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divergent opinions and noted that the proposal of the Egyptian representatives for the revision of Article 36 (Jurist 31) had been submitted but had not yet been distributed. M. Ramadan summarized this proposal as follows: That the jurisdiction of the Court should include all cases which the parties submitted and all matters provided for in the Charter of the United Nations and in treaties and conventions. That in principle, the compulsory jurisdiction of the Court over the classes of disputes now enumerated in Article 36 was accepted. Then, the members of the United Nations or parties to the Statute would be permitted to make reservations as to compulsory jurisdiction, such reservations to benefit any other party to a dispute against which that state may have availed itself of the jurisdiction of the Court. He noted that this proposal was similar to that put forward by the American and Canadian Bar Associations, that is, that a state should be permitted to attach reservations to the principle of compulsory jurisdiction and thereafter withdraw or waive such reservations. M. Ramadan thought that this was a solution for the divergence in the views.

The Chairman suggested that the Egyptian proposal be submitted to the San Francisco Conference, and M. Ramadan stated that this would be agreeable to him.

Dr. Gjurgjevic (Yugoslavia) stated that as Professor Basdevant had pointed out, it was a legal principle that laws should not be retroactive. If states undertook an obligation without accepting compulsory jurisdiction, and suddenly the rule was extended to cases which had arisen years before, it would, in effect, be retroactive. Therefore, he thought that the principle of compulsory jurisdiction, if adopted, should apply only to cases arising in the future.

Sr. Ballivian (Bolivia) asked whether Article 67 of the Rules of Court, relating to the appeal to the Court of cases from other courts, should not be incorporated in the Statute.

Hafez Ramadan Pacha (Egypt) reminded the Committee of Judge Hudson's discussion of the problem of appeals at a previous meeting, and suggested that this discussion be noted in the report.

Judge Hudson pointed out that Article 67 of the Court's Rules deals with procedure on appeal, not with jurisdiction. Since this Committee, like the one which framed the existing Statute, had taken the position that



procedural matters should in general be omitted from the Statute, this matter probably should be omitted. Jurisdiction on appeal was covered under the first paragraph of Article 36, in both proposed drafts; jurisdiction on appeal would depend upon the agreement of the parties. The Chairman expressed agreement with Judge Hudson.

Sr. Dihigo (Cuba) remarked that nothing had been said thus far about the problem of enforcement of judgments. He thought this Committee should make some reference to this problem, if only for the purpose of calling the attention of the San Francisco Conference to it.

Dr. Wang (China) declared that he would like to see an express provision, either in the Charter of the organization or in the Statute of the Court, empowering the Security Council to take necessary steps for enforcing the judgments of the Court if any State should not comply with them.

Mr. Fitzmaurice (United Kingdom) was of the view that a clause of this kind belonged in the Charter, if at all, rather than in the Statute of the Court. He also observed that there had been no case in which a judgment of the Permanent Court of International Justice had not been executed by the parties, and expressed doubt whether such a provision was necessary.

Hafez Ramadan Pacha (Egypt) believed that judgments of the Court would generally be carried out. But in principle a judgment without a sanction was of little value. In case there should be a refusal to comply, there ought to be a provision that the case should be sent to the political organs of the organization for such action as might seem necessary.

Professor Spiropoulos (Greece) stated that his delegation had once contemplated submitting a proposal for such a provision but had later decided against it. As the representative of the United Kingdom had pointed out, all the judgments of the old Court had been executed, and this was generally true of international tribunals. But if a great power should refuse to carry out a judgment against it, and there was a provision that the Security Council was required to enforce the judgment, the dispute might lead to war. Hence, he thought a political question was involved and that the matter should be left to the San Francisco Conference.



The Chairman remarked that public opinion would play a large part in enforcement of the Court's judgments. If it should be insufficient, and the dispute give rise to a threat to peace, the matter would fall within the jurisdiction of the Security Council. Therefore there was no great danger in omitting such a provision from the Statute. In any event, he agreed that the proper place for such a provision was the Charter, not the Statute. The Rapporteur should take note of the discussion on this point.

The Chairman then proposed that Mr. Read (Canada), who had acted as Chairman of the Drafting Committee, should take up the report of that Committee, dealing only with the articles which had been changed.

Sr. Dihigo (Cuba) inquired what was to be done about Article 1, no draft of which was included in the Drafting Committee's report. He observed that there had been a subcommittee report on this article and a lengthy discussion in the Committee on the question whether the old Court should be continued or a new one established.

Sir Michael Myers (New Zealand) expressed doubt that any satisfactory solution to this perplexing problem could be reached in this Committee. His suggestion was that a special committee be set up at this time to study the problem of continuity and report to the San Francisco Conference. He proposed a committee of about nine, and thought it should include Belgium, China, France, and the Soviet Union.

The Chairman suggested that the matter be deferred until the Drafting Committee had been heard from.

