at the suggestion of the council.

10.- In the undertakings of submission to the jurisdiction of the court, implicitly expressed by the signature of the instrument constituting the court, any statement of reservation should be avoided as far as possible.

If this is unavoidable, such reservations should be limited to one or two general formulas. In this connection the following might be considered admissible:

- a).- A reservation in reference to events which took place before a given date, as, for example, the beginning of hostilities or the signature of peace treaties; and
- b).- A reservation in reference to relations



with States which may be regarded as not submitting to the jurisdiction of the court.

11.- In regard to the law applicable, the provision of Article 38 of the statute of the Supreme International Court of Justice does not give occasion to any fundamental objection.

#### B) Advisory Opinions

12.- The court should be enabled to give advisory opinions in juridical questions or on juridical points or aspects of political questions.

13.- The following would have the right to petition such opinions:

- a).- The Assembly;
- b).- The Council;
- c).- The International Organization; and
- d).- The States in particular, by means of restrictions assuring the proper use of this right.

14.- The court would decide on its competence for giving an opinion, on the basis of the subject, of the person, or of the international body requesting it.

15.- On pertinent points arising in political conflicts, provision should be made to make obligatory the procedure of petitioning the opinion of the court. This requirement might perhaps be made effective by establishing that a qualified minority of the council would be enabled to call for the required petition.

16.- It seems advisable, in a general way, to extend the opportunity for petitioning and for giving advisory opinions in that sphere of action in which the judicial activity of the court is the smallest.

#### C) Complementary Duties

17.- The court shall have the following complementary duties:

- a).- It should be a supreme court within the international administrative system. In this regard, it should have the power to settle conflicts of competence between international bodies and should be able to set



itself up as a court of appeal for questions coming in first instance under the jurisdiction of other international administrative courts which may be created.

b).- It should be empowered to unify the interpretations given to international agreements by the different national or international courts. This power should be exercised only at the request of governments or representatives of international bodies.

D) Procedure

18.- The court should determine its own procedure, which might be similar to that of the permanent international court of justice.

19.- The decision should require a majority of five votes, that is, an absolute majority of the members of the court.

20.- The court should be considered as the successor of the Permanent Court of International Justice. In this regard, the signatory states of the agreement should indicate that all powers and duties granted by previous conventions to the Permanent Court of International Justice should be regarded as granted to the court which is to be created within the new organization.

Washington, April 9, 1945.



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CORRECTION DU TEXTE FRANCAIS DES ARTICLES 26 ET 27  
DU STATUT DE LA COUR DE JUSTICE INTERNATIONALE,  
PROPOSEE PAR LA DELEGATION FRANCAISE

(La présente est une correction du Document Jurist 6,  
G/6, en date du 10 Avril 1945.)

ARTICLE 26.

La Cour peut, de temps à autre, constituer une ou plusieurs Chambres pour connaître d'affaires déterminées ou de catégories déterminées d'affaires. Le Règlement de la Cour pourra pourvoir à l'institution d'assesseurs siégeant dans ces Chambres sans droit de vote.

A la demande des parties, les affaires seront soumises à ces Chambres et jugées par elles.

ARTICLE 27.

Tout jugement rendu par l'une des Chambres prévues aux articles 26 et 29 sera un jugement rendu par la Cour.



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MEMORANDUM BY THE LIBERIAN GOVERNMENT  
ON THE INTERNATIONAL COURT OF JUSTICE

(With French Translation)

In connection with Chapter VII, the following suggestions are offered by the Liberian Government with reference to the International Court of Justice:

(a) That the Court envisaged by this report should be an independent organization unaffected by international politics and left free to exercise its juridical functions.

(b) It does appear, and should be specifically provided, that no single country should be habitually represented on that Court or given permanent representation.

(c) On the question of a number of Judges, it appears that nine (9) would be adequate and seven (7) should constitute the quorum of the Court.

(d) As to the period of appointment, the system recommended in order to prevent complete disorganization of the Court by the retirement of all the judges at one time is favourably considered. It is the opinion of the Liberian Government that after a period of nine (9) years service any judge should not be eligible for re-election, for thereby a sort of permanent representation of the country of which he is a national would be obviated.

