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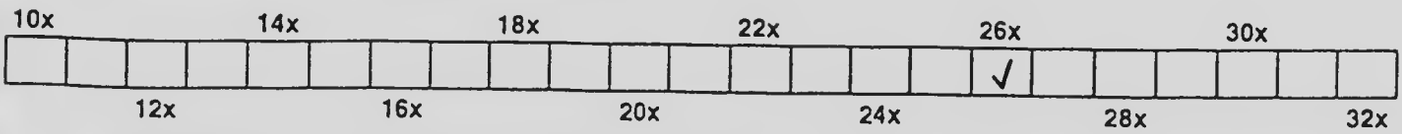

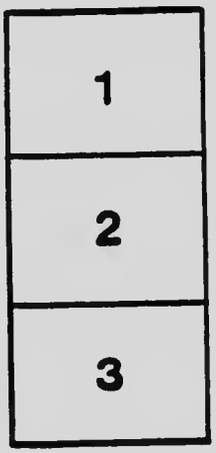

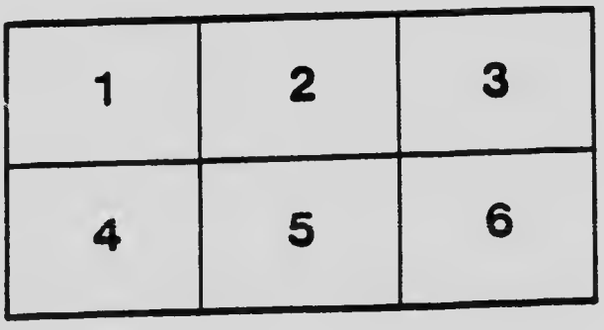

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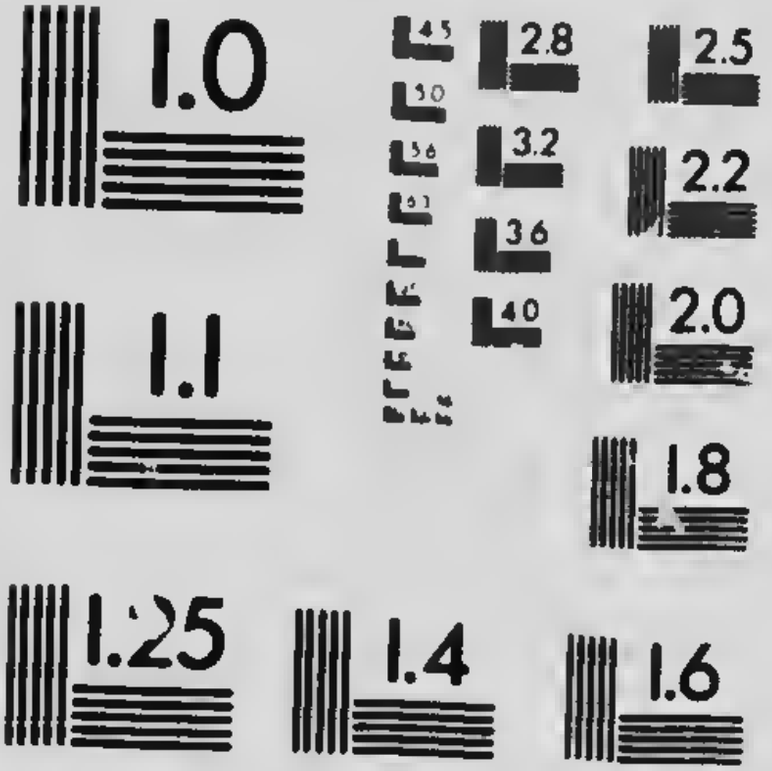

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The Reports to the Hague Conferences of 1899 and 1907

Carnegie Endowment for International Peace
DIVISION OF INTERNATIONAL LAW

The Reports to the Hague Conferences of 1899 and 1907

BEING THE

OFFICIAL EXPLANATORY AND INTERPRETATIVE COMMENTARY ACCOMPANYING THE DRAFT CONVENTIONS AND DECLARATIONS SUBMITTED TO THE CONFERENCES BY THE SEVERAL COMMISSIONS CHARGED WITH PREPARING THEM

TOGETHER WITH THE

TEXTS OF THE FINAL ACTS, CONVENTIONS AND DECLARATIONS AS SIGNED, AND OF THE PRINCIPAL PROPOSALS OFFERED BY THE DELEGATIONS OF THE VARIOUS POWERS AS WELL AS OF OTHER DOCUMENTS LAID BEFORE THE COMMISSIONS

EDITED, WITH AN INTRODUCTION, BY

JAMES BROWN SCOTT
DIRECTOR

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PREFACE

It is the constant and the necessary practice of those who seek to ascertain the precise meaning and application of rules of law, as formulated by law-making bodies, to study the intentions of the legislators as revealed in the debates leading up to the passage of the enactments in question, and also as evidenced in the formal reports of the committees charged with their preparation. Thus, in the interpretation of a statute enacted by the Congress of the United States, the investigator will read the record of the debates had in the Senate and in the House of Representatives on the subject, as well as the committee reports and the original projects of law, or bills, which have individually or in combination been the starting-point of the legislative action resulting in the statute. The thorough student will even go behind the original bills as introduced and seek the light shed by such official communications as messages from the President transmitting the views of the Executive on needed legislation.

This method of examination is quite as applicable to the construction and interpretation of the rules of international law when these rules have been formulated by an international congress of legislative functions. In the case of rules of law laid down in the conventions and declarations concluded at the First and Second Hague Peace Conferences, we are fortunate in having at our disposal officially published proceedings, containing not only the debates in the Conferences and the reports of the commissions charged with preparing and submitting the drafts of agreements to the Conferences in plenary session, but also the debates at length within the commissions and in a number of subordinate committees, supplemented by the texts of the proposals offered by the delegations of the various Powers. Not only has the student this wealth of material at hand, but he may also look deeper and examine the instructions given by the various Governments to their respective delegations, although it is true that such instructions are accessible in the cases of only a few countries, among which, fortunately for American and British students, are Great Britain and the United States.[1] Of all this material bearing upon the conventional rules as finally adopted, the place of first importance belongs to the declared reports made to the Conferences by the several commissions in explanation of the draft conventions prepared and submitted by them. With rare exception the conventions as submitted by the commissions to the Conferences of [illegible] the discussion in conference and were adopted as proposed, being subject to purely formal changes of style by a general drafting committee before signature. These reports therefore constitute the *raison d'être* of the present volume. But

[1] These instructions may be found in the papers laid before Parliament and in the volumes of the *Foreign Relations of the United States*. The American instructions have been reprinted by the Carnegie Endowment for International Peace in *Instructions to the American delegates to the Hague Conferences and their official reports* (New York, 1916).

although most illuminating in themselves, they frequently refer to the proposals made from time to time by the delegations of the various Powers taking part in the debates and discussions, which were well known to the members of the Conferences, who had already received copies of them in committee. These proposals, printed in the official proceedings as *annexes* to the reports and to the minutes, are second in importance only to the reports themselves in reaching an understanding of the articles of the signed agreements. As an exposition of the position of the Governments in regard to certain principles and rules of international law, they outrank even the reports.