Mr. Read (Canada) called on Mr. Jessup (United States) to explain the markings in the Drafting Committee's report (English text, Jurist 49; French text, Jurist 50). Mr. Jessup explained that the report was based on the American draft and that changes by the Drafting Committee were changes in that draft. Deletions made by the Drafting Committee were indicated by slanting lines, additions by double underlining.

Mr. Read stated that the Drafting Committee had met all day Saturday, appointed Mr. Jessup to prepare a draft, and met on Sunday to revise the draft. In general, it had made no changes except upon instructions from the Committee. It had, however, made some changes to conform the English text to the French, and some verbal changes where the English text was very bad. Mr. Read then went through



the draft, explaining the changes which had been made. Each of the paragraphs had been numbered, for more convenient reference. Changes to make the English text conform to the French had been made in Articles 16(2), 17(3), 31, 43(2), 47, 55(1) and 66(4). The Committee had found it impracticable to draft Article 1 until the basic question of principle, namely, that of continuity, had been decided at San Francisco; the Committee had, therefore, thought it desirable to leave Article 1 entirely blank. In Article 14, the phrase "at its next session" was stricken because the Security Council is to be in continuous session. In Article 15, the text of the existing Statute was restored according to instructions from the Committee. The Committee had asked the Drafting Committee to reconsider the problem of judges' vacations. Accordingly, Article 23(2) had been drafted as a practical solution, with the benefit of the experience of Dr. Wang (China), Judge De Visscher (Belgium), and Judge Hudson, who had all served on the Court. Article 31, relating to national judges, had been discussed more than any other, but after efforts to frame a new text, the Committee had decided it was best to leave the old text practically as it was, despite some inadequacies. In Article 34(2), relating to information received from international organizations, changes had been made in light of the lengthy discussion in the Committee. In Article 43(2) the word "cases" was changed to "memorials" to conform to the practice of the Court. The reference to "deputy" in 52(2) was thought somewhat misleading and accordingly changed. Article 57 was amended to conform to the Court's practice of rendering concurring as well as dissenting opinions. "Sentence" in Article 51(5) was changed to "judgment" on agreement of the full Committee, since the Court exercises no criminal jurisdiction. The phrase "as a third party" was eliminated from Article 62(1) as misleading. Article 69, on amendment, was drafted to conform to the amendment clause of the Charter in the Dumbarton Oaks Proposals, and on the assumption that if the Dumbarton Oaks clause should be changed at San Francisco, Article 69 would be changed accordingly.

The Chairman asked if there were any objections to the report of the Drafting Committee. Since there were not, the Chairman declared the report accepted and requested the Drafting Committee to coordinate it with those articles of the Statute which had been referred to it in the morning's meeting. The Chairman stated that the next time the Statute came before the full Committee, it should be in completed form so that the full Committee could reexamine it.



It was agreed, moreover, that the Drafting Committee should be authorized to make such minor verbal changes in the draft as it may deem necessary in its work without the prior authorization of the full Committee; but that such minor verbal changes were to be called to the attention of the full Committee when the revised draft was presented to it.

In response to a question by Hafez Ramadan Pacha (Egypt), the Chairman stated that the various points noted in the draft (Jurist 49) for future reconsideration would be reconsidered in this committee.

Professor Bilsel (Turkey) suggested that in order to conciliate the two divergent points of view with respect to the nomination of judges, the Committee might adopt the principle that the members of the Court of International Justice be elected by the Security Council and by the General Assembly from a list of delegates nominated by the governments and by the national groups. If a government and its national group were in agreement, there would be no difficulty. If there were disagreement, then the government would not transmit the proposal of the national group. He stated this was merely a proposal.

Professor Bilsel then suggested that the Chairman write to the various organizations who had supplied materials and proposals, letters expressing the appreciation of the Committee of Jurists for their great help and inspiration. He named the following groups: The Carnegie Endowment for International Peace; American Bar Association Journal; Committee of the American Bar Association to Report as to Proposals for the Organization of Nations for Peace and Law; Committee of the Canadian Bar Association on Legal Problems of International Organization for the Maintenance of Peace; and the National Lawyers Guild.

The motion of the representative of Egypt that the Chairman write letters of appreciation to these organizations was carried.

The Chairman then raised the question of the language to be used in submitting the recommendations of this Committee to the San Francisco Conference, observing that it had been suggested that these recommendations be presented in English, French, Russian, and Spanish. Dr. Wang (China) observed that since the Charter was also to be in Chinese, there should be a Chinese text of this material and offered to supply the Chinese text. There



was considerable discussion as to whether the report should be in these different languages and also as to whether the text of the Statute should be in languages other than English and French.

Mr. Fitzmaurice (United Kingdom) asked whether the Russian, Chinese, and Spanish texts of the Statute were to be regarded as translations or authentic versions, noting the difference between putting the reports in several languages for the convenience of the delegates and providing for authentic versions of the Statute in several other languages.