Furthermore, the combined intellects and talents of all of the nations of the world should be able to produce a successor for any one who has served for nine (9) years.

(e) On the question of National and Supplementary Judges this Government is of opinion that provision should be made for them in whatever scheme that is formally adopted for the re-organization of the Court.

That it should provide definitely that each such Judge should sit in conjunction with the Permanent Judges whenever any matter is being heard to which their country is a party.

(f) In order that the Court might be removed from the possibility of alienation from its main objective, this Government's view is that its functions should be purely judicial.



Furthermore, it should have compulsory process over all nations subject to the General International Organization anticipated to be set up after the War; whereby upon the complaint of any nation the other, against whom the complaint is made, would be compelled to abide whatever judgment is given.

(g) This Government recommends that no opinion or judgment of Municipal Courts should be appealable to the Court of International Justice except in cases growing out of international disputes in which jurisdiction is specifically conferred upon the Court by the provisions of treaties in force.

(h) This Government is of opinion that there should be no regional chambers of this Court for it would be a rather involved and intricate system which may hamper the proper functioning of the International Court of Justice.

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MEMORANDUM SUR LA COUR INTERNATIONALE DE JUSTICE,  
PRESENTE PAR LE GOUVERNEMENT DU LIBERIA

En ce qui concerne le Chapitre VII, le Gouvernement du Libéria soumet les propositions suivantes, concernant la Cour Internationale de Justice:

(a) La Cour en question devrait être un organisme indépendant qui ne serait pas influencé par la politique internationale et qui aurait toute liberté d'action dans l'exercice de ses fonctions juridiques.

(b) Il semble que nul pays ne devrait avoir de représentant habituel à ladite Cour ou y être représenté de façon permanente.

(c) En ce qui concerne le nombre de juges, il semblerait qu'un total de neuf (9) serait adéquat et que sept (7) constituerait le quorum de la Cour.

(d) Pour ce qui est de la durée de leur mandat, considération favorable est accordée à la méthode recommandée dans le but d'éviter la désorganisation complète de la Cour, du fait du retrait simultané de la totalité des juges. Le Gouvernement du Libéria estime qu'après un mandat de neuf (9) ans, un juge ne devrait pas être rééligible, afin d'éviter la représentation permanente à la Cour du pays dont il possède la nationalité.



De plus, la combinaison des intelligences et des talents de la totalité des nations du monde devrait être à même de produire un successeur pour toute personne ayant rempli un mandat de neuf (9) ans.

(e) En ce qui concerne la question de juges nationaux et de juges auxiliaires, le Gouvernement du Libéria estime qu'ils devraient être prévus aux dispositions officiellement adoptées pour la réorganisation de la Cour.

Il devrait être décidé, de façon formelle, que chacun de ces juges devrait siéger conjointement avec les juges permanents, à tous les débats de questions auxquelles leur pays serait partie.

(f) Le Gouvernement du Libéria considère que les fonctions de la Cour devraient être purement judiciaires, afin d'éviter toute possibilité que celle-ci ne perde de vue son objectif principal.

De plus, la décision de la Cour devrait être obligatoire pour toutes les nations membres de l'Organisation Générale Internationale qui doit être établie après la Guerre; de sorte que, sur la plainte d'une nation quelconque, toute autre nation faisant l'objet de cette plainte serait tenue de se conformer à l'arrêt rendu.

(g) Le Gouvernement du Libéria recommande qu'aucun avis ou arrêt des Cours Municipales ne puisse être soumis en appel à la Cour de Justice Internationale, excepté lorsqu'il s'agit de questions soulevées par des différends internationaux pour lesquels les dispositions des traités en vigueur reconnaissent formellement la compétence de la Cour.

(h) Le Gouvernement du Libéria estime que ledite Cour ne devrait pas comporter de Chambres Régionales, qui constitueraient un système embrouillé et compliqué susceptible d'entraver le bon fonctionnement de la Cour Internationale de Justice.