

UNCIO - working papers - plenary UN Committee on Jurists & general committees  
- Jurists 63-77

15 April 1945  
30 April 1945

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06/05

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PROPOSED REVISION OF ARTICLE 4  
OF THE STATUTE OF THE  
PERMANENT COURT OF INTERNATIONAL JUSTICE,  
SUBMITTED BY THE REPRESENTATIVE OF TURKEY

ARTICLE 4.

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

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REVISION DE L'ARTICLE 4  
DU STATUT DE LA  
COUR PERMANENTE DE JUSTICE INTERNATIONALE  
PROPOSEE PAR LE REPRESENTATIVE DE LA TURQUIE

ARTICLE 4.

(1) Les membres de la Cour sont élus par l'Assemblée Générale et par le Conseil de Sécurité, sur une liste des personnes présentées par les groupes nationaux de la Cour d'Arbitrage et proposées par le gouvernements de ces groupes, conformément aux dispositions suivantes.



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SUMMARY OF ELEVENTH MEETING

Interdepartmental Auditorium, Conference Room B

Wednesday, April 18, 1945, 10 a.m.

The meeting was opened by the Chairman, Mr. Hackworth (United States), who asked Mr. Read (Canada), the chairman of the drafting committee, to present his report on the Statute and to indicate the changes that the drafting committee had made since the Statute was last considered in the full Committee.

Mr. Read (Canada) stated that the drafting committee had considered all the articles not dealt with in its previous report and also one or two other articles. He expressed appreciation to Messrs. Fahy and Jessup and to the Secretariat for their assistance in preparing the texts of the draft Statute. He asked the members of the full Committee to look at the following documents to compare them with the present English text (Jurist 59) and the French text (Jurist 60): U.S. Jurist 1 (Jurist 5); Jurist 49 (the previous English text); Jurist 48 (the previous French text). Mr. Read then went through the draft Statute article by article.

Article 1. Mr. Read called attention to the fact that the note under Article 1 had been changed to read: "For reasons stated in the accompanying report, the text of Article 1 has been left in blank pending decision by the United Nations Conference at San Francisco."

Article 2. In accordance with the suggestion of Mr. Fitzmaurice (United Kingdom), it was agreed to substitute "the Court" for "the Permanent Court of International Justice". It was noted that this is the only place where the Permanent Court of International Justice is specifically mentioned; and it was thought that since this depends upon Article 1, the reference to the Permanent Court should be stricken.

Article 3. Mr. Read stated that Article 3 was new but unchanged. He added that when he said unchanged he meant that it was the same as the American draft proposal (U.S. Jurist 1).

Article 4. Mr. Read stated that Article 4 is new but unchanged.

Article 5. In paragraph 1 of Article 5, the words "belonging to the States which are parties to the present Statute" have been inserted after "Permanent Court of Arbitration". In paragraph 2 of Article 5 the word "may" is inserted in the third line.

Article 6. Mr. Read stated that Article 6 is new but that there is no real change. He noted that the capital letters had been eliminated.

Article 7. Mr. Read noted that Article 7 is new but that the words "for appointment" had been eliminated at the end of the first paragraph, so as to conform to the French text.

Article 8. Mr. Read stated that Article 8 is new but that there is no change.

Article 9. Mr. Read stated that Article 9 is new and is revised and read the full text of Article 9 as it appeared in the draft (Jurist 59). He commented that there is no change in the sense; but that the revision conforms more closely to the French text.

Articles 10 and 11. Mr. Read stated that these articles are new and unchanged.

Article 12. Mr. Read stated that the first paragraph of Article 12 is new and unchanged. The second paragraph of Article 12 contains the words "the joint conference", in order to fit in with the text of the preceding paragraph. He stated that the word "elected" had been substituted for "appointed" in the third paragraph of Article 12, which conforms more closely to the French text.

Article 13. Mr. Read read the full text of Article 13 as revised (Jurist 59), relating to the terms of the judges. M. De Visscher (Belgium) declared that while he did not wish to reopen this question, Article 13 caused him some disquiet. He agreed to the idea that it was necessary to provide



continuity for the Court; but he questioned whether the triennial system, with five new judges in the Court every three years, was the best method. He felt that this might cause great instability in the composition of the Court and compromise the jurisprudence of the Court. He thought that a homogeneous jurisdiction could be acquired only by men working together a long time, and that the main purpose of a court of international justice was to furnish a unity of jurisprudence, which would require some fixed personnel. With respect to the method proposed, M. De Visscher thought that there would be great inconvenience in having an election every three years and that, moreover, it would not be good for the authority of the Court. The independence of the Court must be protected; and electoral competition should be avoided.

The Chairman thanked M. De Visscher for his observations and noted that this article had been debated at considerable length during M. De Visscher's absence. M. De Visscher said that he did not want to reopen the question but that he did want to make these observations.

Professor Basdevant (France) called the Committee's attention to certain differences between the English and French texts of Article 13 and read the French text the way he thought it should be. It was agreed that Professor Basdevant's revision would be incorporated in the Statute.

Article 20. Mr. Read (Canada) stated that there was no change in this article.

Article 22. Mr. Read read the English text of Article 22 (Jurist 59), which he said had been changed in accordance with the direction of the full Committee. Professor Basdevant (France) called attention to a discrepancy in the French text. Señor Dihigo (Cuba) called attention to the fact that in the first paragraph of Article 2 the full Committee had only agreed to drop the word "valid" but that in this draft the phrase "and rendering decisions" had also been eliminated. Professor Basdevant (France) stated that his report refers to Article 22 and observes that as it had been decided that the seat of the Court is to remain at The Hague, it was thought desirable to authorize the Court to sit elsewhere and to exercise its functions elsewhere. After some discussion on this point, it was agreed to add the phrase "and from exercising its functions" after "sitting" in paragraph 1 of Article 22.



Ambassador Cordova (Mexico) asked if the Committee were just reading the Statute or if it were actually approving it as it went along. In the latter case, he said, he wanted to go back to Articles 4 to 12, inclusive, and propose that an alternative draft for these articles, the United Kingdom's proposal, appear in the text in a parallel column. He noted that the Committee had seemed to be more evenly divided on this question than on the question of compulsory jurisdiction.