Minister Novikov (Soviet Union) thought if the Final Act and the report were all signed in five languages they would all be authentic versions.

Minister Novikov stated that he did not object to the minutes being in English alone but if they were also in French, then Russian should also be used. The Chairman stated that it was not intended that the minutes should be translated into French. M. Jorstad (Norway) moved that the minutes should be in English and French, and this motion was seconded by M. Star-Busmann (Netherlands).

Sr. Dihigo (Cuba) also suggested that since English and French were the official languages of the Court, the English and French text should be the authentic text which could be translated into as many languages as convenient. Mr. Fitzmaurice (United Kingdom) supported this proposal.

It was agreed to hold over the question of languages until Wednesday morning.

Minister Novikov (Soviet Union) remarked that the chief argument of the United Kingdom representative was that the translations would involve a great deal of work. He observed that the representative of China had just stated that a Chinese translation was in preparation. A Russian text was also being prepared simultaneously with the English one, he declared, and therefore the work of the Committee need not be impeded. He saw no reason why English and French should be preferred.

Mr. Fitzmaurice (United Kingdom) explained that he had not said that he preferred to have the texts in English and French; he did not wish to prejudice the question at all, and thought the decision should be made



at San Francisco. He believed, however, that the Committee was not now in a position to do anything but continue the existing texts of the Court's Statute, which were in French and English only.

The Chairmah inquired whether there was any objection to putting the work of this Committee into the five languages.

Mr. Fitzmaurice (United Kingdom) replied that he had no objection to putting the report in as many languages as seemed desirable, provided it was made clear that the translations were unofficial. But he thought the text of the Statute should be in French and English only. He pointed out that the Statute itself provides that French and English shall be the official languages of the Court.

Professor Spiropoulos (Greece) observed that the languages of democracy have not always been the same, that before the last war French had been the international language used among European countries, but that after the war new conditions had been recognized and both English and French adopted. New conditions might require a corresponding change now. But the decision was one which should be made only by the San Francisco Conference. He thought this Committee should follow the existing international practice and use English and French; he did not believe this would in any way prejudice the question when it came up in San Francisco.

Hafez Ramadan Pacha (Egypt) was also of the view that English and French should be used, as they had been throughout the Committee's meeting.

Dr. Gjurgjevic (Yugoslavia) proposed that the official text be in English only, but that anyone who wished to submit a translation in another language to be appended to the official text be permitted to do so. Dr. Moneim-Riad Bey (Egypt) pointed out that the Rapporteur would naturally prepare the report in French.

Professor Basdevant (France) observed that since the Committee's discussions had been based on existing French and English texts of the Statute, he thought the logical consequence was that the report of the Committee should be in the same two languages. He said that of course he would write the report in French, hoping to finish it the following day, and that he would want to review the English translation which the Secretariat would have to make for him. He had no objection to having the report translated into other languages, provided it was understood



that they had not been fully discussed and were made only for the purpose of aiding the work at San Francisco.

The Chairman suggested that decision on this matter be reserved until Wednesday, when the Committee would next meet, and that further consideration be given it in the meantime. He called attention to the difficulty of putting the proceedings of the Committee into the various languages, but stated that he desired to be as accommodating as possible.

Dr. Moneim-Riad Bey (Egypt) urged that the representatives desiring texts in more than the two languages defer to expediency without waiving their rights so far as San Francisco was concerned, particularly since the matter had come up so near the close of the Committee's work.

Minister Novikov (Soviet Union) desired to make it clear that he had raised the point with the Chairman on Friday of last week. He agreed that the question should be left over until Wednesday, but wished to stress that there were no really technical difficulties, because the respective delegations would cooperate in making the translations. He thought the decision had nothing to do with what might be done at San Francisco, because it related only to texts of this Committee's work. A decision excluding the Russian language from among the official languages of this Conference would not be acceptable to his Government, he declared.

The Chairman referred to the suggestion of the representative of New Zealand that a committee of nine be appointed to study Article 1 of the Statute and to make a report thereon. Sir Michael Myers (New Zealand) stated that he was willing to wait upon the report of the Drafting Committee before taking up this proposal.

The Chairman noted that the closing hour had already passed and declared the meeting adjourned.



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DRAFT REPORT

DRAFT STATUTE OF AN INTERNATIONAL COURT OF JUSTICE PROVIDED FOR IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS SUBMITTED BY THE COMMITTEE OF JURISTS OF THE UNITED NATIONS TO THE UNITED NATIONS CONFERENCE IN SAN FRANCISCO

Washington, April 18, 1945.