A problem confronting the editor in the preparation of this book was to make such a selection from the voluminous official proceedings of the two Conferences as could be compressed within the compass of a single volume, and at the same time to omit no essential document. Doubtless some very interesting parts of the records of the Conferences have been omitted, but it is believed that everything essential to show the rules in their proper light and setting has been included, either in its complete form, or through annotation. Especially have the propositions of the various delegations, referred to but not quoted in the reports, been set forth in full. To this material taken from the official proceedings some of the diplomatic correspondence leading up to the Conferences and also the protocol signed in 1910 additional to the Prize Court Convention have been added. As this protocol makes important modifications to that convention and is to be considered as forming an integral part thereof, its inclusion is necessary; and as it was not prepared at the Peace Conference and as it was not accompanied by a report that may be said to have an international character, it has been thought advisable to supply a commentary by printing the report thereon made to the Secretary of State of the United States by the American delegate plenipotentiary to negotiate and sign the protocol.

The plan of this volume is therefore to set forth the indispensable diplomatic correspondence leading up to each Conference, the Final Act thereof, and the conventions and declarations in the order in which they are enumerated in the Final Act. Each convention and declaration is immediately followed by its respective report, which in turn is followed by the documents which are mentioned therein, here called annexes and given consecutive numbers for convenience in using the volume. The part assigned to each Conference is closed with a statement of the extent to which the various Powers have accepted the agreements through signature, ratification, adhesion, and reservation.

Throughout the reports to the Conferences it is observable that the delegates have, in drafting the conventions and declarations, been greatly influenced by and have made free use of earlier attempts at codification, both official and unofficial. It also is true that some of the conventions adopted, such as those for

the adaptation of the principles of the Geneva Convention to maritime warfare, necessarily implied a study of existing conventions. The inclusion in this volume of such of these documents as would be desirable for the reader to have at hand would swell the proportions of the book beyond reasonable measure. It has accordingly been decided to issue a companion volume which will contain the documents above referred to and will at the same time afford an opportunity to bring into the collection numerous related documents which the investigator is now obliged to seek in a variety of sources.

The translations of the several conventions and declarations are based upon the official translations transmitted by the Department of State of the United States to the Senate. That official translation has, however, been departed from in not a few instances. The principal cause of such changes as have been made lies in the requirements imposed by the reports. In order to make the translation of the conventions accord with the language of the reports it has at times been necessary to render the French of the conventions into rather more literal English than obtains in the official translations. For instance, the draft of the last paragraph of Article 23 of the 1907 Regulations respecting the laws and customs of war on land contained the words '*contre leur propre pays*' and, as appears from the report of the commission (*post*, p. 525), the phrase was amended by omitting the word '*propre*' so that the phrase as adopted read '*contre leur pays*', which both the American and British official translations render 'against their own country'. We have rendered it 'against their country'. Again, in Article 44 of the same Regulations, as will be seen from the same report, the commission thought it best to change the French word '*population*' to the word '*habitants*'. In the Regulations as adopted the word is '*population*', which the official translation renders into English by 'inhabitants'. We have rendered '*habitants*' by 'inhabitants', and '*population*' by 'population'. Other and less simple departures from the official translations occur where the latter employ inversions of the structure of the sentence in the original. In all cases it has been sought to carry the English phraseology of the conventions back through the reports to the original proposals and thus to place before the reader identity of form in English where such identity obtains in the original French. That the translations here given of the conventions show many variations from the official translations must not be understood as reflecting upon the accuracy of the latter, but as having been introduced in order to set before the reader identical English in the place of identical French. It would seem hardly consistent where the later Conference has adopted without alteration the wording of provisions adopted by the earlier Conference to offer the reader different translations, even although both are correct. Such a course would also have the result of putting the reader on inquiry to make sure that under the change in form there did not lurk some change in meaning. The necessary translations of the reports and annexes have been

prepared by Messrs. W. Clayton Carpenter, Henry G. Crocker, and George D. Gregory, of this city, and have been made to harmonize in general with the language of the official translations of the conventions and declarations of the Department of State in their somewhat modified form as indicated above.

The tabular statements of the signatures, ratifications, adhesions, and reservations to the several conventions and declarations have been taken from the volume prepared in the Division of International Law of the Endowment entitled *The Hague Conventions and Declarations of 1899 and 1907*. The correctness of these tabular statements has been confirmed by the Netherland Government through a communication to the Director from its Legation in this city, dated October 7, 1915. It is understood that no change in the status of the agreements has taken place since that date. An examination of the various signed agreements discloses the fact that while some countries occasionally reserved from their acceptance certain specified articles, at other times they merely referred in signing, and later in ratifying, to certain declarations, statements or reservations which they had made in the course of the Conference concerning the meaning of a convention or declaration as a whole or as to some of its provisions, without, however, adding the text thereof to the signature. For this reason it is sometimes difficult to know, without consulting the proceedings, the exact sense in which a Power signing a convention agreed to be bound by it, and in the present volume such declarations or statements of reservations, when not textually appended to the signature on the convention but only referred to there, are also given in full and may be found in the foot-notes to the reservations as appended to the signatures.

It should be stated, to avoid possible misunderstanding, that the text of the volume consists solely of official documents, with the exception of the introduction and occasional foot-notes for which the editor is responsible.

The official published proceedings of the First Conference are referred to in the foot-notes as *Procès-verbaux*; those of the Second as *Actes et documents*. The full titles of the publications are respectively: (1) *Conférence internationale de la paix. La Haye 18 mai–29 juillet 1899. Ministère des affaires étrangères. Nouvelle édition. La Haye, Martinus Nijhoff, 1907*; (2) *Deuxième conférence internationale de la paix. La Haye 15 juin–18 octobre 1907. Actes et documents. Ministère des affaires étrangères. La Haye, imprimerie nationale, 1907*. The 1907 edition of the proceedings of the 1899 Conference is used in preference to the first edition issued by the Netherland Government (*La Haye, imprimerie nationale, 1899*), for the reason that the latter is not so generally accessible.

JAMES BROWN SCOTT,
Director of the Division of International Law.

WASHINGTON, D.C., *February 28, 1916.*

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INTRODUCTION

It is the custom of European conferences to accompany a convention by a report giving an account of the origin, nature, and interpretation of the provisions thereof as understood and interpreted by the members and adopted by the conference at one and the same time with the convention. The report is the work of a specially qualified person called the reporter, and the document itself may be considered as the official, authoritative, and interpretative commentary of the convention. This custom does not obtain in the English-speaking world, but it was thus explained by Lord Desart, president of the London Naval Conference and chairman of the British delegation, in transmitting to his Government the Declaration of London drafted by that Conference :

> The proceedings of the Conference in plenary meetings are recorded in the minutes, and short summaries were made of the discussions in grand committee. Attached to these minutes is, among other papers, the general report to the Conference prepared by M. Renault. We desire to call your particular attention to this document, which contains a most lucid explanatory and critical commentary on the provisions of the Declaration. It should be borne in mind that, in accordance with the principles and practice of continental jurisprudence, such a report is considered an authoritative statement of the meaning and intention of the instrument which it explains, and that consequently foreign Governments and courts, and, no doubt also, the International Prize Court, will construe and interpret the provisions of the Declaration by the light of the commentary given in the report.[1]

Without stopping to consider whether the report of a convention is ratified by the Government ratifying the convention and whether the provisions thereof are to be interpreted by the ratifying Government in the sense in which they are explained and interpreted by the official report accompanying the convention, it may be said without hesitation that it is often difficult, if not impossible, to obtain an adequate understanding of the convention and its provisions without carefully studying the text of the official report accompanying and explaining it. This is especially true of large conferences in which many Powers are represented and many projects presented and considered, and where the text of the convention ultimately adopted is largely a matter of compromise.

The Hague Conferences were very large assemblies. In the First, held at The Hague in 1899, official delegates of twenty-six countries attended and took part in the proceedings. In the Second Hague Conference forty-four countries were officially represented and through their delegates took part in the proceedings, contributing in larger or lesser degree to the results reached by this illustrious assembly.

