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SUMMARY OF THIRD MEETING
(Revised)

Interdepartmental Auditorium, Conference Room B.
Tuesday, April 10, 1945, 2:30 p.m.

Mr. Hackworth, Chairman, opened the meeting. He invited Mr. Basdevant (France), Rapporteur, to be seated next to the Chairman.

Mr. Basdevant (France) observed that he had understood at the morning meeting that the Committee was to return to the points on which there was agreement and was to put in brackets those points regarding which there was a difference of opinion from the proposals made at Dumbarton Oaks. He inquired whether this was the view of the Committee.

The Chairman observed that that was his understanding also. He said that it would be desirable that the Committee should agree on as many matters as possible. He pointed out that Mr. Basdevant, as the Rapporteur, would have to point out differences of view in his report.

The Chairman then proceeded with the discussion of the Statute of the Court. He recalled that Article 1 was held in abeyance but expressed the view that this Article would probably have to be considered in order to prevent changes in some other Articles. He proposed a small subcommittee to consider Article 1. He suggested that the subcommittee should consist of the representatives of Cuba, New Zealand, and the Union of Soviet Socialist Republics.

The Chairman then stated that the Committee was ready to consider Articles 5 to 14 of the Statute of the Court. These Articles should be considered together because they are all tied in with the election of judges. The Committee's decision in relation to Article 4 would influence the Committee's judgment as to the other Articles. He asked the Solicitor General of the United States, Mr. Charles Fahy, his adviser, to read Articles 5 to 14 from the draft of the Statute of the Permanent Court of International Justice numbered U. S. Jur. 1. Mr. Fahy read Article 5, concerning

nomination of judges. He then pointed out that if Article 4 should be changed so as to have nomination of judges by governments the word "government" would have to be substituted for "members of the national groups".

Mr. Fahy then read Article 6, relating to nominees, Article 7 as to lists of nominees, and Article 8 as to election of judges by the Assembly and the Council. He pointed out that the last-mentioned Article contemplates a majority of the Assembly as well as a majority of the Council, separately.

Mr. Fahy then read Article 9 as to qualifications of judges and Article 10 as to method of election. He pointed out that the required majority is a majority of each of the two bodies and not of the aggregate number of their members.

Mr. Fahy then read Articles 11 to 14. Articles 11 and 12 related to vacancies on the Court, Article 13 to the term of members of the Court, and Article 14 to vacancies.

Sir Frederic Eggleston (Australia) suggested that the second paragraph of Article 5 might be clarified, since the last sentence meant simply that when there was only one vacancy each country could nominate but one candidate.

Ambassador Cordova (Mexico) suggested that since all these Articles relate to the same subject, i.e., the election of judges, they should all be referred to the same subcommittee. The Chairman inquired whether there was any objection to the proposal of the Mexican representative. There being no objection, the articles were referred to the subcommittee.

Mr. Fitzmaurice (United Kingdom) called attention to Article 13 which provides that the members of the Court shall be elected for nine years and that they may be re-elected. He pointed out that under the present system it is possible that the terms of all the judges may expire at the same time and that in such a case there would be a

practical break in the continuity of the Court since all the judges would be new. He thought that there should be a provision for the election of judges for nine years but that with respect to the first election, three judges should be elected for three years, three others for six years, and the other three for nine years. He stated that this proposal was based on the assumption that there would be only nine judges. If the number of judges was to be changed, other changes would have to be made accordingly.

Ambassador Mora (Chile) said that regardless of the number of judges there should be three groups elected at different times.

Dr. Wang (China) agreed with the proposal of the representative of the United Kingdom. He said that his experience in the Court made him believe that nine new judges, or a majority of new judges, would break the Court's continuity. For the initial period, he was of the opinion that the judges should be elected in groups.

Ambassador Cordova (Mexico) agreed with the representative of the United Kingdom but proposed that all judges be elected for nine years and that the groups which should be retired after the expiration of three and six years, respectively, be chosen by lot.

The Chairman said that he had received a suggestion that the representatives of Canada, France, and Norway be added to the subcommittee. There being no objection, he appointed them on the subcommittee.

Ambassador Cordova (Mexico) suggested that Mr. Fitzmaurice draft a text of Article 13 to give effect to the latter's suggestions. Mr. Fitzmaurice agreed to do so.

Dr. Escalante (Venezuela) submitted a document for revision of Articles 4 to 14 and suggested that the revision be referred to the subcommittee. The Chairman stated that if there was no objection this action would be taken. There was no objection.

The Chairman then proceeded to a discussion of Article 14, relating to vacancies, which he read. He pointed out that if the Dumbarton Oaks Proposals were approved by the San Francisco Conference the Security Council would be in continuous session and, therefore, the provision in Article 14 regarding the fixing of the date of elections at the next session of the

Council would have to be changed. However, this was a question of drafting and was held in abeyance for the time being.

The Chairman then took up Article 15 and pointed out that it was changed entirely, the proposed text providing for expiration of the term of a member of the Court upon his attaining the age of 75 years, and for ineligibility of election of persons over 72.

Dr. Abbass (Iraq) stated that he had great reverence for the wisdom of age, but in the dynamic civilization in which we live he would propose an age limit of 70 years. Sir Frederic Eggleston (Australia) agreed with him.

Mr. Fitzmaurice (United Kingdom) stated that his Government was opposed to any age limit. In the legal field the older the judge the better. Any age limit might exclude very desirable candidates.

Sir Michael Myers (New Zealand) agreed with the representative of the United Kingdom. Judges appointed for life may be required to retire when they attain a certain age limit, but since the judges of the Court are to be elected for nine years the electors would be free not to elect them if they believe that during the term of office the judges would reach an age of decrepitude. He preferred the original article.

Mr. Fitzmaurice (United Kingdom) stated that if the system of rotation was adopted it would be desirable to preserve the present article, so as not to upset the regular retirement.

The Chairman stated that, under the rotation proposal of the representative of the United Kingdom, Article 15 might be retained in its present form. He proposed that Article 15 be held in abeyance unless the Committee desired to retain it in its present form. He stated that he had no particular brief for the new article. He simply had in mind that people who are unable to take part in the activity of the Court should not be elected to membership.

Dr. Escalante (Venezuela) agreed with the proposed Article 15. M. Basdevant stated that since he is probably the senior member of the Committee he would not make any proposals concerning the provision as to age limit.

The Chairman pointed out that if Article 15 is retained in its present form, the question of vacancies would be taken care of. He asked the Committee to vote on the question whether the Article should be retained in that form. Twenty members voted for such retention, and it was decided that there would be no change.

The Chairman observed that the next question related to age limit. He asked the Committee whether it was ready to vote.

Dr. Escalante (Venezuela) moved and Dr. Abbass (Iraq) seconded that there should be an age limit.

Mr. Fitzmaurice (United Kingdom) stated that he would like to observe that there was no need for an age limit and that there are sufficient safeguards with respect to this matter. Under the present Statute, judges are elected for nine years and they go out of office at the end of that period. Furthermore, this matter can be handled by the electors. If they believe that, because of age, a man should not be elected, the electors may, of course, refrain from appointing him on the Court.

Dr. Abbass (Iraq) pointed out that there are many able persons over 70 years of age, but that there are also such persons under that age. He favored an age limit.

Mr. Simpson (Liberia) was against an age limit.

Mr. Ramadan Pacha (Egypt) stated that there is an analogy between the Court and certain other institutions. He expressed the view that there was no need for such limitation and saw no advantage in having it, especially if the proposal of a renewal of the judges every three years is to be adopted.

The Chairman called for a vote. Twenty members voted against an age limit and ten in favor. The motion was lost.

The Chairman stated that it had been suggested to him by the representatives of Egypt, Iran, Iraq, Saudi Arabia, and Syria that one of them be appointed on the subcommittee on elections. They proposed the Egyptian representative, and, there being no objection, he was appointed.

The Chairman then took up Article 16, which prohibits members of the Court from engaging in any other occupation of a professional nature. Mr. Fitzmaurice (United Kingdom) stated that he would like to circulate a proposal to distinguish between members of the Court and judges. He expressed the view that the former should not be prohibited from engaging in other occupations of a professional nature, but that he would like to hold this Article in abeyance.

The Chairman stated that if there was no objection, the Article would be held in abeyance. He then took up Article 17, which prohibits a member of the Court from participating in the decision of any case with which he might have previously been connected as agent or counsel. He read the Article and inquired whether there was any objection thereto.