The Dumbarton Oaks Proposals having provided that The United Nations International Organization should include among its chief organs, an International Court of Justice, a Committee of Jurists designated by The United Nations met in Washington for the purpose of preparing and submitting to the San Francisco Conference a draft Statute of the said Court. The present report has for its purpose to present the result of the work of this Committee. It could not in any way whatsoever prejudice the decisions of the Conference. The jurists who have drawn it up have, in so doing, acted as jurists without binding the Governments to which they are responsible.

The Dumbarton Oaks Proposals provided that the Court would be the chief judicial organ of The United Nations, that its Statute, annexed to The United Nations Charter, would be an integral part thereof and that all the Members of the International Organization should ipso facto be parties to the Statute of the Court. It did not decide whether the said Court would be the Permanent Court of International Justice, the Statute of which would be preserved with amendments, or whether it would be a new Court the Statute of which would, furthermore, be based on the Statute of the existing Court. In the preparation of its draft, the Committee adopted the first method, and it was recalled before it that the Permanent Court of International Justice had functioned for twenty years to the satisfaction of the litigants and that, if violence had suspended its activity, at least this institution had not failed in its task.

Nevertheless, the Committee considered that it was for the San Francisco Conference (1) to determine in what form the mission of the Court to be the chief judicial organ of The United Nations shall be stated, (2) to judge whether it is necessary to recall, in this connection, the present or possible existence of other international courts, (3) to consider the Court as a



new court or as the continuance of the Court established in 1920, the Statute of which, revised for the first time in 1929, will again be revised in 1945. These are not questions of pure form; the last, in particular, affects the operation of numerous treaties containing reference to the jurisdiction of the Permanent Court of International Justice.

For these reasons the draft Statute gives no wording for what is to be Article 1 of the latter.

## DRAFT STATUTE

### Article 1

(Wording Subject to Change)

The Committee has kept the name respected for the last 25 years, of Permanent Court of International Justice and it has proceeded to a revision, article by article, of the Statute of the Court. This revision consisted, on the one hand, in the effecting of certain adaptations of form rendered necessary by the substitution of The United Nations for the League of Nations; on the other hand, in the introduction of certain changes judged desirable and now possible. With regard to this second point, moreover, the Committee has considered that it was better to postpone certain amendments than to compromise by excessive haste the success of the present project for an International Organization, this even in consideration of the eminent function pertaining to the Court in a world organization which The United Nations intend to construct in such manner that peace for all and the rights of each one may be effectively assured. It has happened many times that this examination has led the Committee to propose retaining such or such Articles of the Statute without change. However, the Committee has deemed it useful to number the paragraphs of each article of the Statute, whether changed or not.

## CHAPTER I Organization Of the Court

No change is proposed in Article 2.

### Article 2

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons



enjoying the highest moral esteem, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurists of recognized competence in international law.

\* \* \*

Although the proposal has been made to reduce the number of the members of the Court either preserving the general structure thereof, or changing it, the Committee has deemed it preferable to preserve both this structure and the number of judges which in 1929 was made fifteen. It has been pointed out that, thereby, the interest taken in the Court in the different countries would be increased and that the creation of chambers within the Court would be facilitated. Accordingly, Article 3 has not been changed.



### Article 3

The Court shall consist of fifteen members.

\* \* \*

For the election of the judges it is provided, in accordance with what seems to be the spirit of the Dumbarton Oaks Proposals, to have it done by the General Assembly of the United Nations and the Security Council, leaving to these the duty of determining how a state which, while accepting the Statute of the Court, is not a Member of The United Nations, may participate in the election. The method of nomination with a view to this election has given rise to an extensive debate, certain delegations having advocated nomination by the Governments instead of entrusting such designation to the national groups in the Permanent Court of Arbitration as has been established in the present Statute; the continuance of the present regime has been defended as introducing a non-political influence at this point of the procedure for the election of the judges. In the debate, at the moment of the vote, the Committee was divided without a majority being clearly shown; thus the proposed innovation did not find place in the draft and Article 4 was retained with minor changes of form. Afterward a compromise suggestion was presented without taking the form of an express proposal before the Committee; it would have consisted in giving the Government the power of not transmitting the nominations of candidates decided upon by the national group, this disagreement depriving the country concerned of the exercise of the right to nominate candidates for the election in question.

### Article 4

(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated by the national groups in the Permanent Court of Arbitration in accordance with the following provisions.

In the case of members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be submitted by national groups, appointed for this purpose by their Governments, under the same conditions as those prescribed for members of the Court of Arbitration by Article 44 of The Hague Convention of 1907



for the pacific settlement of international disputes.

(3) The conditions under which a State which has accepted the Statute of the Court but is not a Member of The United Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly on the proposal of the Security Council.

\* \* \*

The procedure to be followed for the designation of candidates by the national groups is retained with no other change than that consisting in specifying that the groups called upon to participate in such designation are the groups belonging to the States which are parties to this Statute.