The conventions and declarations of both Conferences have been published in many editions in English, to speak of only one language, and are, it is believed, easily accessible to any reader who cares to consult them. The student and professor, the statesman and man of affairs, however need more than the bare text of the various conventions and

[1] Correspondence and Documents respecting the International Naval Conference, held in London, December 1908—February 1909 ; Misc. No. 4 (1909), Cd. 4554, pp. 93–94.

declarations in order to clear up doubts and difficulties which arise when they are examined with care or when it is sought to interpret and to apply them to concrete situations. Recourse must be had to the proceedings of the Conference, and in first instance to the reports which, as has already been said, were prepared by competent and skilful persons designated by the Conference because of knowledge and familiarity with the subject-matter of the proposed conventions or declarations, and possessing the confidence of their colleagues.

The reports are thus indispensable to those whose duty it is to study and expound them and whose privilege it is to apply them in international relations. Yet it is believed that hitherto no edition of the various conventions and declarations of either Conference has been published containing the reports interpreting and explaining them which, as previously stated, were adopted by the Conference at one and the same time as their official commentaries. They are locked up in the official proceedings of the Conference, and it is necessary to have at hand either the bulky volume of the proceedings of the First Conference or the India paper edition thereof, difficult and hard to handle, and the three large and unwieldy volumes of the Second Conference, which require the strength of one man to handle and the patience rarely vouchsafed to any one to spend the time necessary to locate the passage desired, even although the volumes are supplied with an elaborate table of contents and a not unserviceable index.

An attempt has been made to meet the needs of persons either compelled or desiring to study the official reports accompanying the conventions and declarations by freeing the reports from the proceedings, by translating them into English, by having them follow the conventions and declarations of the two Conferences, and by issuing them in attractive and usable form, within the compass of a single and not over-large volume.

It is not the aim of the present introduction to discourse the origin, the purpose, or the results of the two Conferences, as the first and second rescripts of the Russian Minister of Foreign Affairs stated the purpose and as much of the origin of the Conference as is to be known at present. The conventions and declarations and the reports accompanying them contained in this volume make clear the results, and if accounts of the proceedings of the Conferences in narrative form are wanted they can be found on the market without difficulty and for a small outlay by any interested person. The aim of the introduction is rather to explain the nature of the Conferences, the method of procedure, the different kinds of documents and their importance.

The First Conference, when it met at The Hague, was a nameless body. It was only a conference proposed by His Majesty the Emperor of all the Russias, and invited by Her Majesty the Queen of the Netherlands, in agreement with the Czar, to meet at The Hague to consider the subjects contained in the Russian rescripts. The public, however, acclaimed it as a Peace Conference, well knowing that the meeting of official delegates to consider the reduction of armament and the means by which peace could be maintained was, in fact if not in theory, a Peace Conference. The delegates unconsciously took up the name, and without any formal vote it was recognized by them and is to-day everywhere recognized as the official name.

Attempts have been made to state the difference between an international congress and an international conference, but the difference is one of name, not of fact. The term 'congress' was at one time apparently a more usual designation, and students of international law and public affairs are familiar with the congresses that have met at West-

phalia, Utrecht, and Vienna, the congresses connected with the Holy Alliance, the congresses that met at Paris and Berlin, to mention but some of the most familiar and at the same time the most illustrious. But the conferences that have met at Geneva, Petrograd, and Brussels are examples of international assemblies, differing only in name from the gatherings just mentioned. The fact to be borne in mind is that the congress or the conference is an assembly of official delegates, meeting at the call of a Government and for purposes expressed in the call. Both are composed exclusively of official delegates who act according to the instructions of their respective Governments, given to them in advance or during the sessions in response to requests either for further instructions or for additional instruction concerning matters which have arisen during the sessions but which were unforeseen in advance of the meeting.

Now, an international gathering differs essentially from a parliament, a national congress, or a legislative body, all of which are composed of official persons but who act in accordance with their judgement and not according to instructions from their respective Governments. In an international conference each State has but a single vote, notwithstanding the number of delegates which it may choose to send and by which it is represented. In a legislative body each member has the right to vote. In an international assembly unanimity is the rule; in the legislative assembly the majority prevails. The reason is simple and easy of comprehension. A State is in international law a sovereign body, and all sovereigns being equal it naturally results that a sovereign cannot be overridden by another sovereign or a combination of sovereigns. The State sends its representatives to confer, not to be outvoted, otherwise the State would refuse the invitation which it is free to do since it is not in the nature of a summons. A legislative assembly is composed of members who meet not merely to confer but to enact laws, and to reach conclusions it is necessary that the will of the majority should prevail.

Much dissatisfaction has been expressed without the conferences concerning the unanimity rule, and at times within the Conferences, especially when a handful of States stood in the way of projects which the large majority of delegations wished to adopt, and by standing upon their rights prevented the majority from adopting them, even although the States objecting would not have been bound thereby. Yet it is doubtful whether the unanimity rule is really subject to criticism, for nations wishing to adopt the projects can do so after the adjournment of the Conference and bind themselves just as they as if the projects had been voted in the Conference.

The main thing, as was pointed out by Mr. Léon Bourgeois, is not that certain nations take a step in advance, but that all nations take the same step at one and the same time, however short or halting it may be. 'We are here', he said, 'to unite, not to be counted.' Opposition no doubt prevents the passage of projects which could properly be adopted, but it may be questioned whether nations overridden in a conference would be inclined to live up to the letter or the spirit of a convention which had been forced upon them, and it would seem the part of wisdom for the conference to content itself with the adoption of those projects which can be accepted with good-will without creating a bitterness of feeling that survives the adjournment, and to lay aside for a future conference a subject unavailingly discussed, trusting to an enlightened public opinion and to the lessons of experience to secure its acceptance, if indeed it be really worthy of acceptance. We must remember that nations, unlike men, who are things of the moment, can afford to move slowly and majestically.

It is believed that the instructions to the American delegation to the Second Conference, given by Mr. Elihu Root when Secretary of State of the United States, prescribe the rule in such matters leading to success:

> In the discussions upon every question it is important to remember that the object of the Conference is agreement, and not compulsion. If such conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the Powers cannot be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the Powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future conference in the hope that intermediate consideration may dispose of the objections. Upon some questions where an agreement by only a part of the Powers represented would in itself be useful, such an agreement may be made, but it should always be with the most unreserved recognition that the other Powers withhold their concurrence with equal propriety and right.
>
> The immediate results of such a conference must always be limited to a small part of the field which the more sanguine have hoped to see covered; but each successive conference will make the positions reached in the preceding conference its point of departure, and will bring to the consideration of further advances toward international agreement opinions affected by the acceptance and appli[illegible] of the previous agreements. Each conference will inevitably make further progr[illegible] and, by successive steps, results may be accomplished which have formerly appeared ...possible.
>
> You should keep always in mind the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached in that Conference, but also with reference to the foundations which may be laid for further results in future conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement.[1]

In a letter of instructions to the Honourable Robert Bacon, who was about to proceed on a mission of good-will and conciliation to South America in behalf of the Carnegie Endowment for International Peace, Mr. Root, as President of the Board of Trustees, said:

> The trustees of the Endowment are fully aware that progress in the work which they have undertaken must necessarily be slow and that its most substantial results must be far in the future. We are dealing with aptitudes and impulses firmly established in human nature through the development of thousands of years, and the utmost that any one generation can hope to do is to promote the gradual change of standards of conduct. All estimates of such a work and its results must be in terms not of individual human life, but in terms of the long life of nations. Inconspicuous as are the immediate results, however, there can be no nobler object of human effort than to exercise an influence upon the tendencies of the race, so that it shall move, however slowly, in the direction of civilization and humanity and away from senseless brutality.[2]

Another difference between an international conference and a national parliament or legislative body is that the former recommends whereas the latter adopts. That is to say, the international conference recommends certain projects which it approves to the States

[1] *Foreign Relations of the United States*, 1907, pt. ii, p. 1120; *Instructions to the American delegates to the Hague Peace Conferences and their official reports* (New York, 1916) p. 71.