Dr. Abbass (Iraq) agreed with the provisions of Article 17 except with respect to the provision which prohibits participation in the decision of a case by a member of the Court who had previously taken part as a member of a commission of inquiry. He thought that a member of such commission gained experience which might be useful and saw no reason for barring him.

Mr. Simpson (Liberia) proposed the elimination of the words "an active" in the second line of the second paragraph of Article 17. He was of the opinion that a member need not have taken "an active" part to be barred and that if he has taken any part as agent or counsel he should be ineligible to participate in the decision of a case.

Mr. Basdevant (France) stated that the remarks of the Liberian representative related to the English text and that the French text did not contain the same difficulty.

The Chairman pointed out that both texts are official and suggested that the words "an active" be eliminated, especially since they are not in the French text.

Mr. Ramadan-Pacha (Egypt) said that the French text states that even a simple "intervention" is a bar. It would be desirable to find an equivalent word in English to take care of those cases in which there is "intervention".

Mr. Star-Busmann (Netherlands) thought that the question was not very important since Article 17 provides that any question of doubt may be resolved by the Court.

The Chairman saw no objection to the elimination of the two words, "an active". He put the question to a vote. Seventeen voted in favor of elimination, with no dissenting votes.

The Chairman then took up Article 18, which provides for the dismissal of a member of the Court in case of inability to fulfill the required conditions. He read this Article and asked if there were any comments.

Sir Frederic Eggleston (Australia) pointed out that Article 18 was in the negative form and that it raised a question of drafting.

The Chairman replied that since it had been in effect 25 years it should be approved unless there was an objection. There was no objection.

The Chairman then took up Article 19, which grants diplomatic immunities to members of the Court.

Mr. Fitzmaurice (United Kingdom) stated that since there was a correspondence between the old article and a similar article in the Covenant of the League of Nations there should be a correspondence between this provision and whatever analogous provision might be included in the initial Charter.

The Chairman thought that there should be immunity regardless of the nature of the provisions in the Charter. He thought that Article 19 should be approved.

Mr. Fitzmaurice (United Kingdom) stated that he agreed in principle and that the Article might be passed for the time being.

The Chairman then read Article 20 regarding oaths of office by members of the Court. There being no objection, the Article was approved.

He then read Article 21 which provides for the election by the Court of a President, a Vice-President, and a Registrar. The Article provides also that the duties of the Registrar of the Court shall not be deemed incompatible with those of the Secretary-General of the Permanent Court of Arbitration.

Mr. Fitzmaurice (United Kingdom) stated that it was not clear why the provision as to incompatibility was included in this Article. Mr. Jorstad (Norway) pointed out that, in practice, the two offices have never been held by the same person.

Mr. Basdevant (France) thought that the Secretary-General of the Court of Arbitration had limited activities and so he was able to be also a Registrar of the Court. However, if the Court had a great deal of work there would have to be a Registrar as well as a Secretary-General. Up to now there was no Secretary-General. There was, however, an Assistant Registrar. He was of the opinion that Article 21 might perhaps be changed to read that the Court might appoint a Registrar, and, if necessary, a Secretary-General.

Dr. Gavrilovic (Yugoslavia) agreed with the French representative. He said that the Registrar assisted the Court and, in addition, was in charge of administrative matters such as the appointment of personnel and the like. Probably there should be a Registrar to assist the Court and a Secretary-General to have administrative functions.

Mr. Fitzmaurice (United Kingdom) had no strong views as to this matter. However, he made a motion along the lines suggested by the French representative.

Mr. Nisot (Belgium) saw no reason for retention of the provision of Article 21 as to incompatibility since it was not shown that this provision was necessary. Dr. Gavrilovic (Yugoslavia) agreed with the Belgian representative and moved that the last paragraph of Article 21, which contains this provision, be eliminated. The Chairman put the question to a vote. Eighteen voted for elimination and seven against. The Chairman called attention to the fact that some of the representatives did not vote. He stated that if the Committee wanted to reopen the question he would entertain such a motion. Dr. De Bayle (Costa Rica) inquired whether the omission of the provision concerning incompatibility from Article 21 would result in making the holding of the two offices of Registrar and Secretary-General by the same person permissible. Ambassador Cordova (Mexico) stated that if this provision is eliminated the Court could appoint anyone it chose, including the Secretary-General of the Permanent Court of Arbitration. Dr. Gavrilovic called attention to the fact that the Permanent Court of International Justice and the Court of Arbitration are run by the same governments. He expressed the view that the Registrar should not be charged with additional duties. Dr. De Bayle expressed the view that elimination would not solve the question. He raised the question whether elimination would make the holding of the two offices incompatible. Sr. Castro (El Salvador) said that elimination would carry an implication that the Secretary of the Permanent Court of Arbitration may be also a Registrar of the Permanent Court and favored omission of the Article.

The Chairman pointed out that the Committee had agreed to eliminate the provision regarding incompatibility and that the French representative had suggested the appointment of another officer of the Court to take care of the possibility that the work of the Court might be increased. The Chairman thought that the Court might appoint a Secretary-General if it found it desirable.

Mr. Basdevant (France) moved that there should be a provision authorizing the Court to appoint such other officers as it might need. The motion was seconded. Mr. Jessup (United States) stated that under its rules the Court had been able to operate effectively so far in appointing other officers and that there was no need for the proposed amendment. Sir Frederic Eggleston (Australia) expressed the view that the Court had no power to appoint officers and that to do so might be ultra vires. He thought, therefore, that there might be reason for the suggested amendment. Dr. Wang (China) expressed the view that the Court had no power to create positions by rules of procedure. Mr. Star-Busmann (Netherlands) agreed with the Chinese representative. Mr. Nisot (Belgium) inquired whether this suggestion would not result in requiring the appointment

of all officials by the Court instead of by the Registrar, as is the case now.

Ambassador Mora (Chile) stated that if such a provision is introduced the Committee would be entering into the regulatory field, a thing which in his opinion should not be done. He thought that that field should be left to the appointing power of the Court. Mr. Gori (Colombia) agreed with the greater part of the remarks of the Chilean representative. He thought that the draftsman of this Article must have had some purpose in mind and that the provision as to incompatibility should not be eliminated.

The Chairman called attention to the fact that the Committee had already voted to eliminate that provision.

Sir Frederic Eggleston (Australia) stated that the provision authorizing the Court to appoint an officer did not necessarily imply that it could appoint other officers.

The Chairman stated that the motion was to add at the end of the second paragraph of Article 21 the words "and such other officers as may be necessary". Mr. Spiropoulos (Greece) wanted to make some general observations. The Statute of the Court has been in force for about 25 years. The Committee wants now to change some provisions. He expressed the view that the Committee should leave the Statute as is, unless it is absolutely necessary to make changes. He thought that there should not be any changes in regard to this matter, especially since the members of the Committee were not the judges of the Court and did not know the pertinent details. Mr. Nisot (Belgium) agreed with the Greek representative that, as the Court functioned perfectly for 25 years, there should not be any changes. Mr. Fitzmaurice (United Kingdom) expressed the view that the omission as to the appointment of other officials must have been an oversight and that since the Committee has an opportunity to remedy such omissions it should do so.

Mr. Star-Busmann (Netherlands) agreed with the representative of the United Kingdom. The Chairman pointed out that in the United States administrative officials take action and in some cases go back to Congress for legislation authorizing them to take such action. These officials merely want to put it beyond any reasonable doubt that they have authority to act as they do. This is the situation here. It would do no harm to have such a provision. He put the question to a vote. Twenty-one representatives votes in favor and one opposed.

The Chairman then took up Article 22 which provides that the seat of the Court shall be at The Hague. He called attention to the fact that the question as to where the seat of the

Court should be is a question that could be left for the San Francisco Conference. However, if the Committee had any observations, they could be embodied in the report. Dr. Escalante (Venezuela) stated that the Venezuelan delegation agreed that the seat should be at The Hague but added that there should be a provision that the Court could meet, if necessary, in other places. He expressed the hope that other representatives would comment in regard to this matter.

Mr. Star-Busmann (Netherlands) stated that the seat of the Court is part of the "functioning" of the Court. He thought that this question should be decided here.

Mr. Spiropoulos (Greece) thought that the question was not a political one but believed that the questions to be referred to the San Francisco Conference need not be only political ones. He thought that questions of this character might be so referred and that this question should be decided by the San Francisco Conference.