The Chairman stated that it was his understanding that the articles of this draft Statute were being approved as read, if no objection were made.

Professor Basdevant (France) recommended a change in the French text of Article 22 to correspond more exactly with the English.

The Chairman then took up the question raised by the representative of Mexico as to whether Articles 4 to 12 in the form in which they appeared in Jurist 44 should be inserted as alternatives to the provisions in Jurist 59.

Justice Farris (Canada) suggested that instead the Rapporteur should be instructed to deal fully with the division of opinion on this point in his report. Professor Basdevant (France) said that in his report he was discussing the controversy over the nomination of judges but he was ready to elaborate the discussion more fully if the Committee so desired.

Mr. Fitzmaurice (United Kingdom) supported the suggestion of the representative of Mexico. In view of the division of opinion on this point, he pointed out that if it was decided at the San Francisco Conference to adopt the system of direct nomination by governments, considerable modification of the Statute would be required; in fact eight articles would need to be redrafted. This would involve a considerable burden on the San Francisco Conference, and he thought the Committee should present alternative texts. He suggested, however, that Articles 4 to 12, as they appeared in Jurist 44, would have to be referred to the drafting committee to be harmonized with other provisions in the Statute.

Dr. Moneim-Riad Bey (Egypt) pointed out that there had been a vote in favor of maintaining the present system. He thought that the presentation of alternatives in Article 36 was not a precedent in this case since the proposals in Article 36 were true alternatives while these were not. He suggested that the text of Articles 4 to 14, as they appeared in Jurist 44, might be referred to in the report, but he did not believe that they should be included in the draft of the Statute.



The Chairman declared that it was important for the Committee to do its work well and for that reason he did not believe that it should be bound by strict rules or procedure. He suggested that, unless there was opposition, the drafting committee might be requested to put in the alternatives. Since there was no opposition, it was agreed that the drafting committee should meet at 3 p.m. for this purpose.

Article 26. The chairman of the drafting committee next read the new text of Article 26, explaining that it was based upon the reports of two subcommittees and took into account subsequent discussion in the full Committee. The draft provided that when the Court set up chambers to decide particular cases the approval of the parties should be obtained. This was in harmony with the advice of three judges of the Court.

Dr. Moneim-Riad Bey (Egypt) raised the question as to whether the chambers were to have a stated quorum and if so what it should be. The chairman of the drafting committee explained that there were two types of chambers and that the number of judges to compose the chambers dealing with special categories of cases was to be determined by the Court. Judge Delgado (Philippine Commonwealth) moved that in the first paragraph dealing with chambers to handle special categories of cases there be included after the word "determine" the words "but in no case shall it be less than three". This was seconded by Dr. Moneim-Riad Bey (Egypt).

Judge Hudson inquired whether it would not meet the purposes of the Committee to say that the chambers should be composed of three or more judges as the Court might determine. This wording was accepted by the representatives who had made and seconded the motion. Professor Bailey (Australia) suggested that changes might not be necessary because a chamber would not have jurisdiction unless the parties agreed. Judge Delgado (Philippine Commonwealth) objected that, if a number were not fixed, the decision would lie with the political branches of governments. Mr. Moneim-Riad Bey (Egypt) pointed out that the chambers which were to handle special categories of cases did not do so at the request of the parties.

There was no objection to the revision proposed by the representatives of the Philippine Commonwealth and Egypt as revised by Judge Hudson.



Dr. Gómez-Ruiz (Venezuela) suggested striking out the last part of the first paragraph of Article 26 "for example, labor cases and cases relating to transit and communications". The Chairman explained that these words had been designed to show that the Committee had in mind the interests of the labor and transit and communication organizations.

Judge Delgado (Philippine Commonwealth) suggested that the number of judges to compose a chamber should be specified in paragraph 2 as well as in paragraph 1 but that the phrasing of the proposal should be left to the drafting committee. The Chairman explained that in paragraph 2 it had been desired to leave the matter to the discretion of the parties. He said that for himself he could see no harm in this. Judge Delgado said that the change which he had proposed in paragraph 1 was to assure that the chamber should always be a collegiate tribunal. He thought paragraph 2 should be consistent with paragraph 1, and he did not wish to have the composition of the chambers determined by political agencies.

At the request of the representative of Egypt, Judge Hudson declared that the number of judges in chambers should be considered in connection with Articles 27 and 31 (4). He stated that Judge Huber had wished to insure that ad hoc judges might be added to the chambers. For this reason the number composing the chambers had been increased from three to five in the revision of 1929. This idea had been maintained in this draft in Article 31 (4). If the number of judges in the chambers were limited to three, the President of the Court would have to ask two members of a chamber to withdraw in favor of ad hoc judges. Judge Hudson further stated that he favored changing Article 26 (2) to conform with paragraph 1.

The Chairman declared that it was the general desire to provide means of settling disputes peacefully. If the parties were willing to take a case to a chamber, he thought it would be perfectly satisfactory to have the judgment of that chamber be the judgment of the Court, as provided in Article 27. It was, however, a matter for the Committee to determine.

Dr. Moneim-Riad Bey (Egypt) proposed that the minimum number stated in paragraph 1 should be raised from three to five. He believed, however, that paragraph 2 should be treated differently and saw no reason why those chambers should be collegiate bodies if the parties were willing to have their cases decided by a chamber composed of one judge.

Judge Delgado (Philippine Commonwealth) agreed to Judge Hudson's views and favored five as a minimum number in paragraph 1. He stated, however, that he was not willing to make a distinction between paragraphs 1 and 2.



Dr. Gjurgjevic (Yugoslavia) suggested that the difficulty might be solved by providing that three or more judges of the Court should compose a chamber; then ad hoc judges would be additional.

The chairman of the drafting committee pointed out that this would affect the structure and drafting of other parts of the Statute since Article 31 (4) provided that ad hoc judges and chambers should take the place of regular judges.

The Chairman put the question whether the Committee favored changing Article 26 (1) to fix the minimum number of judges in chambers at five or more. There were 10 votes in favor and 13 in opposition. The proposal was therefore lost and Article 26 stood as previously adopted.