[2] *For better relations with our Latin American neighbors—a journey to South America*, by Robert Bacon (Washington, 1915), p. 3.

in order that they may be approved by the treaty-making Power or by the constitutional department of the Government and thus become binding upon the nation. The members of the parliament or legislative body adopt a proposal and give it the form of a statute so that it leaves their hands as a law, in so far as they possess the law-making power. In one sense of the word it may be said that the work of a conference is incomplete, because the action of Governments is necessary to give the force and effect of law to the projects approved and recommended by the conference, but as the delegates act under instructions, and sign the various conventions or declarations also under instructions, although *ad referendum*, it is clear that the convention or declaration recommended to the Government creates a moral although not a legal obligation to accept it. Instances are comparatively rare in which a Government has refused to ratify a convention or declaration which its delegates signed, unless indeed the delegates felt themselves forced to sign what they did not really approve, in which case it was not to be expected that, freed from the pressure of a conference, their Governments would ratify their acts.

If the proceedings of the Hague Conferences be examined it will be found that there are various documents, known as the Final Act, conventions, declarations (signed and unsigned), resolutions, and certain documents grouped together under the general term of *vœux*, which term is difficult of translation and which may mean anything from a recommendation to an expression of opinion or desire. It is advisable to attempt to describe and define these various terms, as some of them are indefinite and as their exact nature is perhaps known only to the delegates, if indeed to them.

The Final Act is a document prepared by the Conference and formally signed by the delegates, stating the call of the Conference, its place of meeting, the Powers represented, the names of the delegates, the dates of assembling and adjournment, a list of the conventions and signed declarations, and the texts of the unsigned declarations, resolutions and *vœux*. It is not a treaty or convention, although formally signed; it is not submitted to nor does it require the ratification of the Powers. It is complete in itself and is to be so regarded because it is the official statement in summary form of the positive and tangible results of the Conference.

It will be seen by an inspection of the Final Act of the First Hague Conference that that epoch-making assembly adopted three conventions, namely, the Convention for the pacific settlement of international disputes, the Convention regarding land warfare, and the Convention applying to maritime warfare the principles of the Geneva Convention; and three signed declarations, namely, the prohibitions to launch projectiles from balloons, to use asphyxiating gases, and to use expanding bullets. It adopted a resolution respecting the limitation of military expenditures and *vœux* that the original Geneva Convention of 1864 relating to land warfare be revised, that rights and duties of neutrals be considered at a future conference, that the types and calibres of guns be studied by the Governments, that the Governments examine the possibility of the limitation of armed forces and war budgets, that the question of the inviolability of private property in naval warfare be considered at a subsequent conference, and, finally, that the bombardments of ports, towns, and villages by naval forces likewise be referred to a subsequent conference.

It will be observed that there was no unsigned declaration at the First Conference, although there was one at the Second concerning obligatory arbitration.

An attempt will be made to define and to distinguish the different terms which have just been mentioned. In the first place, it is to be noted that the convention is a docu-

ment signed by the official representatives of the Governments approving it. A declaration is of two kinds. One is signed by the official delegates, and in this respect it differs from the convention only in name and in the fact that its text is confined to a single subject instead of having many provisions, as is or may be the case with conventions. The other documents are unsigned.

The signed documents will first be considered. They represent the projects which have met with the approval of the Conference and which have been given the form of treaties or conventions adopted by the Conference, signed by the delegates of the countries accepting them, and transmitted by the Ministry of Foreign Affairs of the Netherlands to the different countries participating in the Conference for formal acceptance and ratification by the treaty-making power of the various countries and for deposit at The Hague after such ratification. It was formerly understood that a minister plenipotentiary furnished with full powers bound his Government by his signature, and while this may be true in theory in some instances, it is generally understood to-day that the signature of a delegate to an international conference, although he be furnished with full powers, is made *ad referendum*. This is particularly the case with the United States, because, while the President of the United States can appoint delegates and clothe them with full power, he cannot ratify the act to which they have affixed their signatures without the previous advice and consent of the Senate of the United States authorizing him so to do. It is therefore necessary that American plenipotentiaries sign *ad referendum*. The co-operation of legislatures with the executive in the exercise of the treaty-making power has become the rule instead of being the exception, and even those States in which the sovereigns can bind the countries without reference to a legislative assembly are unwilling to bind themselves by the act of signature, while other contracting Powers are only bound at a later period by the action of appropriate and internal organs.

It may therefore be stated that conventions and declarations are only signed *ad referendum* by the delegates taking part in the Conference, and whether or not this be literally true, it is a fact that a nation is bound only after the deposit of ratifications of the convention at The Hague and then only to those countries which have likewise ratified and deposited their ratifications at The Hague. That is to say, the ratification and the deposit thereof at The Hague, not the signing, creates a legal obligation. It is no doubt true that the signature creates an obligation, but it is at most a moral obligation to take the necessary steps to convert the moral into a legal one by ratifying and depositing the instrument of ratification at The Hague.

What has been said of the convention is equally true of the signed declaration.

The unsigned documents are, in the order of their rank, declarations, resolutions, and *vœux*. They are alike in the fact that they are unsigned and they are further alike in that they are complete within themselves, requiring no action on the part of Governments to perfect them, differing in this respect from the conventions and signed declarations, which require the action of the Governments to complete them. On the other hand, the unsigned documents are not the actions of the Governments; they are merely the expression of an opinion, more or less formal, of the Conference, and they are the acts of the Conference, not the completed, binding acts of the nations, as are the conventions and signed declarations when ratified. The unsigned documents will be considered in the order of their enumeration.

The declaration is a statement of the Conference of a very formal nature, declaring

or establishing a principle in so far as the Conference can declare or establish it. The one example of the unsigned declaration is that of the Second Conference respecting obligatory arbitration. It may be stated in this connexion that the treaty of general arbitration, improperly called a treaty of obligatory or compulsory arbitration, was opposed at the First Conference, where it was beaten by the opposition of Germany, and was proposed at the Second Conference, where it met the same fate at the hands of the same Power and its allies. In the First Conference, Article 19 of the Convention for the pacific settlement of international disputes was adopted after the failure to agree upon a convention by which the Powers reserved to themselves 'the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it'. This provision was thought to be meaningless, or at least to have little or no value, because nations do not need to reserve a power which they possess and which they have not renounced. The fact is, however, that it is by virtue of the reservation contained in this article that the series of arbitration treaties negotiated since the adjournment of the First Conference have been concluded. The article might have been adopted as a declaration, stating that the Powers represented at the Conference reserve the right to conclude joint or special agreements.

The Second Hague Conference failed, as has been stated, to adopt a general treaty of arbitration, but the partisans of arbitration treaties proposed a declaration which met with general agreement 'which, while reserving to each of the Powers represented full liberty of action as regards voting, enables them to affirm the principles which they regard as unanimously admitted: It is unanimous: (1) In admitting the principle of obligatory arbitration; (2) In declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of international agreements, may be submitted to obligatory arbitration without any restriction'. It will be observed that this is a statement on behalf of the Conference that the Powers represented therein admitted and declared the principle of obligatory arbitration without creating an obligation on the part of the Powers.