#### Article 5.

(1) At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4 (2), inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

(2) No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

#### Article 6.

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

\* \* \*

The following articles concerning the procedure of the election have undergone only the changes in form rendered necessary by references to the organs of The United Nations or, in the English text of Articles 7, 9, and 12, to insure a more exact agreement with the French text.



Article 7.

(1) The Secretary-General of The United Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12 (2), these shall be the only persons eligible.

(2) The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8.

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

Article 9.

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10.

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

(2) In the event of more than one national of the same State or Member of The United Nations obtaining an absolute majority of the votes of both the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11.

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

Article 12.

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



(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

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

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

\* \* \*

The Committee has felt that the rule subjecting the Court to a complete renewal every nine years presented serious drawbacks, despite the rule of the re-eligibility of the judges, and the practice, widely followed in 1930, of re-election. Hence it proposes to substitute therefor a system of renewal by one-third every three years. However, certain doubts appear to remain regarding the methods of the system, and these might be made the subject of a further examination with a view to determining whether a solution could not be found in some other way which would consist, contrary to what is said in Article 15, in fixing at nine years the duration



of the term of any judge, no matter the circumstances under which he is elected.

### Article 13.

(1) The members of the Court shall be elected for nine years and may be re-elected, provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

(2) The judges whose terms are to expire at the end of the above mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of The United Nations immediately after the first election has been completed.

(3) The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

(4) 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 United Nations. This last notification makes the place vacant.

At the close of Article 14, concerning the way in which a place that has become vacant is to be filled, the words "at its next session" have been eliminated, the reason for this being the fact that the Security Council is to be in session permanently.

### 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 United 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 Security Council.

The Committee has felt that, in the English text of Article 17, par. 2, it is well to eliminate the words "an active", in order to establish closer conformity with the French text: the latter has not been changed. The same is true of the substitution of the expression "shall be" for the word "is" in the English text of the same article, par. 3.



Besides, no change is made in Art. 18 except in par. 2, which arises from the mention of the Secretary-General of The United Nations.

Examination of Article 15 has provided an occasion for several delegations to propose an age limit for judges. However, this proposal was not supported by the Committee, which proposes to retain Articles 15 and 16 without changing them: the substitution in the English text of the expression "shall be" for the word "is" does not involve any change in the French text.

Article 15.

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

Article 16.

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

(2) Any doubt on this point shall be settled by the decision of the Court.

Article 17.

(1) No member of the Court may act as agent, counsel or advocate in any case.

(2) No member may participate in the decision of any case in which he has previously taken 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.

(3) Any doubt on this point shall be settled by the decision of the Court.

Article 18.

(1) A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

(2) Formal notification thereof shall be made to the Secretary-General of The United Nations by the Registrar.



(3) This notification makes the place vacant.

The Committee does not propose any change in Article 19 concerning the granting of diplomatic privileges and immunities to members of the Court. However, it points out that, insofar as The United Nations Charter regulates the granting of such privileges and immunities to the representatives of The United Nations and their agents, it will be well to examine the opportunity and the way of coordinating the regulations of this nature.

As to Article 20, it has not appeared to call for any change.

#### Article 19.

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

[Subject to reconsideration after provisions on the same subject have been adopted for incorporation in the Charter.]

#### Article 20.

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

Par. 2 of Article 21 has given rise to discussion in consequence of the suggestion that has been made to



Article 21.

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

(2) It shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

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As the seat of the Court is kept at The Hague, it has appeared proper to add that the Court, when it considers it desirable, may decide to sit at some other place and consequently to perform its duties there. Article 22 has been completed to that effect.

Article 22

(1) The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting elsewhere whenever the Court considers it desirable.

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

\* \* \*

After having carefully examined Article 23, concerning the leaves which may be granted to the members of the Court whose homes are far distant from The Hague, the Committee has retained the wording of the old article, but with a paragraph 2 couched in general terms.

It does not propose to modify Articles 23, 24, and 25.

Article 23.

(1) The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

(2) Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

(3) Members of the Court shall be bound, unless they are on regular leave or prevented from attending



by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24.

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

(2) 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.

(3) 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.

Article 25.

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

(2) 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.

(3) Provided always that a quorum of nine judges shall suffice to constitute the Court.

\* \* \*

The Statute of the Permanent Court of International Justice prescribed in its Articles 26 and 27 the establishment, by the Court, of special Chambers for cases relating to labor and for cases relating to transit and communications.

As a matter of fact, these Chambers were indeed established, but they never functioned, and it appears henceforth superfluous to retain the provisions concerning them. But it has appeared advisable to authorize the Court to establish, if necessary, on the one hand, Chambers dealing with particular categories of cases, and the precedent of cases relating to labor, transit and communications has been revived, in this connection, and, on the other hand, to establish a special Chamber to deal with a particular case.



Article 26.