Article 27. The chairman of the drafting committee read Article 27 and explained that no change had been made. Professor Basdevant (France) called attention to a change in the French text from "arrêts" to "jugements". He suggested that this might limit the role of chambers and would, for example, make it impossible for chambers to deliver advisory opinions. Judge Hudson explained that as a chamber could function only with the consent of the parties a chamber could not deliver an advisory opinion. It was agreed, however, to substitute "arrêts" for "jugements" in the French text.

Article 28. When Article 28 was read, Señor Dihigo (Cuba) pointed out that it provided that the chambers might sit elsewhere than at The Hague only with the consent of the parties, while Article 22 permitted the Court to sit elsewhere on its own initiative.

Dr. Moneim-Riad Bey (Egypt) proposed that the article should be eliminated entirely.

The Chairman explained that Articles 22 and 28 were different in purpose. Article 22 was intended to permit the Court to hold sittings elsewhere, for example, in case it was prevented from sitting at The Hague, while Article 28 was intended to permit chambers to sit where it was desirable for the conduct of particular cases.

M. Star-Busmann (Netherlands) suggested that Articles 22 and 28 should be made to conform, pointing out that Article 22 provided that the Court might sit and exercise its functions elsewhere than at The Hague. The Chairman thought that there would be no opposition to providing that the chambers might sit and exercise their functions elsewhere than at The Hague. The chairman of the drafting committee accepted this suggestion and stated that "to a dispute" should be deleted as it had been elsewhere in the Statute. Dr. Moneim-Riad Bey (Egypt) pointed out that exercise of functions would cover advisory opinions, but though the chambers did not give advisory opinions he thought the phraseology was satisfactory. Judge Hudson agreed that chambers might give orders and that therefore the term "judgment" might not be adequate.



Article 29. The chairman of the drafting committee read Article 29 explaining that the only changes proposed were grammatical.

Dr. Moneim-Riad Bey (Egypt) inquired whether the chamber of summary procedure should not be reduced to three members. The chairman of the drafting committee explained that the drafting committee had been carrying out the instructions of the subcommittees and the full Committee. Furthermore, Article 29 dealt with a standing chamber and gave the Court no discretion as to the number of judges. He did not think the Committee would regard it as desirable to reduce a standing chamber to three members.

Article 30. Mr. Read (Canada) read Article 30 as it appeared in the English text (Jurist 59). He stated that this revision conformed to the actual practice of the Court, in that it authorizes the Court to make rules for carrying out its functions. It was also thought that the phrase "rules of procedure" would include rules of summary procedure. Professor Basdevant (France) noted a change that should be made in the French text of paragraph 2 of Article 30.

Article 31. Mr. Fitzmaurice (United Kingdom) raised the question whether paragraph 4 of Article 31 was not already covered by paragraph 2 of Article 26. It was decided to leave paragraph 4 of Article 31 as it stood, and Judge Hudson noted that under paragraph 2 of Article 26 the Court could not appoint ad hoc judges. Professor Basdevant (France) noted a mistake in the French text of paragraph 4 of Article 31.

Article 34, Article 35. Mr. Read stated that there was no change in these articles.

Article 36. Mr. Read (Canada) stated that in accordance with the instructions of the full Committee, the drafting committee had set up the article in alternative drafts in parallel columns, with the optional clause draft on the left-hand side and the compulsory jurisdiction draft on the right-hand side. He stated that in accordance with the Committee's instructions the drafting committee had stricken "justiciable" from the first paragraph of the optional clause draft and had substituted "or" for "and" in the first paragraph of each draft. Mr. Read stated that in accordance with the proposal of Dr. Wang (China), the chairman of the subcommittee which prepared the compulsory jurisdiction text, the phrase "in any legal dispute" had been substituted for "in all or any of the classes of legal disputes", in the second paragraph of the compulsory jurisdiction draft.



The Chairman noted that "or" had been put in the wrong place in the first paragraph of each draft. It was agreed that the drafting committee should change the first paragraph of each draft to read: "or in treaties and conventions in force".

Señor Urdaneta (Colombia) proposed that the word "justiciable" be reinserted in the first paragraph of the optional clause draft. He felt that it was very important to do so because the real nature of the Court might be changed and many countries might be obliged to make reservations and observations otherwise.

The Chairman thought with respect to the observation of the representative of Colombia that there had been considerable discussion with respect to the word "justiciable". He thought it would be difficult to give an accurate interpretation of this term and wondered if the point were not covered by paragraph 2 of the draft which refers to "legal disputes". Mr. Fitzmaurice (United Kingdom) stated that this did not cure the defect since the two paragraphs covered two different things. He recalled that the point had been made in a previous meeting that the first paragraph covered voluntary reference of cases to the Court, and that the second paragraph covered cases in which the parties had accepted the compulsory jurisdiction of the Court. Mr. Fitzmaurice felt that this is a very serious point and that something ought to be inserted in the report with respect to it. He noted that two points had been made in opposition to including the word "justiciable" in the draft: First, with respect to the difficulty of interpreting the word, he observed, this is true, but it does not affect the principle that cases of a political character should not be referable to the Court even if the parties want it; second, the point has been made that since paragraph 1 provides for voluntary reference to the Court, the parties should be able to refer political cases to it. From the lawyer's point of view, he said, it is altogether wrong that parties should refer political cases to a court. He thought it was all right for the Court to deal with a case on a partially equitable basis so long as the substance of the case is legal. Mr. Fitzmaurice hoped that under the new United Nations organization there would be better provision for the settlement of political disputes. He noted that the machinery of the Security Council and the General Assembly had been set up for that purpose and thought it would be undesirable for parties to by-pass the political organs and go to the Court. Mr. Fitzmaurice therefore supported the



motion that the word "justiciable" be reinserted in the draft. Otherwise he felt that there should be special reference to the matter in the Committee's report.

The Chairman agreed with the views of the representatives of Colombia and the United Kingdom that the Court should deal with legal and not with political cases. He proposed, therefore, that after the word "cases" the phrase "of a legal character" be inserted, so as to avoid the word "justiciable".

