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SUMMARY OF THIRTEENTH MEETING

Interdepartmental Auditorium, Conference Room B

Thursday, April 19, 1945, 3:15 p.m.

The meeting was opened by the Chairman, Mr. Hackworth (United States).

The Chairman stated that since the draft Statute and the Rapporteur's report had been approved by the Committee the previous evening, the next question related to the manner of presenting these documents to the San Francisco Conference. The Chairman suggested that a very brief final act be submitted, to which the draft Statute and the report would be attached. This final act would be in five languages and would be signed by the various members of the Committee. This would make it unnecessary to sign both the Statute and the report; it would be necessary merely to sign a brief statement. The Chairman then proposed the text of the final act to be submitted.

"Final Act
of the

Meeting of the Committee of Jurists for the
Preparation of a Draft of a Statute for the
International Court of Justice to be Sub-
mitted to the United Nations Conference on
International Organization

Pursuant to the invitation extended on March 24, 1945 by the Government of the United States of America, on behalf of itself and of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China, a Committee of Jurists, as enumerated below, met in Washington on April 9, 1945:

[Here should follow in alphabetical order the list of the countries represented and the names of the representatives and advisers.]

The Committee held sessions beginning on April 9 and ending on April 20. It has completed its work and has unanimously agreed upon a draft of a statute of an international court of justice as referred to in Chapter VII of the Dumbarton Oaks Proposals, and a Report to accompany that draft, for submission to the United Nations Conference on International Organization, both of which documents, in the Chinese, English, French, Russian and Spanish languages, are attached hereto.

In testimony whereof the undersigned have signed the present Final Act likewise in the Chinese, English, French, Russian and Spanish languages at the City of Washington on the twentieth day of April, one thousand nine hundred and forty-five."

In this way, the Chairman stated, the members of the Committee could signify their approval of these documents that are being submitted to the San Francisco Conference. These documents, he noted, are only recommendations since this Committee was not authorized to prepare a final document.

Judge Delgado (Philippine Commonwealth) moved that the Chairman's suggestion be adopted. The motion was seconded by Mr. Fitzmaurice (United Kingdom), by Dr. Wang (China), and by Minister Novikov (Soviet Union).

Professor Basdevant (France) stated that he had heard the Chairman's proposal with great interest. He noted that this Committee of Jurists was assigned to do preparatory work for the San Francisco Conference and that the result of this work should be presented in the most appropriate form to the San Francisco Conference. It would be appropriate, Professor Basdevant said, for a conference of diplomats to sign a final act, but it would not be appropriate for a committee of jurists to do so. He thought that the Chairman should transmit these documents in a letter personally written by the Chairman, with the documents attached to the letter, in five languages. He proposed this as the simplest method since the members of this Committee are technicians and have prepared recommendations. He did not think that the members of this Committee would have to sign a final act here, as this would be superfluous.

Dr. Moneim-Riad Bey (Egypt) supported Professor Basdevant's suggestion. He thought that the Rapporteur's report would be the most important document to go to the San Francisco Conference; and that this report presents this Committee's views fully. He recalled that the report of the jurists of 1920 constituted a standing reference document, and he believed that Professor Basdevant's report would be the same kind of document. He felt that the Committee had no mandate to sign anything since it could not bind the governments, and that the Committee's function was to discuss these problems freely as jurists. He noted that a neighbor had said that he could not sign something that he could not understand since the document was not in Arabic.

Judge Delgado (Philippine Commonwealth) stated that with all due respect to Professor Basdevant's suggestion and to the statement of the representative of Egypt, he thought the Committee

should sign the final act and appoint the Chairman, the Rapporteur, and another as a committee of three to be the bearers of the documents to the San Francisco Conference. He agreed that the representatives were not authorized to bind their governments but thought that the representatives could sign their names to what they had agreed upon and that it would add a little tone for them to sign the final act. Judge Delgado therefore moved that the Chairman's suggestion be adopted.