Next in order is the resolution, of which there was one instance in the First Conference, dealing with the limitation of military expenditure, and another in the Second Conference reaffirming the resolution of 1899 with slight additions. It will make for clearness if the text of the original resolution be quoted:

> The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

It is clear from the terms of this resolution that it expresses the opinion of the Conference, not necessarily the opinion of the countries taking part in it, as they are not named. It is not necessarily the opinion of all the members, because all may not have voted for it, or all may not have approved it; but it is what it professes to be, the opinion of the Conference. As a matter of fact, it is all that is left of the original Russian proposal to limit armament, which was the reason given in the first Imperial rescript for the call of the Conference. The resolution is the action taken by the delegates upon a motion made by Mr. Léon Bourgeois, first delegate of France to the First as well as to the Second Conference, who insisted that, even although it was impossible to agree upon a reduction of armaments and to carry the same into effect by an international undertaking, it was

nevertheless possible and necessary for the Conference itself to express its opinion that such a limitation is desirable, both for the material and moral welfare of mankind. The motion was made by Mr. Bourgeois in the sixth session, held June 30, 1899, of the First Commission dealing with the question of the limitation of armaments, and was unanimously adopted.[1] The question of the limitation or reduction of armaments did not figure in the programme of the Second Conference, owing to opposition on the part, it would seem, of more than one Power in which military charges are more popular than in the English-speaking world. Sir Edward Fry, first delegate of Great Britain, acting under instructions from his Government, proposed, however, that the Conference should confirm the resolution of 1899, which it did in the following slightly modified form:

> The Second Peace Conference confirms the resolution adopted by the Conference of 1899 in regard to the limitation of military expenditure; and inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the Governments should resume the serious examination of this question.

The President of the Conference read letters approving Sir Edward Fry's motion from the chairmen of the American, Spanish, Argentini , and Chilean delegations; and Mr. Léon Bourgeois, as the mover of the resolution in 1899, warmly seconded it.

This brief statement has been made in order to make it clear that the resolution was the action of the Conference, not of the nations represented in it, and that they were willing by their silence to allow the Conference to adopt such a resolution, provided it were understood to be the opinion of the Conference and not the binding expression of opinion controlling the actions of their respective Governments.

The distinction between a resolution and a declaration is slight and shadowy, but the declaration appears to be superior because it may be signed by the delegates, when it becomes to all intents and purposes a convention. The resolution, expressing the opinion of the Conference and not of the Governments, as in the case of a convention and signed declaration, is not meant to be signed. It is, in its inception and final form, the act of the Conference, not of the nations represented in it.

The next unsigned act of the Conference, or expression of its opinion, is the *vœu*, a term so difficult to translate that it is generally used as a French word and bids fair to cease to be exotic by becoming naturalized in English. The first *vœu* of the Second Conference is in fact if not in form a recommendation, and it discloses its nature in the opening sentence:

> The Conference recommends to the signatory Powers the adoption of the annexed draft Convention for the creation of a Court of Arbitral Justice, and putting it into force as soon as an agreement has been reached respecting the selection of the judges and the constitution of the Court.

In other cases the *vœu* is synonymous with opinion, and in this regard it seems to approach the declaration or resolution without, however, treading upon their heels. Thus, the second *vœu* of the Second Conference reads, according to the American official translation:

> The Conference expresses the opinion that, in case of war, the responsible authorities, civil as well as military, should make it their special duty to ensure and safeguard the maintenance of pacific relations, more especially of the commercial and industrial relations between the inhabitants of the belligerent States and neutral countries.

[1] *Procès-verbaux*, pt. ii, p. 34.

The First Conference preferred, or at least the American and British official translations make it so appear, to use the term *vœu* in the sense of wish. Thus:

> The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, expresses the wish that steps may be shortly taken for the assembly of a special Conference having for its object the revision of that Convention.

Whatever may be the exact nature and meaning of the various *vœux* contained in the Final Act of the First Conference, it is seen that they appeared in the programme of the succeeding Conference, just as the *vœux* of the Second will undoubtedly appear in the programme of the Third, which in the providence of a merciful God will, it is to be hoped, meet in the near future.

What is, then, the difference between the declaration, the resolution, and the *vœu*, if they all indicate an expression of opinion on the part of the Conference? The most that can be said is that the declaration and the resolution are positive statements, declaring or laying down a principle, whereas the *vœu* is negative in the sense that it is a solemn utterance of a recommendation, opinion, or wish that something be done by the Powers after the adjournment of the Conference, or that something be done in a succeeding conference which the present one failed or was unable to do. But, as Secretary Root truly and happily said in his instructions which have been already quoted, but which cannot be quoted too often:

> It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement.

It is not necessary to state that the convention is to bind the nation in the sense in which it was understood at the time of signing and ratifying. The difficulty is to understand that sense, and there can be no difficulty about the matter when the nation has made a statement regarding its understanding of the convention or specifically excluded from signing and ratifying an article thereof.

The question may, however, arise whether the other contracting Powers will among themselves agree to be bound and allow a Power accepting the same provisions of the convention to obligate itself merely by those which it signs and ratifies, thus reducing considerably its duty toward the other Powers. This question greatly troubled and perplexed the American delegates to the First Conference who, while willing to accept the articles relating to good offices and mediation of the Convention for the pacific settlement of international disputes, were unwilling to assume the duty created in Article 27 of that convention without a statement which would seem to safeguard the Monroe Doctrine and negative on the part of the United States the desire or the duty to intermeddle with European affairs. Article 27 reads:

> The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.
>
> Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

The incident is thus related by the Honourable Andrew D. White, the veteran publicist

and diplomatist, who represented the United States with equal dignity and success at the First Conference:

> For some days—in fact, ever since Captain Mahan on the 22d called attention to Article 27 of the arbitration convention as likely to be considered an infringement of the Monroe Doctrine—our American delegation has been greatly perplexed. We have been trying to induce the French, who proposed Article 27, and who are as much attached to it as is a hen to her one chick, to give it up, or, at least, to allow a limiting or explanatory clause to be placed with it. Various clauses of this sort have been proposed. The article itself makes it the duty of the other signatory Powers, when any two nations are evidently drifting toward war, to remind these two nations that the arbitration tribunal is open to them. Nothing can be more simple and natural; but we fear lest, when the convention comes up for ratification in the United States Senate, some over-sensitive patriot may seek to defeat it by insisting that it is really a violation of time-honoured American policy at home and abroad—the policy of not entangling ourselves in the affairs of foreign nations, on one side, and of not allowing them to interfere in our affairs, on the other. . . .
>
> All night long I have been tossing about in my bed and thinking of our declaration of the Monroe Doctrine to be brought before the Conference to-day. We all fear that the Conference will not receive it, or will insist on our signing without it or not signing at all. . . .
>
> In the afternoon to the 'House in the Wood,' where the 'Final Act' was read. . . . We had taken pains to see a number of the leading delegates, and all, in their anxiety to save the . . . arbitration plan, agreed that they would not oppose our declaration. It was therefore placed in the hands of Raffalovitch, the Russian secretary, who stood close beside the president, and as soon as the 'Final Act' had been recited he read this declaration of ours. This was then brought before the Conference in plenary session by M. de Staal, and the Conference was asked whether any one had any objection, or anything to say regarding it. There was a pause of about a minute, which seemed to me about an hour. Not a word was said,—in fact, there was dead silence,—and so our declaration embodying a reservation in favour of the Monroe Doctrine was duly recorded and became part of the proceedings.
>
> Rarely in my life have I had such a feeling of deep relief; for, during some days past, it has looked as if the arbitration project, so far as the United States is concerned, would be wrecked on that wretched little Article 27.[1]

The reservation to which Mr. White referred is as follows:

> The delegation of the United States of America on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration:
>
> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.[2]

The question was apparently settled in 1899, for when the reservation to Article 27, which in its revised and enlarged form had become Article 48 of the Convention of 1907, was renewed by the undersigned on behalf of the American delegation to the Second Conference there was no objection, nor was any dissent observable. Indeed, it seemed to have been expected.