Dr. Moneim-Riad Bey (Egypt) thought it would be better to leave to the United Nations Charter the question whether political cases or legal cases should be submitted to the Court. Mr. Fitzmaurice thought that did not cover the point, because the United Nations Charter was already referred to in the first paragraph of Article 36.

Ambassador Cordova (Mexico) asked what the situation would be if two parties wanted to come before the Court and believed that the Court could give a decision on the juridical side of a question. He asked who would decide whether a question was legal or political, where the parties had agreed to submit a case to the Court. Mr. Fitzmaurice (United Kingdom) replied that the Court could deal with legal aspects of a case, and that if the Statute provided that the Court should have jurisdiction over a case of a legal character, it could be left to the Court to decide whether a question was one of a legal character. Ambassador Cordova stated that he was referring chiefly to the compulsory jurisdiction clause and thought that if the word "legal" were inserted there, the parties would have a controversy as to the nature of the issue. Mr. Fitzmaurice noted that that often happened, and that moreover paragraph 3 of the compulsory jurisdiction draft gave the Court jurisdiction to decide whether a case was justiciable.

Judge Delgado (Philippine Commonwealth) moved to adopt the Chairman's suggestion so that paragraph 1 of Article 36 would be amended to read "all cases of a legal character".

Dr. De Bayle (Costa Rica) asked whether this change was to be made in the optional clause draft or the compulsory jurisdiction draft. The Chairman said that he supposed the same change would be made in both texts. Judge Delgado (Philippine Commonwealth) moved that the same change be made in both drafts.

Professor Basdevant (France) recalled that this proposal had already been discussed quite fully. He noted that in the two texts there was also provision for two hypotheses:



(1) Cases which States voluntarily agree to submit to the Court; (2) cases of compulsory jurisdiction. In the second category, the proposal that cases be specified as "legal" is important. In the first category, of voluntary jurisdiction, if this condition is inserted, the jurisdiction of the Court will be contested. Professor Basdevant recalled the Brazilian loan case between Brazil and France in which the Court had to decide whether a loan contract should be fulfilled in gold francs, a legal question. The Court also determined what adjustment should be made, a question of a more political character. Since the parties had agreed to submit this case to the Court, there seemed to be no reason to limit the Court's jurisdiction. He recalled a more recent case involving frontiers. He thought if the Court were asked to settle this question, it should be permitted to do so. He felt that when parties agreed to go before the Court, the Court's jurisdiction should not be limited with respect to the nature of the dispute. He did not believe that the present texts should be altered. He stated, however, that Mr. Fitzmaurice's opinion would appear in his report.

Mr. Fitzmaurice (United Kingdom) stated in reply to Professor Basdevant that the latter's point was covered by the last paragraph of Article 38. He thought that it was proper to refer boundary matters to the Court, and that the Court should be free to determine a question on legal and equitable grounds as provided by Article 38. The fundamental issue, however, is whether political disputes should be referred to the Court, and Mr. Fitzmaurice thought it should be made clear that political disputes should not be referred to the Court. He noted that since, under paragraph 2 of the compulsory jurisdiction draft, legal disputes must go to the Court, the only reasonable meaning of the first paragraph of that draft is that political matters may also go to the Court.

Dr. Moneim-Riad Bey (Egypt) asked for Judge Hudson's opinion on this matter with respect to the present practice of the Court, noting that the present text of the Statute does not include the word "justiciable". He observed that the compulsory jurisdiction of the Court is restricted to legal cases and thought that parties must be given the right to take other cases to the Court. He also observed that the Dumbarton Oaks Proposals provided that justiciable disputes should normally be referred to the Court, and thought that the Dumbarton Oaks Proposals meant to provide obligatory jurisdiction for legal disputes. He further stated that he agreed with Professor Basdevant.



Señor Urdaneta (Colombia) suggested that the phrase "of a legal character" might be inserted in one text and omitted in the other.

M. De Visscher (Belgium) declared that he supported Professor Basdevant's view. He thought that debate on this point could continue indefinitely, and he favored maintaining the present text. He believed that if the words of "legal character" were inserted the jurisdiction of the Court might be dangerously limited.

Dr. Wang (China) said that he thought there were two reasons for maintaining the present language: One was that he could see no reason why a dispute which the parties were willing to submit to the Court should not be decided by it; the other was that the Court had exercised jurisdiction under Article 36 of the present Statute without any difficulty. He pointed out that all international disputes had at least some political implications and the insertion of the phrase "of a legal character" might seem restrictive. M. Jorstad (Norway) pointed out that the Permanent Court had not had enough cases and, therefore, he did not believe the jurisdiction of the Court should further be restricted. He also felt that, if States were paying for the maintenance of the Court, they should not be refused access to it when they were willing to present a case. The Chairman pointed out that there had been a motion to insert in paragraph 1 of Article 36 the wording "of a legal character". If there were no second to the motion, the matter would be left to the report.

Mr. Fitzmaurice (United Kingdom) seconded the motion and stated that, if there was difficulty in defining disputes of a legal character, the definition of legal disputes in the second paragraph of the article could be employed. There was, however, an important question of principle involved here. Would the Committee wish to see purely political questions referred to the Court? He felt that a court of arbitration could more properly decide political disputes. The international court of justice would be bound by rules which were wholly unsuitable for deciding questions which were not of a legal character.

Dr. Wang (China) pointed out that the Court would apply international law and quoted the substance of Article 38.

Mr. Fitzmaurice (United Kingdom) said that the problem was how the Court could apply legal principles in non-legal disputes.



Justice Farris (Canada) inquired whether it would meet the difficulty involved in handling disputes which were not entirely of a legal character by employing this formula: "cases in which there was a legal aspect or aspects". He did not, however, make an amendment to the motion.

The Chairman proposed the question whether Article 36 should be changed. Nine voted in favor of the change, and 21 in opposition. The motion was therefore lost.

M. Jorstad (Norway) moved that the Egyptian proposal contained in Jurist 31 should be added as a third alternative in Article 36. Dr. Moneim-Riad Bey (Egypt) read the Egyptian proposal which had been put forward in an attempt to conciliate the different points of view with regard to this article. The essence of the proposal was that States would be bound by the "optional clause" unless they made reservations regarding it. He seconded the proposal of the representative of Norway.