Professor Bailey (Australia) stated that he supported Professor Basdevant's suggestion. He felt that the final character of the Committee's work should be emphasized as little as possible. He noted that the report brings out the fact that the Committee was invited to do what was possible here; but that it is plainly an incomplete report of matters not fully accomplished, since many points had been left open. He would deprecate the adoption of a document terminating these proceedings which did not emphasize the interim and provisional character of what had been done. The previous night, he noted, the Committee did not have the final text in any language, and the motion put by the Chairman's deputy was simply that the text of various paragraphs would be accepted if no objections were raised. Professor Bailey said that he personally would not care to sign a document which he had not seen in written form; and he noted that the English and French texts had been one day in arrears, with the changes being made orally and the Rapporteur indicating what changes were to be made. In short, the representatives had not had a chance to study the final report carefully. The Chairman noted that the report was now in complete form and that it could be examined before the following day.

Sir Michael Myers (New Zealand) declared that the motion stated that the act should be called a final act, but he could not regard it as a final act. He moved, as an amendment, that after the words "final act" there should be inserted:

"subject to further consideration of various questions raised in the Report after these questions have been decided by the Conference of The United Nations at San Francisco."

Without such qualification, the title would be misleading since the Committee had not and could not finish its work without directions from the Conference at San Francisco.

Judge Delgado (Philippine Commonwealth) stated that he would accept this amendment to his motion if his seconds gave their approval.

Minister Novikov (Soviet Union) observed that there seemed to him to be some misunderstanding of the term "final act". The

act was not meant to be an official act but a means of concluding the work done in Washington. The introduction of the consideration that representatives could not bind their governments would serve only to complicate the question because the Committee's action would not be an official act. He thought the procedure suggested by the Chairman would be more satisfactory than that proposed by the Rapporteur.

Mr. Fitzmaurice (United Kingdom) supported Minister Novikov's view and called attention to two points of confusion which had appeared in the discussion. The term "final act" was simply a formal term for a formal document summing up the work of a conference. For example, the Civil Aviation Conference adopted a final act although it provided for work to be done by an organization to be established. He saw no difficulty in drawing up a final act for the session in Washington without prejudice to further work at San Francisco. The other point of confusion was the nature of the act of signing. He called attention to the fact that the phraseology did not commit the governments and that the signers would act in their personal capacity as jurists. This seemed to him to remove objections. The only question remaining was whether the procedure suggested by the Chairman was more desirable than some other. He thought that it was, for the work was important and the recommendations should, therefore, be presented in the weightiest possible form. He believed that a document signed by all would be impressive, and he, therefore, supported the Chairman's suggestion.

The Chairman stated that he wished to clear up doubts and called attention to the invitation issued for this meeting, which asked governments to send representatives to prepare recommendations to be studied at San Francisco. It was obvious, therefore, that the Committee was not preparing a final document. "Final act" was a term of art. He felt that all were in agreement in the sense that they agreed to a majority of the articles and to the presentation of alternative drafts of certain articles. There was no disagreement that alternatives should be submitted. He thought there was agreement that the work done was in the nature of recommendations, which did not bind governments. He agreed with Mr. Fitzmaurice that it was desirable to lend dignity to the presentation of the work of the Committee. All that the final act would say would be that this was the product of the Committee's effort. There might be many changes made at San Francisco.

Dr. De Bayle (Costa Rica) suggested that there be added to the final act a paragraph charging the Chairman with the transmission of the documents.

M. Star-Busmann (Netherlands) declared that he shared the view of the Rapporteur and felt that the procedure which the latter had suggested was logical. He stated that he could not sign a document which he did not understand. The Chairman said that even if the representatives did not understand all the translations they would certainly understand some of the drafts.

Professor Bailey (Australia) called attention to the fact that the final act stated that the representatives had unanimously agreed. The Chairman said he believed that the representatives had so agreed in the sense which he had described above.

Professor Bailey (Australia) thought that it would be impossible to agree to documents which the representatives had not seen in their final form before the time for signing.

Mr. Chief Justice Farris (Canada) asked why the representatives should hesitate to sign documents if they trusted the Chairman to transmit them. He thought it would show a sense of responsibility and a willingness to rise to a great opportunity if the representatives signed.

Dr. Moncim-Riad Bey (Egypt) declared that the Chairman's signature represented all and recalled that it had been decided at the first meeting that the report should be prepared and signed in English and that translations should be prepared if possible. This procedure had been adopted and therefore the Chairman might sign in the name of all the representatives.