(1) The Court may from time to time form one or more chambers, composed of a number of judges which it may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

(2) The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

(3) Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

\* \* \*

These Chambers, as well as those which will form the subject of Article 29, will render decisions which will be decisions of the Court. They may, as provided for by the old Article 28 of the Statute, and as will become the rule for the Court itself, by virtue of the new article, sit elsewhere than at The Hague.

Article 27.

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be a judgment rendered by the Court.

Article 28.

The chambers provided for in Articles 26 and 29 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

\* \* \*

As for the Chamber for summary procedure established by Article 29, it is retained with mere formal amendments of this article. Logically, the latter should be inserted somewhat above: it is left at this place in order not to change the established numbering.

Article 29.

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five



judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

\* \* \*

Article 30 has undergone in Paragraph 1 changes that do not alter the sense which had been given it by the Court. A provision is added thereto authorizing the Court to introduce either for itself or in its Chambers assessors without the right to vote.

#### Article 30.

(1) The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

(2) The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

\* \* \*

The Committee has examined whether it was not necessary to simplify, by shortening it, the text of Paragraphs 2 and 3 of Article 31 concerning the right of a party to appoint a judge of his nationality. In the end it did not retain this suggestion and made only slight changes in this article: one, in Paragraph 2, consists in saying, in the French text: "toute autre partie" instead of "l'autre partie" and in the English text "any other party" instead of "the other party"; the others, affecting the English text only, substitute, in Paragraphs 3, 5, and 6, for the terms previously employed, better terms corresponding better with the terminology already adopted in the French text.

#### Article 31.

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

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any 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.



(3) If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to choose a judge as provided in paragraph (2) of this Article.

(4) The provisions of this Article shall apply to the case of Articles 26 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.

(5) 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 shall be settled by the decision of the Court.

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

\* \* \*

Except for the substitution, in Paragraph 5 of Article 32, of the General Assembly of The United Nations for the Assembly of the League of Nations, this Article and Article 33, both concerning the financial system of the Court, are not changed.

#### Article 32.

(1) The members of the Court shall receive an annual salary.

(2) The President shall receive a special annual allowance.

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

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



(5) These salaries, allowances and indemnities shall be fixed by the General Assembly of The United Nations. They may not be decreased during the term of office.

(6) The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

(7) Regulations made by the General 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 traveling expenses refunded.

(8) The above salaries, indemnities and allowances shall be free of all taxation.

#### Article 33.

The expenses of the Court shall be borne by The United Nations in such a manner as shall be decided by the General Assembly.



## CHAPTER II

## Competence Of The Court

Since Article 34 states the rule that only States or Members of The United Nations are justiciable in the Court, the Committee has deemed it advisable to add a second paragraph fixing under what conditions information relative to the cases brought before the Court may be requested by the latter from public international organizations or be presented by such organizations on their own initiative. In so doing, the Committee has not wished to go so far as to admit, as certain delegations appear disposed to do, that public international organizations may become parties to a case before the Court. Admitting only that such organizations might, to the extent indicated, furnish information, it has laid down a rule which certain persons have considered as being one of procedure rather than of competence. The Committee, by placing it nevertheless in Article 34, has intended to emphasize its importance.

## Article 34.

(1) Only States or Members of The United Nations can be parties in cases before the Court.

(2) The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

\* \* \*

Aside from the purely formal changes necessitated by references to The United Nations Organization instead of to the Covenant of the League of Nations, Article 35 is emended only in that, in the English text of paragraph 3, the word "case" is substituted for the word "dispute" which will assure better agreement with the French text.

## Article 35.

(1) The Court shall be open to the Members of The United Nations and also to States parties to the present Statute.

(2) The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security



Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

(3) When a State which is not a Member of The United Nations is a party to a case, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

\* \* \*

The question of compulsory jurisdiction was debated at the time of the initial preparation of the Statute of the Court. Admitted by the Advisory Committee of Jurists, in 1920, it was rejected in the course of the examination of the draft Statute by the League of Nations to yield place, on the successful initiative of a Brazilian jurist, to an optional clause permitting the States to accept in advance the compulsory jurisdiction of the Court in a domain delimited by Article 36. This debate has been resumed and very many delegations have made known their desire to see the compulsory jurisdiction of the Court affirmed by a clause inserted in the revised Statute so that, as the latter is to become an integral part of The United Nations Charter, the compulsory jurisdiction of the Court would be an element of the International Organization which it is proposed to institute at the San Francisco Conference. Judging from the preferences thus indicated, it does not seem doubtful that the majority of the Committee was in favor of compulsory jurisdiction, but it has been noted that, in spite of this predominant sentiment, it did not seem certain, nor even probable, that all the nations whose participation in the proposed International Organization appears as necessary, were at that time in a position to accept the rule of compulsory jurisdiction, and that the Dumbarton Oaks Proposals did not seem to affirm it; some, while retaining their preferences in this respect, thought that the counsel of prudence was not to go beyond the procedure of the optional clause inserted in Article 36, which has opened the way to the progressive adoption, in less than 10 years, of compulsory jurisdiction by many States which in 1920 refused to subscribe to it. Placed on this basis, the problem was found to assume a political character, and the Committee thought that it should defer it to the San Francisco Conference.