When the motion was put to a vote, 4 were in favor and 10 in opposition. The motion therefore was lost.

Dr. Moneim-Riad Bey (Egypt) stated that he would like to have the motion mentioned in the report. Professor Basdevant (France) stated that since the motion had been lost he could not mention it in his report.

The chairman of the drafting committee pointed out that the only remaining articles which had not been approved by the full Committee were Articles 45, 46, 48 to 52, 58, 59, 60, 64, 66, and 67. No changes, except a very few in wording, had been introduced into these articles.

The Chairman announced that the drafting committee would meet at 3 p.m. and that the full Committee would hold a session beginning at 8 p.m. to discuss the report.

The Committee adjourned at 1:15 p.m.



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CORRIGENDUM OF SUMMARY OF FOURTH MEETING (REVISED)

On page 10, line 18, delete "paid homage to" and substitute "appreciated".

On page 10, line 20, delete "and national judges were not allowed" and substitute "and judges who are nationals of the parties were not allowed".



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CORRIGENDUM OF SUMMARY OF SIXTH MEETING (REVISED)

Delete the first full paragraph on page 8 and substitute the following two paragraphs:

Sr. Mora Otero (Uruguay, Adviser) stated that he had heard with satisfaction the different points of view endorsing compulsory jurisdiction. Uruguay had signed the optional clause in 1921, without a time limit and desired to give ample scope for the settlement of all disputes, without distinction between legal or political questions.

The Uruguayan Government thinks that the Court of International Justice should be competent to have jurisdiction in any international dispute that has not been resolved by any other pacific means.

On page 12, the last two lines, delete "excluded by virtue of their being" and substitute "exclusively".

In the first line of page 6, substitute "Mr. Novikov" for "Professor Golunsky".



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CORRIGENDUM OF SUMMARY OF THIRD MEETING (REVISED)

On page 8 at the beginning of paragraph 4, delete  
"Mr. Basdevant" and substitute "Sir Frederic Eggleston."

On page 9, at the end of the third full paragraph,  
add:

";on the contrary, it rather excluded it."



THE UNITED NATIONS  
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 68 (41)  
G/55  
April 19, 1945

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

In the second line of the first paragraph of page 1,  
substitute "Novikov" for "Golunsky and Krylov".



THE UNITED NATIONS  
COMMITTEE OF JURISTS

Washington, D. C.

Jurist 69 (45)

G/56

April 19, 1945

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CORRIGENDUM OF SUMMARY OF

EIGHTH MEETING

On page 3, the tenth line from the bottom, delete "Chapter VI" and substitute "Chapter V".

Add the following to the sixth paragraph on page 8:  
"on the matter whether an advisory opinion can be asked by international organizations, be agreed with the recommendations given by the Informal Inter-Allied Committee on the future of the Permanent Court of International Justice".



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CORRIGENDUM OF MINUTES OF DRAFTING COMMITTEE MEETING

Insert after fifth paragraph on page 2, the text of the following drafts:

Article 1

The Permanent Court of International Justice, established in 1920 and reconstituted in 1929 and 1945, shall be the principal judicial organ of The United Nations.

(Mr. Jorstad)

\* \* \*

Article 1

The Permanent Court of International Justice constituting the principal judicial organ of The United Nations shall function in accordance with the provisions of this Statute.

(Mr. Fitzmaurice)

\* \* \*

Article 1

The Permanent Court of International Justice, reconstituted and adopted to the purposes of The United Nations by this Statute, shall be the principal . . .

(F. C. Jessup)

Insert at the end of the next to the last sentence of the first full paragraph on page 4 the following words: ", or a provision to this effect could be added to Article 68."



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CORRIGENDUM OF SUMMARY OF NINTH MEETING (REVISED)

Change the last sentence of the third paragraph of page 4 to read: "... Judges nominated by governments would be more likely to be influenced by those governments".

Paragraph 4 should read:

"Dr. Wang (China) expressed the view that judges should be nominated by governments and that, as suggested by the Turkish representative, the governments should consult the national groups, the highest courts and certain other institutions with respect to the nominations."



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CORRIGENDUM OF SUMMARY OF TENTH MEETING (REVISED)

The third full paragraph on page 10 should be changed to read as follows:

"M. Jorstad (Norway) moved that the minutes should be in English and French, and this motion was seconded by M. Star-Busmann (Netherlands). 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."

Change the last sentence of the first paragraph of page 10 to read: "... Professor Bailey commented that as the draft now stands the Court would seem to have general compulsory jurisdiction and recalled that there had been considerable embarrassment in Australia where there had been two competing tribunals each vested with jurisdiction."

In the third full paragraph of page 10, the last sentence should be replaced by the following: "... M. Jorstad (Norway) moved that the minutes should be in English and French. The Committee would thus follow the precedents established by the Jurist Committees of 1920 and 1929. This motion was seconded by M. Star-Busmann (Netherlands)."



THE UNITED NATIONS  
COMMITTEE OF JURISTS

Washington, D. C.

April

頓巴敦橡樹建議案第七章  
所提及之國際法院規約稿



上列樹建議案第七章所提及之國際法院規約稿  
由聯合國法家委員會提出于金山聯合國國際組織會議

一九四五年四月二十日于華盛頓

# 第一條

〔在聯合國金山會議決定前，本條條文暫缺，理由見所附報告〕

## 第一章 法院之組織

### 第二條

本法院係以獨立法官若干人組織而成，此項法官不同國籍，于德望素著並在各本國內具有執行司法最高職務之資格者，或公認為國際公法之法學家中選舉之。

### 第三條

法院由十五法官組成之，其中不得有二人屬同一國家或聯合國之同一會員。

### 第四條

(一) 法院法官由聯合國大會及安全  
理事會依照下列各條款之規定  
在常設公斷法院各國公斷員團  
所提出之名單內選出之。  
(二) 法院法官由聯合國大會及安全  
理事會依照第五及第六條  
所提出之名單內選出之。

(二) 在常設公斷法院中無公斷員

(二) 業經接受法院規約之國家



# 第五條

之聯合國會員其候選人名單應由各該國政府為此事所指派之選舉團提出此選舉團之指派應照一九〇七年海牙和平解決國際紛爭條約第四十條規定之指派公斷法院人員條件辦理。

而非聯合國之一員得參加選舉法院法官但其參加條件無特別協定時應由安全理事會提議而由大會決定之。

(三)