Mr. Nisot (Belgium) thought that the question regarding the seat of the Court should be decided here and that the seat should be at The Hague. Mr. Jorstad (Norway) stated that the seat should be at The Hague and called attention to the convenient location of that place as well as to the fact that the Netherlands Government had been most accommodating in its relations with the Court. Mr. Basdevant (France) thought that the Committee should make the recommendation as it was agreed at the morning meeting. It is true that the question might be left for decision by the San Francisco Conference, but he thought that the members of the Committee as jurists might take account of certain considerations. The prestige of the Permanent Court is associated with The Hague. He thought that the Committee should tell the San Francisco Conference that the seat should be at The Hague. He wondered, however, if something more should not be added to Article 22. Mr. Read (Canada) thought that the Court should be able to sit anywhere in the world, when necessary. He expressed the view that the Statute should contain such a provision.

Dr. Garcia (Peru) stated that the Peruvian delegation would vote for the article as it stands.

Mr. Fahy (United States) stated that he would like to make a suggestion that the Court should be able, in its discretion, to sit in other places than The Hague.

The Chairman stated that if there was no objection he would assume that the Committee approved the article as it stands. However, he pointed out that there had been suggestions

to the effect that the Court should be able to hold sessions elsewhere than at The Hague. He called attention to the provisions of Article 28 under which chambers of the Court may sit elsewhere than at The Hague. Mr. El-Fakih (Saudi Arabia) proposed that the Court should have power to sit at The Hague or anywhere else, if necessary. Mr. Fitzmaurice (United Kingdom) called attention to the fact that Judge Manley O. Hudson expressed the view in his book on the Permanent Court of International Justice that the Court may sit elsewhere if it so desires and that there can be no doubt of the power of the Court to do so. Judge Hudson is of the opinion, Mr. Fitzmaurice said, that Articles 44 and 50 of the Statute show that the Court is not bound to The Hague in its activities. Ambassador Cordova (Mexico) expressed the view that it would clarify the situation if the Court was given power to sit elsewhere.

Mr. Star-Busmann (Netherlands) stated that the question of the seat of the Court might be confused with the question whether the Court might sit elsewhere than at The Hague from time to time. Mr. Spiropoulos (Greece) said that there was no difference between the two questions. He did not agree with the Canadian representative that the Court should be able to sit elsewhere. He thought that the Committee should choose The Hague as the seat of the Court and that after such choice the Court could not sit in any other place. He stated that Article 28 did not relate to the Court, but to chambers thereof. He expressed the view that the Court should sit at The Hague but that the question may be left open for decision by the San Francisco Conference. Mr. Benes (Czechoslovakia) stated that the Court should sit at The Hague or in any other place, if necessary. Mr. Castro (El Salvador) proposed the addition of the following words at the end of the first paragraph of Article 22: "This, however, will not prevent the Court from sitting elsewhere if circumstances require."

The Chairman called attention to the fact that the hour of adjournment had arrived and that the proposal of the Venezuelan representative might be discussed on the following day.

The third meeting was adjourned at 5:30 p.m.

LIST OF DOCUMENTS ISSUED

April 9-16, 1945

<u>Jurist Number</u>	<u>Title</u>	<u>Date Issued</u>
1	Official Comments Relating to the Statute of the Proposed Court of International Justice	April 9
2	The United Nations Dumbarton Oaks Proposals for a General International Organization <u>/Printed/</u>	April 9
3	Statute of the Permanent Court of International Justice <u>/French Text/</u>	April 9
4	Minutes of First Plenary Session April 9, 1945, 11 a.m.	April 9
5	The Statute of the Permanent Court of International Justice With Revisions Proposed by the United States (Cover sheet for U.S. Delegation document (US Jur 1) which was circulated to the Committee on April 9)	April 9
6	Statut de la Cour Permanente de Justice Internationale Avec les Revisions Proposees par les Juristes des Etats-Unis (See no. 17 for correction)	April 11
7	Proposed Revision of Article 2 of the Statute of the Permanent Court of International Justice, Submitted by the Representative of Venezuela	April 10

<u>Jurist Number</u>	<u>Title</u>	<u>Date Issued</u>
8	Proposed Revision of Article 2 of the Statute of the Permanent Court of International Justice, Submitted by the Representative of Egypt	April 10
9	Preliminary List of Delegates and Advisers (Revised as no. 29)	April 10
10	Method of Nomination of candidates for Judges suggested by the Representative of China	April 10
11	Summary of First Meeting, April 9, 1945, 3 p.m. (Revised as no. 36)	April 11
12	Convention for the Establishment of a Central American Court of Justice, 1907	April 11
13	Revision of Articles 4 to 14 of the Statute of the Permanent Court of International Justice, Submitted by the Representative of Venezuela	April 11
14	United Kingdom Proposals Regarding the Statute of the Permanent Court of International Justice	April 11
15	Summary of Second Meeting, April 10, 10:15 a.m. (Revised as no. 37)	April 12
16	Memorandum Presented by the Delegation of Venezuela on Bases for the Organization of the International Court of Justice	April 12
17(6)	Correction du Texte Français des Articles 26 et 27 du Statut de la Cour de Justice Internationale, Proposée par la Delegation Française	April 11

<u>Jurist Number</u>	<u>Title</u>	<u>Date Issued</u>
18	Memorandum by the Liberian Govern- ment on the International Court of Justice	April 12
19	Summary of the Third Meeting, April 10, 1945, 2:30 p.m. (Revised as no. 38)	April 12
20	Report of Subcommittee on Articles 22 and 28	April 12
21	Proposed Revision of Article 31 Submitted by the Representative of the Netherlands	April 12
22	Summary of Fourth Meeting, April 11, 1945, 10:15 a.m.	April 12
23	Report of Subcommittee on Articles 26, 27, 29, and 30	April 12
24	Report of Subcommittee on Articles 3 to 13	April 12
25	Report of Subcommittee on Articles 1 and 2	April 12
26	Motion of the Chief Justice of New Zealand	April 12
27	Proposed Revision of Article 36 Submitted by the Representative of Turkey	April 12
28	Subcommittee on Articles 1 and 2; Summary of First Meeting, April 11, 1945, 3 p.m.	April 12
29(9)	Revised List of Representatives and Advisers, April 12	April 12
30	Summary of Fifth Meeting, April 12, 1945, 10:30 a.m.	April 12
31	Revision of Article 36, Proposed by the Egyptian Delegation	April 12

<u>Jurist Number</u>	<u>Title</u>	<u>Date Issued</u>
32	Subcommittee on Articles 3 to 13, Summary of First Meeting, April 11, 1945, 3 p.m.	April 13
33	Proposed Revision of Article 36, Submitted by the Representative of Honduras	April 13
34	Summary of Sixth Meeting, April 12, 1945, 3:15 p.m.	April 14
35	Revision of Article 36, Paragraphs 2 and 3, Proposed by the Delegation of China	April 14
36(11)	Summary of First Meeting, April 9, 1945, 3 p.m. (Revised)	April 14
37(15)	Summary of Second Meeting, April 10, 1945, 3 p.m. (Revised)	April 14
38(19)	Summary of Third Meeting, April 10, 1945, 2:30 p.m. (Revised)	April 14
39	List of Documents Issued, April 9- 16, 1945	April 16
40	Summary of Seventh Meeting, April 13, 1945, 10 a.m.	April 15
41	Report of Subcommittee Dealing With Optional Draft of Article 36 and Other Articles of Chapter II	April 15
42	Local Addresses of Representatives and Advisers	April 15
43	Report of the Subcommittee on Article 36 (Compulsory Juris- diction)	April 15
44	Proposals of the United Kingdom on Articles 3-13	April 15

<u>Jurist Number</u>	<u>Title</u>	<u>Date Issued</u>
45	Summary of Eighth Meeting, April 13, 1945, 3 p.m.	April 16
46(22)	Summary of Fourth Meeting, April 11, 1945, 10 a.m. (Revised)	April 15
47	Text of Statute of the Permanent Court of International Justice-- Revisions Proposed by Drafting Committee	April 15
48	Texte du Statut de la Cour Permanente de Justice Internationale--Revisions Proposées par le Comité de Redaction	April 15
49(47)	Text of Statute of the Permanent Court of International Justice-- Revisions Proposed by Drafting Committee (Revised April 15)	April 16
50(48)	Texte du Statut de la Cour Permanente de Justice Internationale--Revisions Proposées par le Comité de Redaction (Revisé 15 Avril)	April 16

SUMMARY OF SEVENTH MEETING

Interdepartmental Auditorium, Conference Room B
Friday, April 13, 1945, 10 a.m.