Mr. Simpson (Liberia) called attention to the invitation which had asked the governments to send representatives to this meeting. If the work of the Committee had been accomplished, he did not see why the representatives could not sign. He, therefore, agreed with the Chairman and with Mr. Fitzmaurice. The representatives had come to prepare a draft Statute. Why should they not sign it? In fact, what would their governments think if they did not sign it?

Professor Bailey (Australia) said that he was sorry to be troublesome, and he appreciated that the proposed final act would not be final in any sense. He reminded the Chairman, however, of the status of Article 36 which appeared in the form of alternative drafts. He recalled that there had been strong objections by various groups to each alternative, and it had been left that the Rapporteur would call attention to the objections raised to each draft, for example, the absence of the word "justiciable" in the optional clause draft, and the absence of any provision for reservations in the compulsory jurisdiction draft. Professor Bailey then stated that if the implications of signing this document were that the text was unanimously agreed to, the Australian representative could not accept such an implication. He thought that it was entirely proper for the Chairman to transmit the provisional text to the

San Francisco Conference. He added that nobody wished to shirk responsibility, but he pressed the wisdom of the Rapporteur's suggestion that this is not a document which the representatives of the various countries ought to sign. He thought that the document ought to be transmitted by the chief officer of this Committee with the names of all the participating members.

Dr. Gómez-Ruiz (Venezuela) stated that it had been agreed to sign the two texts of Article 36 and also the two texts of Articles 4 to 12 inclusive and nothing more. He thought it was completely proper to say that this Committee agrees to sending these drafts to the San Francisco Conference and nothing more.

Ambassador Mora (Chile) stated that in preparing a draft Statute for San Francisco the Committee was making clear that this work was done by this Committee when it signed the final act. This does not constitute an obligation upon the various governments to accept the texts agreed upon in the preparatory Statute. This merely states that the Committee of Jurists met in Washington, finished its tasks so far as possible, and that the accompanying documents are the result. The Rapporteur's report shows the positions taken by the various representatives on different points. He thought that the members of the Committee were morally obligated to sign the final act in order to show cooperation within the United Nations; and that the Chairman could send a letter under his own signature, stating that the documents attached were the official documents sent to the San Francisco Conference. This could show that the Committee has done its work as charged and transmits the result to San Francisco. (According to the interpreter the Ambassador had said that those who are reluctant to sign the documents might make reservations in signing the final act; but Dr. Gómez-Ruiz (Venezuela) called attention to the fact that the Ambassador had not proposed this. The Chairman added that he, too, disliked the idea of reservations.)

M. Star-Busmann (Netherlands) asked if the fact that the Committee had discussed the English and French texts only would be mentioned in the letter to the San Francisco Conference. The Chairman doubted the necessity of this, since the French and English texts had been used merely as a matter of convenience, and the documents are now being put into five languages. The Chairman felt that the four sponsoring powers should be entitled to have documents put in their languages, English, Russian, and Chinese; that the Statute should also be in French because the original Statute was in French; and that as a matter of courtesy, the documents should be in Spanish because of the large number of Spanish-speaking representatives present and also to be at San Francisco. M. Star-Busmann stated he had no objection to the five languages, but he would like to see the fact mentioned that the drafts discussed had been in English and French. The Chairman said he would prefer not to feature one language over

another, and that to mention this would merely be stating a historical fact. However, he said, this would be for the Committee to decide.

Dr. Kernisan (Haiti) observed that if he understood the question correctly, the Committee was discussing the method of transmitting its work to the San Francisco Conference; that some felt a final act was unnecessary since this was only a technical conference, but that others took a different view. He thought that since this was a preparatory conference of a technical nature and the representatives expressed technical opinions of their countries and had agreed on a certain number of points embodied in the Statute, this result must be authenticated and there must be a document embodying the Statute signed by all members of the Committee. If the report and Statute were transmitted without this, there would be no material proof that these were actually the results of the Committee's collaboration; and he felt therefore that an act of some kind was necessary.

Minister Novikov (Soviet Union) stated that he was unwilling to prolong the discussion of the languages in which the final act should be drafted. He felt, however, that various arguments which looked as though they had merely a technical meaning gave the impression of assuming a political character. He had the impression that there was objection to the use of the languages of two of the sponsoring powers. He was sorry to state this impression but he felt obliged to call attention to it.