In order to facilitate the examination of the question, it thought that it should present, ad memorandum rather than as proposals, two texts.



One is submitted in case the Conference should not intend to affirm in the Statute the compulsory jurisdiction of the Court, but only to open the way for it by offering the States, if they did not think it apropos, acceptance of an optional clause on this subject. This text reproduces Article 36 of the Statute with an addition in case The United Nations Charter should make some provision for compulsory jurisdiction.

The second text, also based on Article 36 of the Statute, establishes compulsory jurisdiction directly without passing through the channel of an option which each State would be free to take or not take. Thus it is simpler than the preceding one. It has even been pointed out that it would be too simple. The Committee, however, thought that the moment had not yet come to elaborate it further and see whether the compulsory jurisdiction thus established should be accompanied by some reservations, such as one concerning differences belonging to the past, one concerning disputes which have arisen in the present war, or those authorized by the General Arbitration Act of 1928. If the principle enunciated by this second text were accepted, it could serve as a basis for working out such provisions applying the principle which it enunciates with such modifications as might be deemed opportune.

#### Article 36.

✓The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.✓

✓(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties or conventions in force.

✓(1) The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of The United Nations and in treaties or conventions in force.

(2) The Members of The United Nations and the States parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(2) The Members of The United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in any legal dispute concerning:



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

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

(3) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by decision of the Court.<sup>7</sup>

(4) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.<sup>7</sup>

\* \* \*

In order to adapt the provisions of Article 37 to the new situation, it will be necessary to say that when a treaty or a convention in force contemplates reference to a jurisdiction to be established by The United Nations, the Court shall be that jurisdiction. But that will not suffice: it must be added that it is also the Court which continues to constitute or which will constitute the jurisdiction contemplated by any treaty giving competence to the Permanent Court of International Justice.

The form to be given to this second rule depends on the decision which is made on the question of whether the Court governed by the Statute in preparation is considered as a new Court or the Court instituted in 1920 and governed by a Statute which, dating from that year, has been revised in



1945 as it was in 1929. In order not to prejudice the reply which the San Francisco Conference will have to give apropos of Article 1 and to show that in its 1920 text Article 37 is thought to be insufficient, the Committee has herein recorded, ad memorandum, the said article as proposed in the American draft.

It should be observed, moreover, that if the Court which will be governed by the present Statute is considered as a continuation of the Court instituted in 1920, the force of law of the numerous general or special international acts affirming the compulsory jurisdiction of this Court will subsist, that if, on the contrary, the Court is held to be a new Court, the former one disappearing, the said obligations will run the risk of being considered null and void, their restoration to force will not be easy, an advance in law will thus be abandoned or seriously endangered.

#### Article 37.

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

Subject to reconsideration after the adoption of a text of Article 1.

\* \* \*

Article 38, which determines, according to its terms, what the Court "shall apply" has given rise to more controversies in doctrine than difficulties in practice. The Committee thought that too many urgent tasks, which it was important to finish properly, had to be taken up by the San Francisco Conference for it to be the opportune time to undertake the revision of the said article. It has trusted to the Court to put it into operation, and has left it without change other than that which appears in the numbering of the provisions of this article.

#### Article 38.

(1) The Court shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;



(c) The general principles of law recognized by civilized nations;

(d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

### CHAPTER III

#### Procedure

The provisions of the Statute concerning the official languages of the Court are modified only to specify, in conformity with practice, that the Court, at the request of a party, shall authorize such party to use another language.

#### Article 39.

(1) 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.

(2) 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.

(3) The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.



\* \* \*

In the other provisions of the Statute relative to procedure, the Committee did not think it should propose important innovations. In the matter of provisional measures, it considered that the indication of such measures ought to be notified to the Security Council as formerly they had to be to the Council of the League of Nations (Article 41).

It thought it opportune, moreover, to improve the agreement between the two texts of the Statute by changing certain expressions in the English text of Articles 43, paragraph 2, 47, paragraph 2, and 55, paragraphs 1 and 2, without its being necessary to change the French text. Articles 40 to 56, accordingly, now read as follows:

Article 40.

(1) 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.

(2) The Registrar shall forthwith communicate the application to all concerned.

(3) He shall also notify the Members of The United Nations through the Secretary-General and also any States entitled to appear before the Court.

Article 41.

(1) The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

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

Article 42.

(1) The parties shall be represented by agents.

(2) They may have the assistance of counsel or advocates before the Court.



Article 43.