Present at the meeting were the following representatives of the United Nations:

United States of America: Mr. Green H. Hackworth,
Chairman; Charles Fahy, Philip C. Jessup, (Advisers)
Australia: Sir Frederic W. Eggleston (Alternate)
Belgium: M. Joseph Nisot (Alternate)
Bolivia: Sr. René Ballivian
Brazil: Minister A. Camillo de Oliverira (Alternate)
Canada: Mr. John E. Read; The Hon. Wendell B. Farris
(Adviser)
Chile: Minister Enrique Gajardo (Adviser)
China: Dr. Wang Chung-hui
Colombia: Sr. Jose J. Gori (Alternate)
Costa Rica: Dr. León De Bayle
Cuba: Sr. Ernesto Dihigo
Czechoslovakia: Dr. Václav Benes
Dominican Republic: Sr. José Ramon Rodriguez
Ecuador: Dr. L. Neftali Ponce
Egypt: Hafez Ramadan Pacha
Ethiopia: Dr. Ambayé Woldemariam
France: Professor Jules Basdevant
Greece: Professor John Spiropoulos
Guatemala: Dr. Enrique Lopez-Herrarte
Haiti: Dr. Clovis Kernisan
Honduras: Dr. Alejandro Rivera Hernández
Iran: Mr. M. Adle
Iraq: Dr. Abdul-Majid Abbass
Liberia: The Hon. C. L. Simpson
Mexico: Ambassador Roberto Cordova
Netherlands: M. E. Star-Busmann
New Zealand: The Rt. Hon. Sir Michael Myers
Norway: M. Lars J. Jorstad
Peru: Dr. Arturo Garcia
Philippine Commonwealth: Dr. José F. Imperial
Saudi Arabia: Mr. Assad El-Fakih
Syria: M. Costi K. Zurayk
Turkey: Professor Cemil Bilsel
Union of Soviet Socialist Republics: Mr. N. V. Novikov
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. José A. Vora Otero (Alternate)
Venezuela: Dr. Luis E. Gómez-Ruiz (Adviser)
Yugoslavia: Dr. Theodore Gjurgjevic (Adviser)

Mr. Hackworth (United States), the Chairman, made the following statement:

"It is, of course, unnecessary for me to stress to my colleagues on this Committee the great loss which this country and its people, and I venture to say the world, have suffered through the death of our beloved President, the great humanitarian and devotee to the cause of peace, security, and justice. It was under his leadership that our people have taken and are taking great strides toward the establishment of a world organization for the promotion of these beneficent purposes. The tribute from us that he would have appreciated most would be the continuation of our labors toward the achievement of the goals which he had so close to his heart. His attitude with respect to unfinished tasks was aptly stated by Mrs. Roosevelt who, in her message to their four sons in the Armed Forces, told them that the President had done his job to the end as he would want to do.

When we closed our work yesterday we had all but finished discussion of Article 36 of the proposed Statute for the International Court of Justice. Most of you gentlemen had spoken eloquently and earnestly on the question whether that article should provide for compulsory jurisdiction, should be optional with the countries that become parties to the Statute. This is a time-honored question. It is one to which much thought has been given and on which reasonable minds may well and do disagree.

If we should now follow the course that was in mind when we adjourned last evening, we would take a vote on a motion that was then pending, a motion designed to determine on which side of the question the respective members of this Committee are prepared to stand. I am glad that we did not vote last evening and I trust that we shall not now vote on this particular issue. We have been working together in this meeting for four days; we have been working earnestly and conscientiously; we have made wonderful progress, and we have made that progress in a spirit of frankness, but at the same time in a spirit of complete collaboration and cooperation with but one goal in view; namely, a task well done. I should very much dislike to see us at this particular time take sides on the issue whether we shall or shall not have a compulsory jurisdiction article in the place of Article 36 of the

proposed Statute. I should not like to see this group so sharply divided, as the discussions at yesterday's meeting indicated that we might be divided. We have too much to gain by continuing our work to a successful conclusion to permit us to risk the results of such disagreement.

After all, what we are trying to do is to frame a plan for a court which all of the United Nations will be able to accept. None of us would wish that our work should have the result of making it impossible for any state represented here to join in supporting the International Court. The French representative was good enough yesterday to refer with approval to the instructions which were issued to the American delegates to the Second Hague Peace Conference. Let me quote a single sentence from those instructions which were written by a statesman closely associated with the establishment of the Permanent Court of International Justice, Mr. Elihu Root: 'In the discussions upon every question, it is important to remember that the object of the Conference is agreement and not compulsion.'

I think that we are justified in assuming that if the signature of the Statute should involve ipso facto the acceptance of the compulsory jurisdiction of the Court, some States would find it difficult to become a party to the Statute. It should be our purpose to endeavor to have every State look to the Court for the adjustment of justiciable disputes which may not be settled by other pacific means. We should not frighten them away by what they might regard as excessively onerous conditions. Let us remember, also, that if we take a vote here on any question as important as the one we are now discussing and carry one view by a small majority, we have not necessarily indicated the conclusion which will be reached at San Francisco. Moreover, we have agreed that our own report shall be adopted by a two-thirds majority before it is finally accepted for transmission to the Conference at San Francisco. Surely, therefore, what we are seeking is the largest possible measure of agreement.

Personally, I share most sincerely the view of those who expressed the hope yesterday that the compulsory jurisdiction of the International Court may be expanded. It would be my earnest hope that if the Statute is ultimately adopted with the optional clause my country would sign that clause at an early date, and that all of the other United Nations would also sign that clause. But at the same time I cannot rid my mind of the important practical considerations to which I have already referred. I venture to suggest to you as my

colleagues on this Committee that just at this time the wisest and the most useful course that we can follow is to proceed on the basis of the existing text of Article 36. At the same time we should record in our report our hope that the optional clause may be widely and quickly accepted, and I should assume that our Rapporteur would include a statement to the effect that a large number of our group favored going a step further at this time along the road toward the acceptance of compulsory jurisdiction."

Dr. Wang (China) spoke as follows:

"May I be allowed to express to our Chairman, the honorable delegate of the United States, and, through him to the American Government and people, our heartfelt condolences for the untimely death of the great American President, Mr. Franklin D. Roosevelt.

We are all profoundly shocked and grieved by this irretrievable loss, not only to the American people, but also to the United Nations.

President Roosevelt has always been regarded as the symbol of freedom and justice. His passing will be mourned by all.

For us, members of this Committee, President Roosevelt's unshaken faith in a better world must be an inspiration in our work. We could not pay a higher tribute to this great man than by doing our best to contribute toward the realization of his cherished ideal of an international organization for peace and security based on justice and sovereign equality of all peace-loving nations."

Sir Michael Myers (New Zealand) said that the Committee could not fail to be impressed by the Chairman's remarks. He recalled that on the preceding day he had said that nothing that this Committee might do with respect to the question whether jurisdiction is to be voluntary or compulsory can have any final effect, since the decision would be made at San Francisco. He had been persuaded not only by the Chairman's remarks, but by statements of other representatives, that such a decision would be embarrassing to a number of countries because they had received no instructions on this question. He said that not only other countries, but New Zealand, itself, might alter its decision when the matter is taken up at San Francisco. Therefore, he wished to withdraw his motion of the previous evening, and to substitute a motion that a subcommittee be set up to prepare a draft of Chapter II on the existing basis and also a draft on the alternative compulsory basis so that both proposals may be placed before the Conference at San Francisco for a final decision. This motion was seconded by Dr. León De Bayle (Costa Rica).

Dr. Arturo Garcia (Peru) said that the discussion was important because a majority had indicated approval of compulsory jurisdiction. This was bound to have an effect at the San Francisco Conference. He realized, however, that it was difficult for some countries which had not yet decided the question; and, therefore, he accepted the American proposal.

Ambassador Cordova (Mexico) stated that he agreed with the motion of Sir Michael Myers (New Zealand). However, this motion contemplated a single subcommittee to draft both the text embodying compulsory jurisdiction and that based on the American proposal. He suggested that there should rather be two committees, one to draft each of these texts. In that way he considered that the Committee would be most certain of presenting the two points of view to the satisfaction of all.

M. Nisot (Belgium) said that he supported the proposal made by Sir Michael.

Mr. Hafez Ramadan Pacha (Egypt) did not consider that two committees were necessary since some members of a single committee could draw up one text and some the other.