Professor Basdevant (France) declared that he had avoided political implications in his remarks. He thought, and continued to think, that his suggestion was the best course to pursue. Even some of those who had supported the suggestion of the Chairman felt it necessary to suggest amendments. Furthermore, even if the Chairman's suggestion were adopted, the document would have to be transmitted. This transmission would have to be made by the Chairman. He thought it was simpler for the Chairman to make the transmission since this would avoid giving a wrong impression of the character of the meeting of the Committee. The Committee had been preparing recommendations and its work was not in completed form. A committee at San Francisco would prepare more authoritative texts on which the Conference would have to decide. This committee would not sign a final act but would merely transmit its work to the President of the Conference. This would be the same as the procedure which he proposed here. He felt it was the simplest method and would divide the Committee least.

Mr. Chief Justice Farris (Canada) stated that he was obliged to leave the session and introduced Mr. Chipman, who would be the representative of Canada at San Francisco, replacing Mr. John Read, the Legal Adviser.

Dr. Moneim-Riad Bey (Egypt) declared particularly to the representative of the Soviet Union that he had never had the slightest idea of pressing a prejudice against the use of any language. He called attention to the fact that this Committee had met under the auspices of the four sponsoring governments and expressed his gratitude to all of them. He further pointed out that he had not pressed a natural desire for the employment of his own language and stated that he would be glad to sign whatever his colleagues agreed to.

Mr. Fahy (United States) declared that the suggestion of the Chairman seemed to him most appropriate. He thought it was appropriate that the documents should go to the Conference in five languages, for three of these languages were the languages of the sponsoring powers and the other two were widely used. He asked who could say that this procedure was inappropriate. One objection which had been raised was that there were no final copies. The Committee, however, had been discussing drafts with meticulous care and there should be a presumption, until it was proved false, that the draft correctly represented the changes agreed upon. Furthermore, any errors which might have crept in could be corrected. Another objection was that some of the representatives had scruples about signing documents in languages with which they were not familiar. He thought that the translations were conscientious and scrupulous, and if errors crept in, they could be corrected. The third objection was that the work was not final, but he felt that this had been adequately met by the Chairman, who had stated that "final act" was a term of art. All that the Committee would be doing would be finishing its work here and transmitting the results to the Conference at San Francisco.

Professor Bilsel (Turkey) stated that he felt the discussion was exaggerating the importance of languages. He noted that French had formerly been considered preeminent as the language of diplomacy, but that English had been admitted as an official language at the Paris Peace Conference in 1919. Since that time there had been a trend toward the use of more languages, and there were increasing demands for the use of various languages. For example, he would like to ask for the use of Turkish. During this war there had been great insistence upon the independence of states, and one of the attributes of independent states was the right to use their own languages. He thought that the representatives could make a reservation with regard to documents which they did not understand. He called attention to the fact that committees did not generally sign documents, but he felt that this group was a commission rather than a committee and that it was not a part of the San Francisco Conference.

Several of the representatives called for a vote upon the question.

Sir Michael Myers (New Zealand) called attention to the fact he had presented an amendment to the motion.

Judge Delgado (Philippine Commonwealth) declared that he had said he would accept the amendment if his seconds agreed. He had not, however, heard any statement from the seconds.

The Chairman suggested that the Committee take a short recess to discuss the matter informally.

The Chairman stated that during the brief recess a draft text had been proposed which he hoped would meet with the approval of the representatives. This document would be called a "record" instead of a "final act". The Chairman then read the text as follows:

"Record
of the

Meeting of the Committee of Jurists for the Preparation
of a Draft of a Statute for the International Court of
Justice To Be Submitted to The United Nations Conference
On International Organization

Pursuant to the invitation extended on March 24, 1945 by the Government of the United States of America, on behalf of itself and of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China, a Committee of Jurists, as enumerated in the annexed list, met in Washington on April 9, 1945:

The Committee held sessions beginning on April 9 and ending on April 20. It has completed its work and transmits the attached draft of a statute of an international court of justice as referred to in Chapter VII of the Dumbarton Oaks Proposals, and a Report to accompany that draft, for submission to The United Nations Conference on International Organization, both of which documents are in the Chinese, English, French, Russian and Spanish languages.

In testimony whereof the undersigned have signed the present Record likewise in the Chinese, English, French, Russian and Spanish languages at the City of Washington on the twentieth day of April, one thousand nine hundred and forty-five.