業經接受法院規約之國家而非聯合國之一員得參加選舉法院法官但其參加條件無特別協定時應由安全理事會提議而由大會決定之。

(一)

聯合國秘書長至遲應于舉行選舉之三個月前用書面邀請屬于本規約當事國之常設公斷法院內之公斷員及依照第四

聯合國秘書長至遲應于舉行選舉之三個月前用書面邀請聯合國各個會員政府及規約之當事國于一定期間內提出能



條第二項所指定之各國公斷  
接受法官職務之本國人一名。

員團體于一定期間內分別由各  
國公斷員團體提出能接受法官  
職務之人員。

(二) 無論何團體不得提出四員以上  
之數，其中屬本國國籍者  
不得過二員。在無論如何情形  
下，所提出之候選人數不得超  
過應占席數之一倍。

## 第六條

在提出上項人員前，應請各國  
公斷員團體就各本國最高法院  
各大學法学院、法律學校、國家研  
究院以及國際研究院在各國所設  
專研法律之各分院加以諮詢。  
在提出上項人員前，應請各個政府  
就各本國最高法院、各大學法学院  
及法律學校、國家研究院以及國際研  
究院在各國所設專研法律之各分院  
加以諮詢。

## 第七條

(一) 聯合國秘書長應依字母之先後編立上項所提人員之名單，除第



第八條

十二條第二項規定外，祇此何人員有被選舉權。  
(二) 祕書長應將此項名單送交大會及安理事會。

第九條

每次選舉時選舉人應注意者，不獨各個被選人須具有必要資格，且應使法院之全部實能保證代表世界各大文化及各主要司法制度。

第十條

(一) 候選人在大會與安理事會  
候選人在大會及安理事會  
會得絕對多數票者為當選  
得絕對多數票者為當選。

(二) 如大會及安理事會所

舉同一國家或同一聯合國之

國民不止一人時，則年長者

當選。

第十一條

第一次選舉會告竣後，如尚有一個或一個以上缺額，則應舉行第二次選舉會。必要時再舉行第三次選舉會。



## 第十二條

(一) 第三次選舉會告竣後，如仍有一個或一個以上缺額，則不論何時經大會或安全理事會之聲請，組織一联席會議，其人數定為六人，由大會及安全理事會各派三人。此項联席會議為每一缺額選定一人提交大會與安全理事會請其接受。

(二) 具有必要資格人員即非列在第四條所指之候選人名單上者，如經联席會議全體同意，亦得列入名單。

(三) 如联席會議確知選舉不能成立，則由安全理事會規定一期間，在此期內，應由已選出之法官就曾在大會或安全理事會得有選舉票之人員中，選舉若干人補足缺額。

(四) 法官表決其票數各半時，則由年事最高之法官決定之。

## 第十三條

(一) 法官任期九年，得再被選。惟第一次選舉選出之法官中，其五人任期為三年，另五人為六年。

(二) 照上述三年及六年初期任滿之法官，應于第一次選舉完畢後，由聯合國秘書長抽籤決定。

(三) 法官在其後任接替前，應繼續行使其職務，雖經接替其經



## 第十四條

手未結束之案仍應結束。  
 (四) 法官辭職應將辭函送致法院院長轉知聯合國秘書長。  
 此項轉知使該法官之一席缺出。

## 第十五條

如遇缺出則照第一次選舉時所行之法并照下開規定遴員接替，即聯合國秘書長應于缺出後一月內照第五條規定發出請柬，選舉日期應由安全理事會指定之。

法官被選以接替任期未滿之法官者，其職務至前任任期屆滿時終止。

## 第十六條

(一) 法官不得行使任何政治或行政職權或從事任何其他專門業務。

(二) 有疑義時由法院裁決之。

## 第十七條

(一) 法官對於無論何種案件，不得擔任代理人輔佐人或律師之職務。

(二) 法官遇有案件，本人曾為兩造之一充任代理人輔佐人或律師者，或曾以本國法院或國際法院或調查委員會之一員



或以他種資格參預此項案件者，該法官對該項案件之判決，不得參預。

# 第十八條

- (一) 有疑義時由法院裁決之。
- (二) 法官非于被其他法官一致認為與必要條件不復適合時，不得解除職務。

# 第十九條

- (一) 法官之解除職務由書記官長正式通知聯合國秘書長。
- (二) 經通知後該法官之一席缺出。
- (三) 法官于執行職務時享受外交官之特權與豁免。(此條應于採納同一事件之規定載入憲章時再議)