Mr. Novikov (Soviet Union) indicated his support of the proposal of the Chairman based on the present Article 36. He thought that there was no necessity for a committee to draw up an alternative text. Such compulsory jurisdiction was absolutely unacceptable to his Government, which is dedicated to the creation of an effective Court. He was convinced that to impose jurisdiction on States which do not want it would make this realization impossible. He proposed a vote on the Chairman's motion. Mr. Star-Busmann (Netherlands) seconded the motion.

Minister Gajardo (Chile) said that for the same reasons given the previous day by Professor Basdevant (France), and at the present meeting by Dr. Garcia (Peru) and Mr. Novikov (Soviet Union), Chile was ready to adopt the United States proposal. However, his Government was also prepared to support the motion of New Zealand.

Dr. Lopez-Herrarte (Guatemala) supported the amendment of Ambassador Cordova (Mexico). Since there were two points of view, both should be presented by their sponsors without any compromise.

Minister Camillo de Oliveira (Brazil) noted that the San Francisco Conference was free to take such action as it wished, and that there was no disadvantage in this Committee expressing its view.

Sr. Mora Otero (Uruguay) agreed with the motion of New Zealand as amended by the representative of Mexico.

Sr. Dihigo (Cuba) also supported the Mexican amendment.

Mr. Novikov (Soviet Union) said that the matter could be decided only after the American proposal had been voted on.

Ambassador Cordova (Mexico) said that he considered his proposal for two subcommittees to be an amendment to the New Zealand motion and therefore that it should be put to a vote first.

Mr. Novikov (Soviet Union) said that there seemed to have been a misunderstanding. At the outset the Chairman had made a proposal and he had supported it. This should be considered first,

Professor Spiropoulos (Greece) thought that it would be best to accept the United States proposals and leave a final decision for the San Francisco Conference,

The Chairman said that there was a parliamentary difficulty. Mr. Novikov seemed to have offered a substitute motion for the previous motion, and if so, this should be voted on first. He appreciated that the gentlemen who desired compulsory jurisdiction would want an expression of their views, and to this they were entitled. The question was one of method. The report should show that a large number of members felt strongly the desirability of compulsory jurisdiction. For the moment the motion before the Committee was that of Mr. Novikov supporting Article 36 of the American proposal.

Dr. Moneim-Riad Bey (Egypt) thought that Mr. Novikov's motion was a second to a proposal by the Chairman. If this were adopted the difficulty would be solved by leaving the question for the San Francisco Conference.

Sr. Dihigo (Cuba) said the way to avoid a vote here and to leave it to the San Francisco Conference was to adopt the motion of New Zealand as amended by Ambassador Cordova.

Ambassador Cordova (Mexico) thought that it was more than a matter of procedure if the proposal of Mr. Novikov were brought before the Committee, the result would be a decision. He understood the motion of Sir Michael to be a compromise and had therefore supported it. He expressed agreement with the view of Sr. Dihigo.

Professor Basdevant (France) stated that, speaking as Rapporteur, he wished to draw attention to the fact that there were only four more days to complete the work, which was only half finished. He thought that time should not be wasted on questions of procedure, but that the Committee should proceed and make reservations on points of disagreement. He advocated adoption of the United States proposal with modifications only as to form, and an explanation in the report of the large number of views which had been expressed. It should be noted that compulsory jurisdiction was not acceptable at Dumbarton Oaks, but was acceptable to many delegates.

The Chairman said that there were two motions. The first motion submitted by Sir Michael was for one, or perhaps two subcommittees to draft Chapter 2 of the Statute more or less in its present form, and also an alternative draft incorporating compulsory jurisdiction. The other motion was that by Mr. Novikov. He thought that the two points of view could be composed.

Ambassador Cordova (Mexico) asked Sir Michael if he accepted his proposal that there be two subcommittees instead of one.

Sir Michael Myers (New Zealand) answered in the affirmative.

Mr. Fitzmaurice (United Kingdom) thought that the proper course was to take the motion of Mr. Novikov first. Of the two, he preferred this one, and, if voted on first, he would vote for it. However, if the motion from New Zealand were voted on first, he would cast his vote for it.

The Chairman called for a vote on the New Zealand motion as amended, and the motion was carried.

Dr. Garcia (Peru) said that had not voted, and did not understand the motion. Did Sir Michael Myers mean to send two drafts to San Francisco?

The Chairman replied in the affirmative.

Ambassador Cordova (Mexico) said that the subcommittee on the American proposal might take the article as it now appears. The other subcommittee may make a draft containing the principle of compulsory jurisdiction.

Minister Camillo de Oliverira (Brazil) said that if the understanding was that Article 36, as proposed by the United States, were to be submitted to the San Francisco Conference, only one subcommittee would be needed.

Ambassador Cordova (Mexico) remarked that the matter had already been decided in favor of two subcommittees.

Dr. De Bayle (Costa Rica) requested Mr. Novikov to clarify his motion. Did he intend to impose an obligation on the Committee to keep the text as it appeared in the United States proposal?

Sir Frederic Eggleston (Australia) remarked that pending the report of the committees, the article would stand as it

now appears. The Chairman said that that was what the proposal meant. Final action would be taken when the draft proposals came back.

Mr. Novikov (Soviet Union) said the procedure of voting was not clear. At the beginning of the meeting, the Chairman had proposed that Article 36 of the American proposal be accepted. He had supported the Chairman's proposal in order that it might be voted on. Some of the ensuing discussion had proceeded on the view that this was an original motion by Mr. Novikov. If the Chairman had changed his view, Mr. Novikov had no objection to having the motion regarded as his own. He felt that the United States proposals, since the text constituted the basis of the Committee's work, should be considered first. This does not exclude amendments which do not change the principle. He understood that the vote on the motion might be lost. It would then be proper to vote on the motion of New Zealand.

The Chairman indicated his understanding that the motion of the representative of New Zealand preceded that of the Soviet representative, leaving him no alternative but to present the motion of the New Zealand representative first. He stated that when he presented the American view he was not making a motion.

Dr. Moneim-Riad Bey (Egypt) declared that he agreed with the representative of Peru that the vote on the New Zealand motion made a vote on the Soviet motion unnecessary. He suggested that two subcommittees might be constituted in accordance with the New Zealand motion.

Sir Frederic Eggleston (Australia) stated his view that a proposal was not a motion and became a motion only when so designated. Once a motion was made, it might be amended, in which case the amendment was voted on before the motion. If the amendment was accepted, the amended resolution was then brought to a vote. He believed that the New Zealand motion was the first motion. As the Soviet motion was a direct negative of this, he thought that it could not be considered an amendment, and he believed that pending the report of the subcommittees, Article 36 of the American proposal stood.

The Chairman asked the Soviet representative whether under the circumstances he would be inclined to withdraw his motion. Mr. Novikov (Soviet Union) assented. The Chairman stated he would announce the appointment of the two subcommittees at the opening of the afternoon session.

Sr. Dihigo (Cuba) stated that he wished to propose an addition to Article 36 and inquired whether it was proper for him to do so at this time. The Chairman suggested that he might present his suggestion to one of the subcommittees. The Chairman then proposed that the Committee turn to a consideration of Chapter III.

Mr. Fitzmaurice (United Kingdom) suggested that Articles 37 and 38 of Chapter II should first be considered. The Chairman indicated that the whole of Chapter II was to be referred to subcommittees in accordance with the New Zealand motion.

Sir Michael Myers (New Zealand) observed that his motion had not been intended to shut off discussion of other parts of Chapter II but had been framed in the belief that the subcommittees might need to take into consideration the whole of the chapter in formulating its recommendations.

Mr. Fitzmaurice called attention to the fact that votes had been taken at a previous session on Articles 34 and 35 which were included in Chapter II.

The Chairman proceeded to read Article 37 and pointed out that the intent of the revision in the American proposal was to preserve treaties which referred to a tribunal to be established by the League of Nations. Since there was no objection to the American proposal, it was approved.

The Chairman next read Article 38 which was approved without objection.

Ambassador Cordova (Mexico) suggested that the Committee might consider the report of the subcommittee on Articles 3 to 13 before proceeding to consider Chapter III of the Statute.

Dr. De Bayle (Costa Rica) declared he would like to suggest that the word "general" be taken out of point 3 of Article 38.