[Signatures follow here.]

The Chairman noted that an annexed list had been provided for in order to avoid repeating the list of names in the center of the document itself. He called attention to the fact that the statement that the documents had been unanimously agreed to

had been eliminated, to meet some of the objections raised. He then asked if the Committee would approve this document, so that it could be put into five languages for signature the following day.

Professor Basdevant (France) said he did not want to resume the lengthy discussion on this point, but he wished to ask the Committee if it preferred the Chairman's proposal or his own suggestion that the Chairman transmit these documents. He said that his objections were still very strong.

The Chairman stated that if this record were signed as he suggested, it would be transmitted to the San Francisco Conference by the representatives of the four sponsoring powers, as a matter of courtesy. He then called for a vote whether the Committee approved the procedure proposed by himself or approved Professor Basdevant's proposal. Twenty-one members of the Committee voted in favor of the Chairman's proposal, and six favored Professor Basdevant's proposal.

The Chairman then said that a list of the representatives with their titles would be circulated immediately so that the heads of the different delegations could indicate who should sign the document the following day. It was agreed that the Committee would meet at 2:30 p.m. on April 20, in a very short session, to sign this document. Upon a motion by Mr. Fitzmaurice (United Kingdom), seconded by Ambassador Cordova (Mexico), it was agreed that more than one jurist in each delegation would be allowed to sign this document.

The Chairman then called attention to the fact that English and French copies of the Rapporteur's report were available.

The Chairman also announced that Dr. James, the Law Librarian of the Library of Congress, had sent him a letter stating that he would be glad to have the members of the Committee visit the Library of Congress, particularly the law library. The Chairman suggested that perhaps some of the Committee members might care to be conducted through the Library of Congress by Dr. James at 10:30 the next morning.

The Chairman then stated that the representative of Egypt had handed him a statement requesting that a document, a note on Article 9 of the Permanent Court of International Justice and the position of the Moslem system, be made part of the record so that that system of law could be kept in mind in this work. It was agreed that this document should be incorporated in the record.

The Chairman also called attention to a note received several days ago from the Minister of the Netherlands stating that he had been designated that government's representative on this Committee. This was also incorporated in the record.

The meeting adjourned until 2:30 p.m. on April 20.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

RESTRICTED

Jurist 86

G/73

April 25, 1945

REPORT
ON DRAFT OF
STATUTE OF AN INTERNATIONAL COURT OF JUSTICE
REFERRED TO IN CHAPTER VII OF THE DUMBARTON OAKS PROPOSALS
(Professor Jules Basdevant, Rapporteur)

SUBMITTED BY THE
UNITED NATIONS COMMITTEE OF JURISTS
TO THE
UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION
AT SAN FRANCISCO

(San Francisco, April 25, 1945)

(This report is a revision of Doc. 61 (revised)
which was issued in Washington on April 20.)

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

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

Nevertheless, the Committee considered that it was for the San Francisco Conference (1) to determine in what form the mission of the Court to be the principal judicial organ of The United Nations shall be stated, (2) to judge whether it is necessary to recall, in this connection, the present or possible existence of other international courts, (3) to consider the Court as a new court or as the continuance of the Court established in 1920, the Statute

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

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

DRAFT STATUTE

Article 1

[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.]

* * *

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

CHAPTER I Organization of the Court

The Committee has introduced only one modification in Article 2. Despite the respect attaching to the name of The Permanent Court of International Justice, it has eliminated that name from this Article in order not to prejudice in

any way the decision which is to be made with regard to Article I: this elimination may be only provisional.

* * *

Article 2.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurist consultants of recognized competence in international law.

* * *

Although the proposal has been made to reduce the number of the members of the Court either preserving the general structure thereof, or changing it, the Committee has deemed it preferable to preserve both this structure and the number of judges which in 1929 was made fifteen. It has been pointed out that, thereby, the interest taken in the Court in the different countries would be increased and that the creation of chambers within the Court would be facilitated. A member of the Committee suggested that it would permit the representation of different types of civilization. On the other hand, the Committee has seen fit to establish directly in this Article the rule derived indirectly from another provision and which does not permit a State or Member of The United Nations to have included more than one of its nationals among the members of the Court.

Article 3

The Court shall consist of fifteen members, no two of whom may be nationals of the same State or Member of The United Nations.