# 第二十條

法官于就職前應在法庭公開鄭重宣誓謂彼將盡誠公正行使職權。

# 第二十一條

- (一) 法院選舉院長及副院長任期各三年，得再被選。
- (二) 法院指派一書記官長并得派其他必要人員。

# 第二十二條

- (一) 法院設在海牙，但法院認為適當時得在他處開庭及行使職務。



### 第三十三條

- (一) 院長及書記官長駐于法院所在地。
- (二) 法院常川辦公，但得有司法假期，其日期及期間由法院規定之。

(二) 法官應享有假期其日期及期間由法院斟酌海牙及各法官住址之距離規定之。

(三) 法官除在假或因病及其他重大原因經何院長說明外，應常川準備隨時應法院之台集。

### 第三十四條

(一) 法官因特別原由認為于某案之判決不應參預時，當告知院長。

(二) 院長認某法官因特別原由不應參預某案時，當告知法官。

(三) 遇此種情形，法官與院長意見不同時，由法院裁決之。

### 第三十五條

(一) 除特別規定外，法院應以全体名義行使其職權。

(二) 法院章程得斟酌情形並以輪流方法准許法官一人或數人缺席，但準備出庭之法官不得因是減少至十一人以下。

(三) 但不論何時法官九人即是構成法院開庭之法定人數。



## 第二十六條

(一) 法院得隨時設立一個或數個分庭並決定由法官三人或三人以上組織之。此項分庭處理特種案件，例如勞工案件及關於通過及交通案件。

(二) 法院為處理某一特定案件，得隨時設立分庭組織該項分庭法官之人数經當事國同意後，由法院決定之。

(三) 案件經當事國之請求應由本條規定之分庭審理裁判之。

## 第二十七條

(一) 第二十六條及第二十九條規定之任何分庭所為之判決，即為法院之判決。

## 第二十八條

第二十六條及第二十九條所規定之分庭經訴訟當事國之同意得在海牙以外之地方開庭及行使職務。

## 第二十九條

為處理案件迅速起見，法院每年以法官五人組織一分庭。該分庭經當事國之請求，得用簡易程序審理及裁判案件。又法院應選定法官二人以備接替不能出庭之法官。

## 第三十條

(一) 法院應訂立章程俾可執行其職務。尤應訂定關於程序之章程。



## 第三章

(一) 法院章程得規定陪審官若干人出席法庭或分庭但無表決權。

(二) 具有爭議當事國國籍之法官，于法院受理該案時，仍得保有其出庭之權。

(三) 如法院受理案件，法官中有具有一造當事國之國籍者，則他造亦得選一人為出庭法官。此項人員最好自第四及第五條規定之候選人中選充之。

(四) 如法院受理案件，爭議當事國均無本國國籍法官時，則各造可照本條第二項規定選出法官一人。

(五) 本條適用於第二十六及第二十九條之情形。在此種情形下，院長應請分庭法官一人必要時或二人退席，讓于具有各造國籍之法官。倘無各造國籍之法官或該法官等不能出席時，則讓于各造特別指定之法官。

(六) 如數當事國具有同樣利益時，則可適用以上各規定範圍內，祇能認為同一當事國。關於此點有疑義時，由法院裁決之。



### 第三十二條

(六) 照本條第二第三及第四各項規定所選派之法官，須合于本規約第二條第十七條第二項第二十及第二十四各條規定之條件。該法官若參與案件之裁判時，與同僚立于完全平等地位。

(一) 法院法官每年應領俸薪。

(二) 院長每年應領特別津貼。

(三) 副院長當執行院長職務時，應按日領特別津貼。

(四) 照第三十一條規定所指派之法官，而非法院之法官，于開庭執行職務時，應按日受領酬金。

(五) 上開俸薪津貼及酬金數由聯合國大會決定之，在任期內不得減少。

(六) 書記官長之俸薪由大會依法院之建議決定之。

(七) 法官及書記官長支給養老金辦法暨補領旅費辦法由聯合國大會制定章程規定之。

(八) 上開俸薪酬金及津貼免除一切稅捐。



第三十三條

法院費用由聯合國擔任，其擔任方法由大會決定之。



## 第二章 法院之管轄

第三十四條 (一) 祇國家或聯合國會員得在法院為案件之當事國

(二) 法院得依照其章程，請求公共國際團體供給關於正在受理案件之消息，各該團體自動供給之。上述消息，法院應接受之。

第三十五條 (一) 法院受理聯合國會員及本規約各當事國之訴訟。

(二) 法院受理其他各國訴訟之條件，除現行條約所定特別條款外，由安全理事會定之。但無論如何，此項條件不得使各造在法庭前處於不平等地位。

(三) 非聯合國會員為案件之一造時，其應担法院費用之數，由法院定之。但如該造業經分担法院費用之一部，本規定即不適用。



第三十六條（本委員會對於本條因意見不能一致特提出

二項互換辦法如下）

（子）

（一）法院之管轄及于各當

事國所付與處理之任

何案件並及于聯合國憲

憲或現行條約及公約

中所特定之任何事件

（二）聯合國會員及本規約

各當事國得隨時設

明關於具有左列性質

法律爭執之全部或一

部對於業已承受同樣

義務之任何其他會員

國或其他國家承認

（丑）

（一）法院之管轄及于各當事

國所付與處理之任何案件

並及于聯合國憲章或現行

條約及公約中所特定之任

何事件

（二）聯合國會員及本規約各

當事國關於具有左列

性質之任何法律爭執

在相互間承認法院之管

轄為當然強迫的無

須另定特約

甲條約之解釋或



法院之管轄為當然  
強迫的，無須另定

特約：

甲、條約之解釋；

乙、國際法上任何問題，

丙、任何事實之存在如

確認其成立足以構

成破壞國際義務

者；

丁、因破壞國際義務

應予賠償之性質及

其範圍

(三) 上開聲明得無條件為

之或以會員或其他國

家之數國或某國相

乙、國際法上任何問題，或  
丙、任何事實之存在如

確認其成立足以構

成破壞國際義務

者，或

丁、因破壞國際義務應

予賠償之性質及

其範圍。



互為條件或以一定之  
期間為條件

(四) 關於法院是否有  
權管轄而起爭執  
時，應由法院裁

(三) 關於法院是否有權  
管轄而起爭執時，應  
由法院裁決之。

決之

### 第三十七條

如現行條約或公約規定某事件當歸國際  
聯合會或聯合國設置之裁判機關處理  
者，該項裁判機關即為本法院。

### 第三十八條 (一) 法院應適用：

甲、國際條約，不論普通或特別，而確立經爭  
議當事國明白承認之規條者；

乙、國際慣例，為業經視為法律之普遍辦法  
的一種證明者

丙、文明各國所承認之法律普通原則，



丁、除第五十九條規定外各國司法判例及地位最高之公法學家學說，可作為確定法律時補助之用者。

(二) 前項規定並不妨礙法院經兩造同意而以公允及善良方法判決案件之權。



### 第三章 程序

#### 第三十九條

(一) 法院以英法兩文為正式文字，如各造同意用法文辦理案件，判決即用法文。如各造同意用英文辦理案件，判決即用英文。

(二) 如未經同意用何種文字，則各造于陳述中得于英法兩文任便擇用，而法院判決則用英法兩文，且同時確定以何文為準。

(三) 法院經任何一造之請求應准該造用英法文以外之文字。

#### 第四十條

(一) 向法院起訴應將所訂特別協定通告書記官長，或繕一陳訴書，送達書記官長，惟無論如何均應敘述案情及訴訟各造。

(二) 書記官長應立將陳訴書通知有關各方。



### 第四十一條

- (三) 書記官長並須經由秘書長通知聯合國各會員及有資格出庭之國。
- (一) 如認情形有必要時，法院有權為兩造指定保存彼此權利之臨時辦法。
- (二) 在最終判決前應速將此項指定之辦法通知各造及安全理事會。