M. Basdevant (France) pointed out that while Article 38 was not well drafted, it would be difficult to make a better draft in the time at the disposal of the Committee. He also called attention to the fact that the Court had operated very well under Article 38. He felt, therefore, that time should not be spent in redrafting it.

Dr. Wang (China) associated himself with the view expressed by M. Basdevant.

The Chairman indicated his belief that it was better to continue the examination of the Statute instead of taking up the reports of the subcommittees at this time. He therefore read Article 39 of the American proposal and called attention to a proposal by the representative of the Soviet Union to rephrase the third paragraph as follows: "If the parties, or one of them, prefer to use in court their own languages, it shall be granted to them".

Dr. Benes (Czechoslovakia) seconded the Soviet motion as did Mr. Simpson (Liberia.)

The Chairman called upon Judge Hudson to explain the operation of Article 39 of the present Statute. Judge Hudson stated that the Court had at various times received requests for the use of other languages and had always granted them. He also called attention to the fact that the paragraph in question had been modified in the revision of 1929, for the original Statute had read: "The Court may at the request of the parties authorize a language other than English or French to be used".

Dr. Wang (China) supported the Soviet proposal, believing it desirable to make the practice of the Court mandatory. Sir Frederic Eggleston (Australia) inquired how the Soviet proposal would affect bilingual countries. The Chairman suggested that the country concerned might choose the language in which it wished to present its case. Dr. Gjurgjevic (Yugoslavia) stated his belief that a country should be allowed to use the language in which it could best express itself.

The Chairman called for a vote upon the Soviet proposal for amending Article 39. It was carried by 26 votes in favor to none opposed.

Ambassador Cordova (Mexico) suggested that Spanish as well as French and English might be made an official language of the Court. He stated that he made this suggestion not out of pride but because so many States used Spanish. Mr. Novikov (Soviet Union) declared his belief that the Soviet proposal solved all practical difficulties and suggested that if another official language were added, this would open the way to many demands for enlarging the number of official languages. Professor Spiropoulos (Greece) declared that there were practical objections to the adoption of three official languages since any increase in the number of such languages would enormously increase the number

of translations required. It would be better to have only one official language, but, since there were two, he thought that the number should not be further increased. The Chairman expressed agreement with the views of the representatives of the Soviet Union and Greece. He asked Ambassador Cordova whether the Soviet amendment did not take care of the problem. Ambassador Cordova stated that he did not make a motion along the lines of his suggestion.

The Chairman then read in turn Articles 40, 41, 42, and 43, which were approved without objection. Judge Hudson called attention to the fact that the most recent rules of the Court designated the documents of the Court as "memorials, counter-memorials and replies".

The Chairman next read Articles 44 and 45 which were approved without objection. When the Chairman read Article 46, Sir Frederic Eggleston (Australia) inquired whether it was desirable to give the Court power to sit in camera on its own motion or on that of the parties. The Chairman thought that there might be at some time political considerations which would make desirable sittings in camera. Judge Hudson reported that the language of Article 46 had been debated at considerable length by the Committee of Jurists in 1920. In practice the Court had never excluded the public from its sittings and so far as he knew, the parties had never asked for such exclusion.

The Chairman then read in turn Articles 47, 48, 49, 50, 51, 52, 53, 54, and 55 which were approved without objection.

Sir Frederic Eggleston (Australia) called attention to the fact that the term "deputy", used in Article 55, had not been used in Article 45. There the term employed was "Vice-President". Judge Hudson noted that the French text of Article 55 was clearer and, he supposed, controlling.

When the Chairman read Article 56, Mr. Fitzmaurice (United Kingdom) stated that he would like to point out in connection with Articles 56 and 57 that under these articles there might be one judgment of the Court and half a dozen dissenting judgments. He read paragraphs 83 and 84 of the Report of the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice as representing the view of the United Kingdom on this question. This Report proposed that each judge should state his views in a reasoned opinion although several judges might, if

they desired, concur in one opinion. The Court would then have an expression of the views of each of the judges and the operative judgment of the Court might take the form of a dispositif, stating simply the verdict reached.

The Chairman called upon Dr. Wang (China) to express his view of this proposal. Dr. Wang stated that since the judgment of the majority constituted the judgment of the Court, he thought there was no necessity for the judges composing the majority to give individual opinions. He suggested that such individual opinions might differ slightly in various respects and that such differences might affect the authority of the judgment. Judge Hudson explained that the practice of the Court had been that after an informal exchange of views, each judge prepared a note giving his ideas regarding the judgment. These notes were circulated among all the members of the Court. It frequently happened that when a judge later wrote a dissenting opinion, it bore little relation to the notes which were circulated. He thought that the authority of the judgments was greater if there were a majority opinion and dissenting opinions. He also pointed out that the concurring judges frequently expressed their own individual opinions.

The Chairman stated his view that a multiplicity of opinions would make for confusion. Since there was no objection to Article 56, it stood approved.

The Chairman then read Articles 57, 58, 59, 60, 61, 62, 63, and 64 which were approved without objection.

Mr. Fahy (United States) called attention to Article 56 which declared that the judgment of the Court should state the reasons on which it is based. He asked whether this was in truth a judgment or an opinion. Judge Hudson pointed out that an article in the Rules of the Court set forth the content of the judgment which was not an opinion in the American sense of the term. The Court did not give a majority opinion, using that term in the American sense.

The Chairman asked M. Basdevant (France) to take the chair momentarily.

Dr. Menoim-Riad Bey (Egypt) called attention to the fact that there was an article in the Rules of the Court dealing with appeals and pointed out that Article 60 of the Statute provided that there should be no appeal. Judge Hudson explained that Article 60 declared that the judgment of the Court should be final and without appeal.

and that the rule to which attention had been called was intended to provide for procedure under agreements between States, providing that appeals from other international tribunals might be carried to the Court. Dr. Moncim-Riad Bey expressed his thanks for this explanation, saying that there might be regional courts established from which appeals might be taken to the Court. He suggested that this point be mentioned in the report of the Committee. Judge Hudson observed that the Statute was flexible enough to permit appeals to the Court from other tribunals if the parties so desire.

The Chairman, M. Basdevant, inquired whether there were any other comments on Chapter III. Mr. Fitzmaurice (United Kingdom) said he would like to suggest a drafting change at the very end of Article 61. The last word of that article was "sentence", a term which was used nowhere else in the Statute. Judge Hudson pointed out that the French text was perfectly clear at this point. Mr. Fitzmaurice suggested that the English text should be made to conform with the French and that the term "sentence" was not suitable since a sentence was a punishment and not a judgment. He suggested that the term "decision" might be used in the English text or preferably "judgment", to conform with the usage in other parts of the Statute. Dr. Wang (China) suggested that the term "judgment" should be used throughout.

The Chairman, Mr. Hackworth, asked whether there were any other suggestions regarding Chapter III. Mr. Novikov (Soviet Union) moved and Dr. Moncim-Riad Bey (Egypt) seconded a motion that the meeting adjourn.

The meeting was therefore adjourned at 12:30 p.m.

REPORT OF SUBCOMMITTEE DEALING WITH OPTIONAL DRAFT
OF ARTICLE 36 AND OTHER ARTICLES OF CHAPTER II

Messrs. Fitzmaurice (United Kingdom), Spiropoulos (Greece), Golunsky and Krylov (Soviet Union), and Fahy (United States) met in Committee Room B, Interdepartmental Auditorium, at 5:45 p.m. April 13, 1945 and agreed upon the appended report.

The subcommittee recommends the adoption of the "optional clause" in the same terms as it appears in the American draft (Doc. US Jur. 1) amended by inserting "justiciable" between the words "all" and "cases" in the first line, so that Article 36 would read as follows:

Article 36. The jurisdiction of the Court comprises all justiciable cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations and in treaties and conventions in force.

The Members of the United Nations and the States parties to the 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:

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

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

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

The subcommittee calls attention to the fact that many nations have heretofore accepted compulsory jurisdiction under the "optional clause". The subcommittee believes that provision should be made at the San Francisco Conference for a special agreement for continuing these acceptances in force for the purpose of this Statute.

The subcommittee notes that Article 37 was referred to the Drafting Committee subsequent to the appointment of this subcommittee and therefore considers that the Drafting Committee has this article under consideration.

Apart from the above points, the subcommittee decided to recommend no other changes in Chapter II.