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

(2) The written proceedings shall consist of the communication to the Court and to the parties of Memorials, Counter-Memorials and, if necessary, Replies; also all papers and documents in support.

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

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

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

Article 44.

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

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

Article 45.

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

Article 46.

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

Article 47.

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

(2) These minutes alone shall be authentic.



Article 48.

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

Article 49.

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

Article 50.

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

Article 51.

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



Article 52.

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

Article 53.

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

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

Article 54.

(1) When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

(2) The Court shall withdraw to consider the judgment.

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

Article 55.

(1) All questions shall be decided by a majority of the judges present.

(2) In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56.

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

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

\* \* \*

An innovation which, furthermore, confirms practice has been introduced in Article 57, paragraph 1, which affirms, for the benefit not only of the dissident judge but of any judge, the right to annex to the decision the statement of his individual opinion.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.



Articles 58 to 64 contain no change in the French text; the formal emendations made in the English text of Articles 61 (substitution of "judgment" for "sentence" in paragraph 5) and 62, paragraph 1 (elimination of the words: "as a third party") do not change the sense thereof.

Article 58.

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

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

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

Article 61.

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

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

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

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

(5) No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62.

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



(2) It shall be for the Court to decide upon this request.

#### Article 63.

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

(2) Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.

#### Article 64.

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

### CHAPTER IV

#### Advisory Opinions

It is for the Charter of the United Nations to determine what organs of the latter shall be qualified to lay before the Court a request for an advisory opinion. Going beyond the terms of the Dumbarton Oaks Proposals, the Committee has believed that it might presume, with a formal reservation, moreover, that this power would be open not only to the Security Council but also to the General Assembly, and it is on that basis that it has determined how the application should be submitted. Aside from that, the changes made in Articles 65 to 68 are purely formal and do not call for any comment.

### CHAPTER IV

#### Advisory Opinions

#### Article 65.

(1) 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 General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.



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

#### Article 66.

(1) The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of The United Nations, through the Secretary-General of The United Nations, and to any States entitled to appear before the Court.

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or international organization 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.

(3) Should any Member of The United Nations or State entitled to appear before the Court have failed to receive the special communication referred to in paragraph (2) of this Article, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

(4) Members, States, and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations 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 United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

#### Article 68.

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.



\* \* \*

It has been suggested that the provisions of the Court Rules (Article 67) concerning appeals brought before the Court be transferred to the Statute. But it has been observed that those provisions have to do with procedure only, and consequently their place is in the Rules. The part played by the Court as an appeal court is governed by the rules regulating its jurisdiction. Consequently, the suggestion mentioned above was not included.

\* \* \*

## CHAPTER V

## Amendments

The American Government having proposed the acceptance of a special procedure for amendment of the Statute of the Court, this proposal has appeared suited to fill a regrettable lacuna in the Statute, a lacuna the disadvantage of which has made itself felt in the past. The Committee has changed the American proposal in order to bring it into conformity with the corresponding provision proposed at Dumbarton Oaks to form part of the Charter of The United Nations. The Committee's proposal is dependent on what is decided at San Francisco regarding the changing of the Charter itself. While deeming its proposal provisionally for this reason, the Committee has believed that it should draft it, because of the importance which it attaches to a provision of this nature.

## Article 69

Amendments to the present Statute shall come into force for all parties to the Statute when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the Members of The United Nations having permanent membership on the Security Council and by a majority of the other parties to the Statute.

/The above text of Article 69 was adopted to conform with Chapter XI of the Dumbarton Oaks Proposals and subject to reconsideration if that text is changed./

\* \* \*



A Member of the Committee has called the attention of the latter to the importance which exact execution of the decisions of the Court has for the reign of law and the maintenance of peace, and he wondered whether the Statute ought not to contain a provision concerning the proper means for assuring this effect. The importance of this suggestion was not contested, but the remark was made that it was not the business of the Court itself to ensure the execution of its decisions, that the matter concerns rather the Security Council, and that Article 13, paragraph 4, of the Covenant had referred in this connection to the Council of the League of Nations. A provision of this nature is not consequently to appear in the Statute, but the attention of the San Francisco Conference is to be called to the great importance connected with formulating rules on this point in the Charter of The United Nations.

\* \* \*

In presenting the provisions stated and explained above, the Committee feels that it has accomplished the task devolving upon it, which was to prepare a draft Statute with a view to its examination by The United Nations Conference. However, it cannot disregard the fact that among The United Nations there are many which are parties to the Statute of the Court drawn up in 1920 and revised in 1929, and that on that account they are bound not only to one another, but also with respect to States which do not appear among The United Nations. Hence the obligation for them of adjusting the situation arising between them and those States for that reason. That adjustment was not within the province of the Committee: it did not undertake to prejudge it. However, it should be borne in mind that in order to build up an institution of international justice, the regular channels must be followed with special strictness.



JURIST 62

SEE: JURIST 62 (Revised)