### 第四十二條

- (一) 各造由代理人代表。
- (二) 各造得派輔佐人或律師出席法庭予以協助。

### 第四十三條

- (一) 訴訟程序分為二部：一書面，一口述。
- (二) 書面程序乃指將訴狀辯訴狀及必要時之答辯狀連同各種文件公牘之可資佐證者送達法官及各造。



(三) 此項送達應經由書記官長照法院所定次序及期限辦理。

(四) 所有此造提出之文件均應備校正抄本通知彼造。

(五) 口述程序乃法院當庭詢問證人、鑑定人、代理人、輔助人及律師等。

第四十四條 (一) 法院遇有對於代理人、輔佐人及律師以外文件之送達，應在某國領土上行之之時，應向該國政府接洽為之。

第四十五條 (二) 法院如須就地搜集證據，前項辦法適用之。法院審訊時由院長主持，院長不到，由副院長主持，二人均缺席，則由出席法官中資深者主持。



第四十六條

法院審訊應公開行之，但如法院作反對之決定或各造請求拒絕公眾旁聽時，不在此限。

第四十七條

(一) 每次審訊應製成記錄，由書記官長及院長簽名。

(二) 前項記錄為惟一之正本。

第四十八條

法院應隨時頒發命令，以便案件之進行，對於每造結束其辯論，應決定其方式與時間，及對於證據之搜集，應為各種之措施。

第四十九條

法院即在開庭審訊前，亦可令代理人交出任何文件，或令其作任何解釋，代理人拒絕時應予正式記載。

第五十條

無論何時法院得自由選擇個人、團體、局所、委員會或其他機關，委以調查或鑑定之責。



## 第五十條

審訊時得依照第三十條所指章程中法院所定之條件向證人及鑑定人提出任何有關係之質問。

## 第五十二條

法院於所定期限內業經收到各項證據後，對此造未經彼造同意而欲提出其他口頭或書面證據時，得拒絕之。

## 第五十三條

(一)

兩造之一不到法庭或不辯護其主張時，彼

造得請求法院就自己主張作有利之裁判。

(二)

法院於實行前項請求前，不特應查明依

照第三十六及第三十七條之規定對本案有權管轄，且請求人之主張在事實及法律上均有根據。

## 第五十四條

(一)

代理人、輔佐人及律師業在法院監督之下



陳述其主張完畢時，院長應宣告辯論終結。

(二) 法官應退席討論判決。

(三) 法官評議秘密不宣。

### 第五十五條

(一) 任何問題應由出席法官之過半數決定之。

(二) 如票決時兩方主張各半，則以院長或代理院長職務之法官決定之。

### 第五十六條

(一) 判詞應叙明理由。

(二) 判詞應記載參預本案之法官姓名。

### 第五十七條

如判詞之全部或一部未能代表法官全體之意見，則任何法官得另行發表其意見。

### 第五十八條

判詞由院長及書記官長簽名，應在法庭內公開宣讀，並應正式通知代理人。

### 第五十九條

法院之裁判祇對於爭議各造及對於本



## 第六十條

案有拘束力。

判決係屬最終的，不得上訴。判詞意思及其範圍有疑義時，法院經任何一造之請求，有解釋之責。

## 第六十一條

- (一) 聲請法院覆核判決，須發現具有決定性之重大事實。而此項事實，在判決宣布以前，為法院及聲請覆核之一造所未及覺察，而該造之所以未及覺察，並非由於過失者。
- (二) 覆核訴訟，應由法院先生裁判，載明新事實之存在，承認此項新事實具有令本案覆核之性質，並宣告覆核之請求，因是可予接受。

- (三) 法院得令先履行判決，然後辦理覆核。



(四) 聲請覆核至遲須於發現新事實後六個月內為之。

(五) 自判決宣告日起逾十年後不得再請覆核。

### 第六十二條

(一) 如一國認為某案件之判決有牽涉屬於該

國法律性質之某種利益之處可向法院聲請准予參加。

(二) 此項聲請由法院裁決之

### 第六十三條

(一) 凡解釋公約時如該公約於訴爭當事國外

尚有他國共同訂立者則書記官長應即知照各該國。

(二) 各該國均有參加此案之權若各國出而參加則判決中所載之解釋對於參加國亦有拘束力。



第六十四條

除法院另有決定外各造自任訴訟費用。



## 第四章 諮詢意見

第六十五條 (一) 凡須向法院諮詢意見之問題，應備一請求書送交法院簽字於此項請求書者，或為聯合國大會主席，或為安全理事會主席，或由聯合國秘書長，奉大會或安  
全理事會之命為之。

(二) 該請求書對於諮詢意見之問題，應有確切說明，並須檢送足供參考之一切文件。

第六十六條 (一) 書記官長應即將諮詢意見之請求經由聯合國秘書長通知聯合國各會員及有資格出庭之國。

(二) 書記官長並須用特別直接文件，將法院準備於院長所定期限內接受關係該問題之書面陳述或準備於本案公開審訊時聽取口頭陳述各節通知各會員國或准許出庭之國或法院（不出庭時為院長認為對於該問題可以供給消息之國際團體）。



(三) 如聯合國某會員或准許出庭之國未接到前項通知，該會員或該國得表示願以書面或口頭陳述之意，法院应予裁判。

(四) 凡會員國非會員國及各團體曾經提出書面或口頭陳述或兼而有之者，對於其他會員國或非會員國或團體提出之陳述，准其依照法院（不用庭時為院長）所定各案之方式程度期限答辯之。故書記官長應按時將此項書面陳述通知於曾經提出相類陳述之會員國非會員國及團體。

### 第六十七條

法院應將其諮詢意見當庭公開宣告並於事前通知聯合國秘書長暨聯合國會員國非會員國及有直接關係之國際團體代表。

### 第六十八條

法院執行諮詢職務時應以適用於爭執事件之本規約各條款為準，惟以法院認為可以適用該項條款為限。