It should be stated once again, as there appears to be considerable misunderstanding,

[1] *Autobiography of Andrew Dickson White*, vol. ii, pp. 339–41.

[2] *Post*, p. 179.

that the signature of a convention or of a declaration does not bind the nation, or, if this statement be regarded as too sweeping, the signature binds only in morals, not in law. A nation is bound not even by its ratification but by the deposit of ratifications with the Netherland Minister of Foreign Affairs at The Hague, in accordance with the provisions of the convention or declaration.

Another difficulty may arise which was not covered by the precedent of 1899, for a nation may make a reservation in the instrument of ratification which it did not make in the discussions in the Conference or indicate on signing. Thus the United States added a clause relating to Article 53 of the pacific settlement Convention of 1907, which rejected the right of the so-called Permanent Court to frame the *compromis*, submitting the issue to arbitration under a treaty of arbitration, but which the United States had not been able to frame, or which, as a matter of fact, had not been framed in conjunction with the other Government. Article 53 reads:

> The Permanent Court is competent to settle the *compromis*, if the parties are agreed to have recourse to it for the purpose.
>
> It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:
>
> 1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, and providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to obligatory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.
>
> 2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This provision is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

The attitude of the United States toward the third paragraph of this article is shown by the following statement made by the Government in the instrument of ratification deposited at The Hague:

> That the United States approves this Convention with the understanding that recourse to the Permanent Court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in Article 53 of said Convention, to exclude the formulation of the *compromis* by the Permanent Court, and hereby excludes from the competence of the Permanent Court the power to frame the *compromis* required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the *compromis* required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise.[1]

It will be noted that this declaration is very carefully drawn so as to leave untouched the text of the article in question, and the objection of the United States is to be found in the statement that it excludes this function of the Court from treaties which it may conclude. No exception, so far as known, has been taken to this action. This action of the United States did not squarely raise the question whether a reservation could be made

[1] *Post*, p. 903.

after signature, but it is believed that it is immaterial whether the reservation be made before, at, or after signing, as until a Power has ratified and deposited ratifications of the Convention it is not bound. But good faith requires that objections to any article be stated either before or at the time of signing, so that nations may know the nature and extent of the obligation they are assuming with other nations. International conventions are often compromises, and the price of a compromise to a nation may be the very article which another nation excludes from the convention or interprets in a special sense in the act of ratification.

The London Naval Conference stated in the 65th article of its Declaration that it must be accepted as a whole in order to prevent doubts or disputes from arising. This case, however, is different, because this article of the Declaration prevented a reservation at signing, which is not the case with the Hague Conventions. If a nation does not sign within the time allowed it may adhere and make what reservation or interpretations it pleases in the act of adhesion as did the United States in the case of the Convention respecting the rights and duties of neutral Powers in naval warfare, adopted by the Second Conference. A nation is bound only by what it adopts, and any two or more nations are bound only by the articles they adopt in common.

There is, however, another question which has arisen and which has placed a very great limitation upon the force and effect of the conventions and declarations, caused by the presence of a clause similar to the following, forming Article 28 of the Convention concerning the rights and duties of neutral Powers in naval war:

> The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

It is of course natural that the Convention should only bind contracting Powers, but it is not clear that the failure of a benighted belligerent to ratify the Convention should release all other parties to a war which may have ratified it from observing its rules and limitations in their relations one with the other, and it is asking much of neutrals to hold them to their duties under the Convention when the belligerents regard themselves as freed from the observance of its terms by the presence of a non-ratifying belligerent in the war. If the article be taken literally it may mean that, in a war with a non-contracting Power, the provisions of the Convention respecting the rights and duties of neutral Powers and persons in case of war on land, and the Convention concerning the rights and duties of neutral Powers in naval war, are not applicable to neutrals, although drafted for their benefit, because one of the belligerents happens to be a non-contracting Power. It may mean, on the contrary, that the provisions of the Conventions are not to apply between the belligerents unless they are contracting Powers, in which case the provisions of the Conventions would regulate the rights and duties of belligerent and neutral nations ratifying the Conventions. The rights of contracting parties which have not caused the war, and which remain neutral, should not depend upon the actions of belligerents, whose conduct the neutrals are unable to control and which they may have tried, and tried in vain, to prevent from going to war.

If an article of this kind is to be embodied in future conventions, it should be modified in such a way that, in case of a war between a contracting and a non-contracting Power, the conventions would not apply between those Powers, but that they would apply between the belligerents and neutrals which may have ratified them.

It may be of interest briefly to explain the method of calling the Conference, the determination of its programme, the division of the Conference into commissions, and the broad outlines of the procedure, common alike to the Conference and its commissions. The First Conference was proposed by Nicholas II, Czar of Russia in the year 1898, and the foreign Governments having diplomatic agents accredited to Petrograd were invited to be represented in the proposed Conference. Brazil was so represented and was invited but did not accept the invitation. Mr. White so states in his *Autobiography*.[1] Mr. Ruy Barbosa mentioned it as a fact in his remarks in the sixth plenary session of the Second Conference.[2] Mexico, likewise represented at Petrograd, accepted, so that it was the only Latin American country taking part in the First Conference.

Perhaps it may have been the part of wisdom to limit the invitations to the countries represented at Petrograd, as the Conference was largely in the nature of an experiment. Its success, however, made it apparent that the world had been endowed with a new institution, capable of helping it out of the rut into which it had fallen, and of considering in conference the common good of all instead of the special advantage of any. Therefore, the invitations to the Second Conference were extended to all countries that had taken part in the First Conference and to all Latin American countries which had not been invited, and likewise to Brazil which, although invited, had not attended, and, in addition, to Korea and Ethiopia. This latter Power does not appear to have accepted; Japan established a protectorate over Korea whereby it lost its right to separate representation; Costa Rica failed to send delegates, and those of Honduras were admitted so near the close of the Conference that they took no part in its work and their names do not appear in the list of delegates in the Final Act.

The programme of the First Conference was drafted by the Russian Government, and the programme of the Second Conference seems to have been prepared by the Russian Government in consultation with some of its big friends. In this category the United States was apparently not included, as it was not a party to the negotiations, of which it only learned incidentally although the Second Confereuce was really called by President Roosevelt, who chivalrously renounced following up the initiative he had taken at the request of the Russian Ambassador when the Treaty of Portsmouth, likewise due to President Roosevelt, ended the Russo-Japanese war, and left the Czar and his advisers free to think again of peace. Perhaps Russia may have been justified in discussing with its friends and neighbours the subjects to be included, because the experiment which had succeeded on a small scale was to be tried upon a much larger one, and it may have been the part of wisdom to leave nothing to chance or to accident. The success of the Second Conference and the adoption of the recommendation by it that the Third Conference should meet, and that 'some two years before the probable date of the meeting, a preparatory committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a programme which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested', can only mean that, in the opinion of the participating countries, the Conference should be (Russianized, if such a term can be respectfully used, that it should be internationalized in the sense that each participating Government should stand upon a footing of equality, and that the programme, organization, and

[1] *Autobiography of Andrew Dickson White*, vol. ii, p. 284.
[2] *Actes et documents*, vol. 2, p. 171.

procedure of the Conference should be determined, if not by all, at least by a committee of their choice.