* * *

For the election of the judges it is provided, in accordance with what seems to be the spirit of the Dumbarton Oaks Proposals, to have it performed by the General Assembly and the Security Council of The United Nations, leaving to these bodies the task of determining how a State which, while accepting the Statute of the Court, is not a Member of The United Nations, may participate in the election. The method of nomination with a view to this election gave rise to an

extensive debate, certain delegations having advocated nomination by the Governments instead of entrusting such nomination to the national groups in the Permanent Court of Arbitration as is established in the present Statute; the continuance of the present regime has been defended as introducing a non-political influence at this point of the procedure for the election of the judges. In the debate, at the moment of the vote, the Committee was divided without a majority being clearly shown. Afterward a compromise suggestion was presented by the Delegate of Turkey; it would have consisted in giving the Government the power of not transmitting the nominations of candidates decided upon by the national group, this disagreement depriving the country concerned of the exercise of the right to nominate candidates for the election in question.

The Committee deemed it fitting to submit two drafts on this point. One, retaining the nomination by the national groups of the Permanent Court of Arbitration, maintained with mere formal improvements Articles 4, 5, and 6 of the Statute; the other modifies these articles in order to provide rules for the nominations of candidates by the Governments.

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

Article 4

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

(2) In the case of Members of The United Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members

Article 4

(1) The members of the Court shall be elected by the General Assembly and by the Security Council of The United Nations from a list of persons nominated in accordance with Articles 5 and 6.

(2) 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

of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

on the proposal of the Security Council.

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

Article 5

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

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

Article 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 of States parties to the present 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 national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

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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.

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

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

Article 8.

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

Article 9.

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

Article 10.

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

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

Article 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.

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

(2) If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

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

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

* * *

The Committee has felt that the rule subjecting the Court to a complete renewal every nine years presented serious drawbacks, despite the rule of the re-eligibility of the judges, and the practice, widely followed in 1930, of re-election. Hence it proposes to substitute therefor a system of renewal by one-third every three years. However, certain doubts appear to remain regarding the methods of the system, and these might be made the subject of a further examination with a view to determining whether a solution could not be found in some other way which would consist, contrary to what is said in Article 15, in fixing at nine years the duration of the term of any judge, no matter the circumstances under which he is elected.

Article 13.

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

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

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

(4) In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General of The United Nations. This last notification makes the place vacant.

* * *

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

Article 14.

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of The United Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

* * *

The Committee has felt that, in the English text of Article 17, par. 2, it is well to eliminate the words "an actove", in order to establish closer conformity with the French text: the latter has not been changed. The same is

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

Article 15.

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

Article 16.

(1) No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

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

* * *

The Committee has felt that in the English text of Article 17, (2), there should be eliminated the words "an active" in order to establish more exact conformity with the French text: the latter has not been changed. The same is true of the substitution of the expression "shall be" for the word "is" in the English text of the same article, paragraph (3). On the other hand, no change is made in Article 18 except in paragraph (2), where there is mention of the Secretary-General of The United Nations.

Article 17.

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

(2) No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

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

Article 18

(1) No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

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

(3) This notification makes the place vacant.

* * *

The Committee does not propose any change in Article 19 concerning the granting of diplomatic privileges

and immunities to members of the Court. However, it points out that, insofar as The United Nations Charter regulates the granting of such privileges and immunities to the representatives of The United Nations and their agents, it will be well to examine the appropriateness and the way of coordinating such regulations.

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

Article 19.

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

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

Article 20.

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

* * *

Par. 2 of Article 21 has given rise to discussion in consequence of the suggestion that has been made to authorize the Court to appoint, if it sees fit, a Secretary-General in addition to the Registrar. Some have appeared to fear this duality, while others would prefer to grant to the Court the power to appoint such officers as it considers necessary; however, it was not desired to require that all officers under it be appointed by it. These various considerations led to the completing of this paragraph by a flexible formula that will authorize the Court either to appoint or to delegate the making of the appointment.

As to paragraph (3), which asserted the compatibility of the function of the Registrar of the Court and those of the Secretary-General of the Permanent Court of Arbitration, it appeared superfluous and has been eliminated.

Article 21.

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

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

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

Article 22

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

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

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

It does not propose to modify Articles 24 and 25.

Article 23.