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COMPTE-RENDU DU SOUS-COMITE CHARGE DE L'AVANT-PROJET DE L'ARTICLE 36 ET DES AUTRES ARTICLES DU CHAPITRE II

MM. Fitzmaurice (Royaume Unis), Spiropoulos (Grèce), Golunsky et Krylov (Union Soviétique) et Fahy (Etats Unis) assemblés dans la Salle de Comité B de l'Auditorium Interdépartemental, à 17 heures 45, le 13 Avril 1945, ont convenu ce qui suit:

Le sous-comité recommande l'adoption de la "clause facultative" sous la forme indiquée dans le projet Américain (Document US Jur. 1) modifiée par l'insertion à la première ligne des mots "toutes les affaires justiciables" au lieu des mots "toutes affaires", de sorte que l'article 36 soit conçu comme il suit:

Article 36. La compétence de la Cour s'étend à toutes les affaires justiciables que les parties lui soumettront, ainsi qu'à tous les cas spécialement prévus dans la Charte des Nations Unies et dans les traités et conventions en vigueur.

Les membres des Nations Unies et Etats parties au Statut pourront, à n'importe quel moment, déclarer reconnaître dès à présent comme obligatoire, de plein droit et sans convention spéciale, vis-à-vis de tout

autre membre ou Etat acceptant la même obligation, la compétence de la Cour sur toutes ou quelques-unes des catégories de différends d'ordre juridique ayant pour objet:

- a) l'interprétation d'un traité;
- b) tout point de droit international;
- c) la réalité de tout fait qui, s'il était établi constituerait la violation d'un engagement international;
- d) la nature ou l'étendue de la réparation due pour la rupture d'un engagement international.

La déclaration ci-dessus visée pourra être faite purement et simplement ou sous condition de réciprocité de la part de plusieurs ou de certains Membres ou Etats, ou pour un délai déterminé.

En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

Le sous-comité attire l'attention sur le fait que plusieurs nations ont jusqu'ici accepté la clause de "compétence obligatoire". Le sous-comité estime que la conférence de San Francisco devrait prévoir un accord spécial pour maintenir ces acceptations en vigueur, aux fins du présent Statut.

Le sous-comité remarque que l'article 37 a été référé au Comité de Rédaction désigné après l'établissement du présent sous-comité, et, considère, par conséquent que le Comité de Rédaction a mis ledit article à l'étude.

Hormis ce qui précède, le sous-comité décide de ne recommander aucune autre modification au Chapitre II.

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AND ADVISERS

AUSTRALIA

The Rt. Hon. Dr. H. V. Evatt, P.C., K.C., M.P.,
Representative (Not present)
Sir Frederic W. Eggleston, Alternate--Legation
Professor K. H. Bailey, Adviser (Not present)
Mr. Alan Watt, Adviser--2900 29th NW.

BELGIUM

M. Charles De Visscher, Representative (Not present)
M. Joseph Nisot, Alternate--Roger Smith Hotel

BOLIVIA

Sr. René Ballivian, Representative--3130 Wisconsin Ave.

BRAZIL

Minister A. Camillo de Oliveira, Alternate--Embassy
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Mr. John E. Read, Representative--Statler Hotel
The Hon. F. Philippe Brais, K.C., Adviser--Statler Hotel
The Hon. Wendell B. Ferris, Adviser--Statler Hotel
Mr. Roger Chaput, Advisers' Assistant--
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CHILE

Ambassador Marcial Mora, Representative--Embassy
Minister Enrique Gajardo, Adviser--Broadmoor Hotel

CHINA

Dr. Wang Chung-hui, Representative--Shoreham Hotel 209D
Dr. Hsu Mo, Adviser--Shoreham Hotel 804E
Dr. Victor C. T. Hoo, Adviser--Shoreham Hotel 807D

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Sr. R. Urdaneta A., Representative--Statler Hotel
Sr. Jose J. Gori, Alternate--Continental Hotel
Dr. Jorge Koppel (Secretary to Sr. Gori)--Statler Hotel

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Dr. León De Bayle, Representative--Coordinator of Inter-American Affairs, Dept. of Commerce

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Sr. Ernesto Dihigo, Representative--Lafayette Hotel

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Dr. M. Abdel Pacha Moneim-Riad Bey, Adviser--Statler Hotel
Dr. Helmy Bahgat Badawi, Adviser--Statler Hotel

EL SALVADOR

Ambassador Hector David Castro, Representative--Embassy

ETHIOPIA

Dr. Ambayé Woldemariam, Representative--2134 Kalorama Rd.
Mr. Getahoun Tesemma, Alternate--2134 Kalorama Rd.
Mr. John Spencer, Adviser (Not present)

FRANCE

Professor Jules Basdevant, Representative--Raleigh Hotel
Dr. Raoul Aglion, Adviser--1523 New Hampshire Ave.
Professor Chaumont, Adviser--Statler Hotel

GREECE

Professor John Spiropoulos, Representative--Embassy

GUATEMALA

Dr. Enrique Lopez-Herrarte, Representative--Woodley
Park Towers

Mr. Francisco Linares, Adviser--2032 Belmont Rd.

HAITI

Dr. Clovis Kernisan, Representative--Roger Smith Hotel

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Dr. Alejandro Rivera Hernández, Representative--
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Sr. Cedar R. Acosta, Adviser--Embassy

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Dr. Arturo Garcia, Representative--Mayflower Hotel
Dr. Juan Mendoza, Adviser--Lafayette Hotel
Dr. Luis Alvarado, Adviser--Mayflower Hotel

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SAUDI ARABIA

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Sayed Jamil Daoud, Adviser--Blair-Lee House
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TURKEY

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UNION OF SOVIET SOCIALIST REPUBLICS

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Professor S. A. Colunsky, Adviser--Statler Hotel
Professor S. B. Krylov, Adviser--Statler Hotel

UNITED KINGDOM

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Mr. M. E. Bathurst, Alternate--2115 P St. N.W.
Mr. Roger Makins, Adviser--2404 Kalorama Rd.

UNITED STATES OF AMERICA

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Mr. Charles Fahy, Adviser 3700 North Hampton St. N.W.
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URUGUAY

Sr. Lorenzo Vincens Thievent, Representative--Statler
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Sr. José A. Mora Otero, Alternate--Lafayette Hotel

VENEZUELA

Dr. Diógenes Escalante, Representative--Embassy
Dr. Luis E. Gómez-Ruiz, Adviser 3624 Davis St.
Dr. Manuel Pérez Guerrero, Adviser (Not yet
arrived)

YUGOSLAVIA

The Hon. Dr. Stojan Gavrilovic, Representative--
2221 R Street
Dr. Theodore Gjurgjevic, Adviser--2221 R Street
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PERMANENT COURT OF INTERNATIONAL JUSTICE

Judge Manley O. Hudson, Unofficial Representative--
Cosmos Club

THE REPORT OF THE SUBCOMMITTEE ON
ARTICLE 36 (COMPULSORY JURISDICTION)

This subcommittee which was entrusted by the Committee of Jurists to draft the text of Article 36 (on compulsory basis) met in conference room C of the Interdepartmental Auditorium, Washington, D. C., April 13, 1945, at 5:30 p.m. The following members of the subcommittee were present:

(Brazil)	Minister A. Camillo de Oliveira
(China)	Dr. Wang Chung-hui
(Cuba)	Sr. Ernesto Dihigo
(Mexico)	Ambassador Roberto Cordova
(Venezuela)	Dr. Luis E. Gómez-Ruiz

Dr. Wang Chung-hui was elected Chairman.

The subcommittee, having given careful consideration to the various proposals that had been presented as well as to the views previously expressed by the different delegates before the Committee of Jurists, unanimously agreed upon the following:

"The Court, being the principal judicial organ of the United Nations, should possess definite jurisdiction, if not in all cases, at least in those cases which are peculiarly susceptible of judicial settlement, namely, legal disputes.

"It may be recalled that as far back as 1920 compulsory jurisdiction was proposed by the Committee of Jurists which drafted the existing statute. The Governments were not prepared at that time to accept the proposal and the result was the adoption of what is known as the optional clause.

"The exercise of compulsory jurisdiction by the Court will promote the rule of law among nations. Public opinion throughout the world is strongly in favor of conferring on the Court compulsory jurisdiction.

"The optional clause has been accepted by 45 out of 51 nations. By now the change from an optional to a non-

optional basis would be a logical and desirable step in furthering the cause of international peace and justice.

Article 36 should therefore be revised to read as follows:

"Article 36.

"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 and conventions in force.