Attention should be called to the following very wise provision of the Russian Government in the second Imperial rescript stating the programme of the First Conference:

> It is well understood that all questions concerning the political relations of States, and the order of things established by treaties, as in general all questions which do not directly fall within the programme adopted by the Cabinets, must be absolutely excluded from the deliberations of the Conference.[1]

It is the custom that the country calling the Conference, if it meets in its own territory, outlines a programme and appoints the presiding officer, and the officers are selected and the methods of procedure devised in accordance with the desires of the country calling it. It was therefore natural that the first Russian delegate should preside at the First Conference. It was natural enough that the first Russian delegate should preside at the Second Conference, although, in becoming international, it might well have been allowed to choose its presiding officer; the Third Conference certainly should.

It is usual for the Minister of Foreign Affairs of the country in which the Conference is held to open it and to suggest, either directly or indirectly, the name of one of his countrymen as presiding officer. The two Conferences were opened by the Netherland Minister of Foreign Affairs, who suggested on each occasion that the Russian first delegate should be president. The minutes of the First Conference state that this proposition was unanimously adopted.[2] His Excellency Mr. Staal delivered a brief address; at the conclusion of which he proposed the appointment of the secretary-general and the personnel of the secretary-general's office. Two days later, on the 20th of May, Mr. Staal delivered a longer address, proposing three commissions to which the different subjects contained in the Russian programme should be assigned. The minutes contain the statement that the president's proposal was adopted.[3] At the next session, on the 23rd of May, 1899, the president asked Mr. van Karnebeek, who had been appointed by him vice-president, to submit to the Conference a project of organization of the commissions and of the distribution of the work. Mr. van Karnebeek proposed the officers of the various commissions, among others Mr. Beernaert as president of the First Commission, Mr. de Martens as president of the Second Commission, and Mr. Léon Bourgeois as president of the Third Commission. The minutes again say these propositions were adopted.[4] The procedure at the Second Conference was, to judge from the minutes, identical. The Netherland Minister of Foreign Affairs proposed as president his Excellency Mr. Nelidow, first Russian delegate. The minutes show unanimous consent on the part of the delegates,[5] and there may have been consent; but if so, it was, as the undersigned well remembers, expressed by silence. The president thereupon began to deliver his address, which had already been prepared and which he read from a printed copy. At the conclusion of the reading of this rather cold and stately document, the president proposed the secretary-general, the editor-in-chief, and the necessary personnel of the secretary's office. The statement in the minutes says that these gentlemen were designated by the Conference upon the motion of the president.[6] This took place on the 15th of June. Upon the adjournment of the first session, held on the 15th of June, the president conferred with his friends, among whom apparently the first delegate of the United States was not included, as he was not consulted, and a programme of procedure was drafted. It was

[1] *Post*, p. 3.
[2] *Proces-verbaux*, pt. 1, p. 10.
[3] Ibid., p. 11.
[4] Ibid., p. 15.
[5] *Actes et documents*, vol. 1, p. 49.
[6] Ibid., p. 52.

read by the president, and the third paragraph of Article 8, allowing a Power to vote by proxy, was rejected by the Conference upon motion of the first British delegate, Sir Edward Fry, seconded by the first German delegate, Baron Marschall von Bieberstein.[1] This was an approach to an expression of opinion, but the Conference was evidently exhausted by this unexpected evidence of independence, because the proposal of the president to divide the Conference into four commissions and the appointment of the officers of the commissions were received without discussion or comment. The evidence of approval, however, is twofold: first, all the delegates above mentioned accepted their appointments; secondly, applause greeted the names of the presidents.[2] The action of Mr. Nelidow was no doubt in accordance with precedent, but it was a bad precedent—a precedent of a congress that meets once and goes out of existence, not a precedent of a congress such as the Hague Peace Conference, at which all the Powers are represented, and which is to meet at stated periods in the future. It is a method to control, not to permit, the expression of opinion, discussion or debate, fitted for the primary school, but not for an assembly in which the representatives of sovereign nations meet on a footing of equality, and in which there is not and, it is hoped, never will be, a superior.

The president of a continental assembly apparently believes it to be his duty to run the congress, and he faithfully performs this part of his duty. He is as far removed as the poles from the Anglo-American conception of the chairman, who is merely the presiding officer of the meeting. These matters will no doubt be satisfactorily arranged by the preparatory committee for the Third Conference, in which it is to be hoped that there will be representatives of countries other than the friends of friends.

It has been stated that, although a country sent as many delegates as it cared to, its delegation voted as a unit and under instructions. At the First Conference there were twenty-six countries represented; at the Second Conference there were forty-four, so that in this latter assembly forty-four votes were cast when every delegation had voted. Proposals were made by the chairman or other member of the delegation on behalf of his Government, and they were printed and discussed. They were referred, if need be, to committees for examination and consideration, and were put to vote. The roll was called according to the names of the countries in French, and either the chairman or some member on behalf of the delegation voted yes or no, or abstained from voting as the case might be. This procedure is natural enough in the case of ordinary meetings. It seemed extraordinary to those not accustomed to it to see Governments, as ordinary individuals, responding to a roll-call. The official language of the Conference was French, but any language might be used. At the First Conference, Count Nigra once spoke in Italian in order that the use of French might not seem to discriminate against his mother tongue. Dr. Zorn at the First Conference spoke in German, and both at the First and Second Conferences the American delegates spoke in English as well as in French. German was also used at the Second Conference, and on one occasion at least Spanish was spoken.

It does not seem necessary to do more than to state that the Conference of 1899 was divided into three Commissions, the First and Second dealing with the military and naval proposals, such as the limitation of armament and budgets and the regulations for warfare, and the Third Commission dealing with good offices, mediation, and arbitration. The Second Conference was divided into four Commissions, each of which, with the exception of the fourth, was subdivided. The First Commission dealt with arbitration,

[1] Ibid., p. 56. [2] Ibid., p. 60.

the Second with land warfare, the Third and Fourth with questions of maritime warfare. The procedure of each Conference was in this respect identical. The Commissions were divided into subcommissions which reported to the full Commission. The projects there agreed upon were laid before the Conference itself in plenary session and accepted. In some cases they were modified, where this could be done without referring them back to the Commission, but they were generally accepted as coming from the Commission.

There is one matter of procedure not previously mentioned which requires briefly to be considered. The projects laid before and accepted by the different Commissions required to be arranged within groups, according to some logical order. A Drafting Committee was appointed, in which all of the States were represented, and of this a small subcommittee was formed, which took all the articles as they came from the plenary session of the Conference and gave them definite form and shape, making conventions of them and giving them their appropriate setting therein. This subcommittee did not feel justified in changing the sense of the projects or articles voted, but it modified the language and improved the form. In some cases, however, it did suggest a change of substance. It reported its action to the larger committee, and the chairman of the subcommittee laid before the Conference the conventions and articles as agreed upon, calling attention in each instance to changes, whether of form or substance, in order that the Conference itself might determine whether they should stand. After the approval of the Conference, the various conventions and declarations requiring signature were printed, and the Final Act, containing, as has been stated, in summary form the calling of the Conference and the results of its labours, was likewise prepared to be signed. At a date fixed by each Conference delegates plenipotentiary of the various countries affixed their signatures to the Final Act and to such conventions and declarations as had met with the approval of their Governments.