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

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

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

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

Article 24.

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

(2) If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

(3) If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25.

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

(2) Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

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

* * *

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

As a matter of fact, these Chambers were indeed established, but they never functioned, and it appears henceforth superfluous to retain the provisions concerning them. But it has appeared advisable to authorize the Court to establish, if necessary, on the one hand, Chambers dealing with particular categories of cases, and the cases relating to labor, transit and communications have been kept as examples in this connection, and on the other hand, at the request of the parties, to establish a special Chamber to deal with a particular case. The Committee has believed that this change might facilitate, under certain circumstances, recourse to that jurisdiction.

Article 26

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

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

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

* * *

These Chambers, as well as those which will form the subject of Article 29, will render decisions which will be decisions of the Court as already stated in Article 73 of the Rules of the Court. They may, as provided for by the old Article 28 of the Statute, and as will become the rule for the Court itself, by virtue of the new text of that article, sit elsewhere than at The Hague.

Article 27.

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

Article 28.

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

* * *

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

Article 29.

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

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

* * *

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

Article 30.

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

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

* * *

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

Article 31.

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

(2) If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

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

(4) The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

(5) Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

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

* * *

Except for the substitution, in Paragraph 5 of Article 32, of the General Assembly of The United Nations for the Assembly of the League of Nations, and the deletion in the same paragraph of the words "on the proposal of the Council," this Article and Article 33, both concerning the financial system of the Court, are not changed.

Article 32.

(1) Each member of the Court shall receive an annual salary.

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

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

(4) The judges appointed under Article 31, other than members of the Court, shall receive indemnities for each day on which they exercise their functions.

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

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

(7) Regulations made by the General Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

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

Article 33.

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

CHAPTER II

Competence Of The Court

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

Article 34.

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

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

* * *

Aside from the purely formal changes necessitated by references to The United Nations Organization instead of to the Covenant of the League of Nations, Article 35 is amended only in that, in the English text of paragraph 2, the word "conditions" is substituted for the word "provisions" and in paragraph 3, the word "case" is substituted for the word "dispute" which will assure better agreement with the French text.

Article 35.

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

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

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

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

* * *

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

The suggestion was made by the Egyptian delegation to seek a provisional solution in a system which while adopting compulsory jurisdiction as the general rule would permit each State to escape it by a reservation. Rather than accept this view, the Committee has preferred to facilitate the consideration of the question by submitting two texts as suggestions rather than as a recommendation.

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

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

Some delegations desired to see inserted in Article 36 (1) the specification that the jurisdiction of the Court extends to "justiciable" matters or those "of a legal nature" which the parties might submit to it. Objections were made to the insertion of such a specification in a provision covering the case in which the jurisdiction of the Court depends on the agreement of the parties. Some refused to restrict in this way the jurisdiction of the Court. Fears were also expressed regarding difficulties in interpretation which such a provision might cause, whereas practice has not shown any serious difficulties in the application of Article 36 (1). Therefore it was not changed as indicated.

Article 36.

The Committee submits two alternative texts of this Article since the opinion of the members of the Committee was divided on the selection of one or the other.⁷

(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

(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

or in treaties and conventions in force.

or in treaties and conventions in force.

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

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

(a) the interpretation of a treaty;

(a) the interpretation of a treaty; or

(b) any question of international law;

(b) any question of international law; or

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation; or

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

(d) the nature or extent of the reparation to be made for the breach of an international obligation.

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

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

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

* * *

In order to adapt the provisions of Article 37 to the

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

The form to be given to this second rule depends on the decision which is made on the question of whether the Court governed by the Statute in preparation is considered as a new Court or as the Court instituted in 1920 and governed by a Statute which, dating from that year, has been revised in 1945 as it was revised in 1929. In order not to prejudge the reply which the San Francisco Conference will have to give apropos of Article 1 and to show that in its 1920 text Article 37 is thought to be insufficient, the Committee has herein recorded, for consideration, the said article as proposed in the American draft.

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

Article 37.

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

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

* * *

Article 38, which determines, according to its terms, what the Court "shall apply" has given rise to more controversies in doctrine than difficulties in practice. The Committee thought that it was not the opportune time to undertake the revision of this article. It has trusted to the Court to put it into operation, and has left it without change other than that which appears in the numbering of the provisions of this article.