"2. The members of the United Nations and states parties to the Statute recognize as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in all or any of the classes of legal disputes concerning:

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

"3. In the event of a dispute as to whether the Court has jurisdiction, the matter is settled by decision of the Court."

(Signed) WANG CHUNG-HUI

PROPOSALS OF THE UNITED KINGDOM
ON ARTICLES 3-13

Article 3.

The Court shall consist of fifteen members.

Article 4.

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 in accordance with Articles 5-7.

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.

Article 5.

At least three months before the date of the election, the Secretary-General of The United Nations shall address a written request to the Governments of Members of the United Nations and States parties to the Statute inviting each of them to undertake, within a given time, the nomination of a person of their own nationality in a position to accept the duties of a member of the Court.

Article 6.

Before making these nominations, each Government 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.

Article 7.

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, paragraph 2, these shall be the only persons eligible for appointment.

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 that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Article 10.

Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council 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.

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.

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

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the 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.

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

Article 13.

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 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 be replaced. Thereafter one third of the members of the Court shall retire every three years on expiry of their current period of service, subjection to re-election.

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.

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.

SUMMARY OF EIGHTH MEETING

Interdepartmental Auditorium, Conference Room B
Thursday, April 12, 1945, 3 p.m.

The following members of the Committee were present:

United States of America: Mr. Green H. Hackworth,
Chairman

Australia: Sir Frederic W. Eggleston (Alternate)

Belgium: M. Joseph Nisot (Alternate)

Bolivia: Sr. René Ballivian

Brazil: Minister A. Camillo de Oliveira

Canada: Mr. John E. Read

Chile: Minister Enrique Gajardo (Adviser)

China: Dr. Wang Chung-hui

Colombia: Sr. Jose J. Gori (Alternate)

Costa Rica: Dr. León De Bayle

Cuba: Sr. Ernesto Dihigo

Czechoslovakia: Dr. Václav Benes

Dominican Republic: Sr. José Ramon Rodriguez

Ecuador: Dr. L. Neftali Ponce

Egypt: Dr. Helmy Bahgat Badawi (Adviser)

Ethiopia: Dr. Ambayé Woldemariam

France: Professor Jules Basdevant

Greece: Professor John Spiropoulos

Guatemala: Dr. Enrique Lopez-Herrarte

Haiti: Dr. Clovis Kernisan

Honduras: Dr. Alejandro Rivera Hernández

Iran: Mr. M. Adle

Iraq: Dr. Abdul-Majid Abbass

Liberia: The Hon. C. L. Simpson

Luxembourg: Minister Hugues Le Gallais

Mexico: Ambassador Roberto Cordova

Netherlands: M. E. Star-Busmann

New Zealand: The Rt. Hon. Sir Michael Myers

Norway: M. Lars J. Jorstad

Peru: Dr. Arturo Garcia

Philippine Commonwealth: Dr. José F. Imperial
(Adviser)

Saudi Arabia: His Excellency Assad El-Fakih

Syria: M. Costi K. Zurayk

Turkey: Professor Cemil Bilsel

Union of Soviet Socialist Republics: Minister
N. V. Novikov
United States of America: Solicitor General
Charles Fahy
United Kingdom: Mr. G. G. Fitzmaurice
Uruguay: Sr. José A. Mora Otero (Alternate)
Venezuela: Dr. Luis E. Gómez-Ruiz (Adviser)
Yugoslavia: Dr. Theodore Gjurgjevic (Adviser)

Unofficial Representative of the Permanent Court of
International Justice: Judge Manley O. Hudson

The meeting was opened by the Chairman, Mr. Hackworth (United States) who stated that at the morning's meeting a decision had been reached to appoint two Subcommittees to consider Article 36. The first Subcommittee would draw up a draft on compulsory jurisdiction and the other Subcommittee would draw up a draft of an optional clause. The Chairman appointed the following as members of the Subcommittee on Compulsory Jurisdiction: The representatives of Brazil, China, Cuba, Iraq, Mexico, and Venezuela. He suggested that the Subcommittee on the Optional Clause be composed of the representatives of Greece, the Netherlands, the Soviet Union, the United Kingdom and the United States. He further suggested that the two Subcommittees might meet immediately after the close of the present session.

The Chairman emphasized the importance of an expeditious conclusion of the work of the Subcommittees. He suggested that finished drafts be prepared to be turned over to the secretarial staff by the evening of the next day, Saturday, April 14. He did not feel that this was a stupendous undertaking and wished to stress the time element since it would be necessary to complete the work of the Committee by the middle of the following week.

The Chairman also proposed that a Drafting Committee be set up, to be composed of the representatives of Belgium, Brazil, Canada, China, Norway, Peru, Turkey, the Soviet Union, the United Kingdom, the United States, with the Rapporteur, Professor Basdevant, a member ex officio. He had made an attempt to have this Committee be as representative as possible. Although the Drafting Committee was somewhat large in size, he felt that its composition was not too large for the task to be undertaken. He suggested that the Drafting Committee hold its first meeting at 10 a.m. of the

morning of the next day, Saturday, April 14. He proposed that no meeting of the full Committee be held that day in view of the funeral services for President Roosevelt which were to be held at 4 o'clock in the afternoon. The various Subcommittees might meet but their proceedings could be adjourned by 4 o'clock.

The next meeting of the full Committee might be held on Monday, April 16 at 10 o'clock in the morning, the Chairman proposed. It was hoped that all drafts would be completed for consideration by the full Committee by Wednesday of that week. He expressed the hope that the work of the Committee would be successfully completed by the following Friday. However, the schedule might be advanced if the work were rapidly carried forward.

M. Jorstad (Norway) proposed that Judge Hudson be called upon to assist the Drafting Committee. This motion was seconded by M. Nisot (Belgium).

The Chairman indicated that in the absence of any objection, Judge Hudson would be considered as an ex officio member of the Drafting Committee and he was appointed as such.

The Chairman then proposed that the Committee turn its attention to a reconsideration of Chapter IV of the United States Proposals, relating to advisory opinions. (U.S. Jur. 1, G-1, April 2, 1945). He opened the discussion by reading the provisions of Article 65.

Dr. Wang (China) raised a question as to the omission of any reference to the General Assembly. He was inclined to believe that the General Assembly, as well as the Security Council, should have the right to request advisory opinions of the Court, particularly in view of the provisions of Chapter VI, Section b, Paragraph 7 of the Dumbarton Oaks Proposals and the relationship outlined therein between the Economic and Social Council and the General Assembly. Since the General Assembly might be called upon to consider certain juridical questions, it should have the right to request advisory opinions.

The Chairman stated that a reference to the General Assembly had been omitted from the United States Proposals because it had been felt that the General Assembly would not function in an executive capacity. Its decisions would be

rather advisory in character. Situations likely to lead to a dispute would be considered by the Security Council, and that body, if unable to resolve them, would be in a position to request advisory opinions of the Court. However, he saw no objections to granting the General Assembly the same right, provided the requests related to juridical questions. It would be for the Court to determine whether it would render an advisory opinion, and presumably it would declare itself incompetent if the question were not of a legal character. He had no strong conviction on this point.

M. Jorstad (Norway), M. Nisot (Belgium), Minister Gajardo (Chile), and M. Star-Busmann (Netherlands) supported the Chinese proposal.

Dr. Gómez-Ruiz (Venezuela), after indicating his support for the Chinese proposal, expressed the view that it would be advisable for the Court to give advisory opinions, not only at the request of the Security Council or the General Assembly, but also at that of other public international organizations and individual states, provided that the right were regulated to avoid abuse. This matter was related to the previous discussion of the competence of the Court in conflicts of a legal nature between public international organizations brought into relationship with the General Organization. This competence should include not only legal cases but the legal aspects of political questions.

The Chairman felt that this matter was somewhat different from the proposal advanced by Dr. Wang. The motion which Dr. Wang had made to the effect that the General Assembly be given the right to request advisory opinions had been seconded.

Dr. Abbass (Iraq) called attention to the relationship between the question of advisory opinions and that of the compulsory jurisdiction of the Court. Advisory opinions would become unnecessary if the Court were given compulsory jurisdiction as he had advocated. If the compulsory jurisdiction of the Court were accepted, justiciable disputes would ipso facto be referred to it. Failing the adoption of compulsory jurisdiction, he would favor as liberal provisions relating to advisory opinions as possible.

Mr. Fitzmaurice (United Kingdom) felt that the existence of compulsory jurisdiction, far from doing away with