Article 38.

(1) The Court shall apply:

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

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

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

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

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

CHAPTER III

Procedure

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

Article 39.

(1) The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

(2) In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

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

* * *

In the other provisions of the Statute relative to procedure, the Committee did not think it should propose important innovations. These provisions, based directly on those of The Hague Conventions, have given satisfaction in practice. In the matter of provisional measures, it considered that the indication of such measures ought to be notified to the Security Council as formerly they had to be to the Council of the League of Nations (Article 41).

It thought it opportune, moreover, to improve the agreement between the two texts of the Statute by changing certain expressions in the English text of Articles 43 (2), 47 (2), 53 (1), and 55 (1) and (2), without its being necessary to change the French text. Articles 40 to 56, accordingly, now read as follows:

Article 40.

(1) Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties shall be indicated.

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

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

Article 41.

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

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

Article 42.

(1) The parties shall be represented by agents.

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

Article 43.

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

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

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

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

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

Article 44.

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

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

Article 45.

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

Article 46.

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

Article 47.

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

(2) These minutes alone shall be authentic.

Article 48.

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

Article 49.

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

Article 50.

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

Article 51.

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

Article 52.

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

Article 53.

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

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

Article 54.

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

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

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

Article 55.

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

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

Article 56.

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

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

* * *

An innovation which, moreover, confirms practice, has been introduced in Article 57 (1) which provides that not only a dissenting judge but any judge, shall have the right to annex to the decision the statement of his individual opinion.

Article 57.

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

* * *

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

Article 58.

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

Article 59.

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

Article 60.

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

Article 61.

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

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

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

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

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

Article 62.

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

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

Article 63.

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

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

Article 64.

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

CHAPTER IV

Advisory Opinions

It is for the Charter of The United Nations to determine what organs of the latter shall be qualified to lay before the Court a request for an advisory opinion. Although this was not stated in the Dumbarton Oaks Proposals, the Committee believed, however, that it might presume that not only the Security Council but also the General Assembly would have this function, and it is on that basis that it has determined how the application should be submitted. The suggestion has been made to allow international organizations and, even to a certain extent, States to ask for advisory opinions; the Commission did not believe that it should adopt it. Aside from that, the changes made in Articles 65 to 68 are purely formal and do not call for any comment.

CHAPTER IV

Advisory Opinions

Article 65.

(1) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the General Assembly or the President of the Security Council or by the Secretary-General of The United Nations under instructions from the General Assembly or the Security Council.

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

Article 66.

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

(2) The Registrar shall also, by means of a special and direct communication, notify any Member of The United Nations or State entitled to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

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

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

Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of The United Nations and to the representatives of Members of The United Nations, of States and of international organizations immediately concerned.

Article 68.

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

* * *

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

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CHAPTER V

Amendments

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

Article 69

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

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

* * *

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

* * *

In drafting the above texts, the Committee has been careful to respect the distribution of subject matter and the numbering of articles just as they occur in the Statute of the Permanent Court of International Justice. It has felt that in so doing it would facilitate scientific work and the utilization of jurisprudence.

* * *

The Committee has not disregarded the fact that among The United Nations there are many which are parties to the Statute of the Court drawn up in 1920 and revised in 1929, and that on that account they are bound not only to one another, but also with respect to States which do not appear among The United Nations. Hence the obligation for the former of adjusting the situation arising between them and those States for that reason. That adjustment was not within the province of the Committee: it did not undertake to prejudge it. It should be also borne in mind that in building up an institution of international justice the regular channels must be followed with special strictness.

THE UNITED NATIONS
COMMITTEE OF JURISTS

Washington, D. C.

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April 25, 1945

RAPPORT

PROJET DE

STATUT D'UNE COUR INTERNATIONALE DE JUSTICE
VISEE AU CHAPITRE VII DES PROPOSITIONS DE DUMBARTON OAKS
(Professor Jules Baselevant, Rapporteur)

PROPOSE PAR LE
COMITE DE JURISTES DES NATIONS UNIES
A LA
CONFERENCE DES NATIONS UNIES
POUR L'ORGANISATION INTERNATIONALE
A SAN FRANCISCO

(San Francisco le 25 Avril 1945)

Le présent rapport est un texte revu et corrigé
du Document No. 62 (Revu) qui a été distribué à
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