That the present volume may spread a broader knowledge of the nature and value of the labours and achievements of the Peace Conferences at The Hague, and that it may tend to create in some degree at least a public opinion in favour of a Third Conference, to administer to the wants of this war-ridden and suffering world, is the earnest hope and sincere desire of the undersigned.

JAMES BROWN SCOTT,
Director of the Division of International Law.

OFFICIAL CORRESPONDENCE LEADING UP TO THE FIRST PEACE CONFERENCE

RUSSIAN CIRCULAR NOTE PROPOSING THE FIRST PEACE CONFERENCE [1]

THE maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations present themselves, in the existing condition of the whole world, as the ideal towards which the endeavours of all Governments should be directed.

The humanitarian and magnanimous views of His Majesty the Emperor, my august master, are in perfect accord with this sentiment.

In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate aspirations of all Powers, the Imperial Government believes that the present moment would be very favourable for seeking, by means of international discussion, the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments.

In the course of the last twenty years the longings for a general state of peace have become especially pronounced in the consciences of civilized nations. The preservation of peace has been put forward as the object of international policy. In its name great States have formed powerful alliances; and for the better guaranty of peace they have developed their military forces to proportions hitherto unknown, and still continue to increase them without hesitating at any sacrifice.

All these efforts nevertheless have not yet led to the beneficent results of the desired pacification.

The ever-increasing financial charges strike and paralyze public prosperity at its source; the intellectual and physical strength of the nations, their labour and capital, are for the most part diverted from their natural application and unproductively consumed; hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science, are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development.

Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments. Economic crises, due in great

[1] Handed to the diplomatic representatives, August 12 24, 1898, by Count Mouravieff, Russian Minister for Foreign Affairs, during the weekly reception in the Foreign Office, Petrograd. The original French text may be found in *Actes et documents relatifs au programme de la Conférence de la paix, publiés d'ordre du Gouvernement* (The Hague, 1899); British Parliamentary Paper, Russia, No. 1, 1899, p. 1; French Diplomatic Document, *Conférence internationale de la paix*, 1899, p. 1. English version in *The Hague Conventions and Declarations of 1899 and 1907* (2d ed., New York, 1915), p. xv.

part to the system of amassing armaments to the point of exhaustion, and the continual danger which lies in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

In checking these increasing armaments and in seeking the means of averting the calamities which threaten the entire world lies the supreme duty to-day resting upon all States.

Imbued with this idea, His Majesty has been pleased to command me to propose to all the Governments which have accredited representatives at the Imperial Court the holding of a conference to consider this grave problem.

This conference would be, by the help of God, a happy presage for the century about to open. It would converge into a single powerful force the efforts of all the States which sincerely wish the great conception of universal peace to triumph over the elements of disturbance and discord. It would at the same time cement their agreement by a solemn avowal of the principles of equity and law, upon which repose the security of States and the welfare of peoples.

COUNT MOURAVIEFF.

ST. PETERSBURG, *August 12, 1898.*

RUSSIAN CIRCULAR NOTE PROPOSING THE PROGRAMME OF THE FIRST CONFERENCE[1]

ST. PETERSBURG, *December 30, 1898.*[2]

WHEN, during the month of August last, my august master commanded me to propose to the Governments which have representatives in St. Petersburg the meeting of a conference with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace and, above all, of limiting the progressive development of existing armaments, there appeared to be no obstacle in the way of realization at no distant date of this humanitarian scheme.

The cordial reception accorded by nearly all the Powers to the step taken by the Imperial Government could not fail to strengthen this expectation. While highly appreciating the sympathetic terms in which the adhesions of most of the Powers were expressed, the Imperial Cabinet has been also able to collect, with lively satisfaction, evidence of the warmest approval which has reached it, and continues to be received, from all classes of society in various parts of the world.

Notwithstanding the strong current of opinion which exists in favour of the ideas of general pacification, the political horizon has recently undergone a decided change.

[1] Handed to the diplomatic representatives at Petrograd, January 11, 1899, by Count Mouravieff. French text in *Actes et documents relatifs au programme de la Conférence de la paix*; British Parliamentary Paper, Miscellaneous, No. 1, 1899, p. 2; French Diplomatic Document, *Conférence internationale de la paix, 1899*, p. 3. English version in *The Hague Conventions and Declarations of 1899 and 1907*, 2d ed., p. xvii.

[2] January 11, 1899, new style.

Several Powers have undertaken fresh armaments, striving to increase further their military forces, and in the presence of this uncertain situation it might be asked whether the Powers consider the present moment opportune for the international discussion of the ideas set forth in the circular of August 12/24.

In the hope, however, that the elements of trouble agitating political centres will soon give place to a calmer disposition of a nature to favour the success of the proposed conference, the Imperial Government is of the opinion that it would be possible to proceed forthwith to a preliminary exchange of ideas between the Powers, with the object :

(*a*) Of seeking without delay means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments ; and

(*b*) Of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy.

In the event of the Powers considering the present moment favourable for the meeting of a conference on these bases it would certainly be useful for the Cabinets to come to an understanding on the subject of the programme of its work.

The subjects to be submitted for international discussion at the conference could, in general terms, be summarized as follows :

1. An understanding stipulating the non-augmentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them ; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future.

2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons.

3. Limitation of the use in field fighting of explosives of a formidable power, such as are now in use, and prohibition of the discharge of any kind of projectile or explosive from balloons or by similar means.

4. Prohibition of the use in naval battles of submarine or diving torpedo-boats, or of other engines of destruction of the same nature ; agreement not to construct in the future war-ships armed with rams.

5. Adaptation to naval war of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868.

6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles.

7. Revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.

8. Acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations ; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

It is well understood that all questions concerning the political relations of States, and the order of things established by treaties, as in general all questions which do not directly fall within the programme adopted by the Cabinets, must be absolutely excluded from the deliberations of the conference.

In requesting you, sir, to be good enough to apply to your Government for instructions on the subject of my present communication, I beg you at the same time to inform

it that, in the interest of the great cause which my august master has so much at heart, His Imperial Majesty considers it advisable that the conference should not sit in the capital of one of the Great Powers, where are centred so many political interests, which might, perhaps, impede the progress of a work in which all countries of the universe are equally interested.

I have, &c.,

COUNT MOURAVIEFF

CIRCULAR INSTRUCTION OF THE NETHERLAND MINISTER FOR FOREIGN AFFAIRS TO THE DIPLOMATIC REPRESENTATIVES OF THE NETHERLANDS. INVITATION TO THE CONFERENCE[1]

THE HAGUE, *April 6, 1899.*

MR. MINISTER:

THE Imperial Government of Russia addressed on August 12 24, 1898, to the diplomatic representatives accredited to the Court of St. Petersburg a circular expressing a desire for the meeting of an international conference which should be commissioned to seek the most effective means of ensuring to the world a lasting peace, and of limiting the progressive development of military armaments.

This proposal, due to the noble and generous initiative of the august Emperor of Russia, having met everywhere with a most cordial reception, and obtained the general assent of the Powers, his Excellency the Minister for Foreign Affairs of Russia addressed December 30, 1898 (January 11, 1899), to the same diplomatic representatives a second circular, giving a more concrete form to the generous ideas announced by the magnanimous Emperor and indicating certain questions which might be specially submitted for discussion by the proposed conference.

For political reasons the Imperial Russian Government thought that it would not be desirable that the meeting of this conference should take place in the capital of one of the Great Powers, and after being assured of the assent of the Governments interested, it addressed the Cabinet of The Hague with a view of obtaining its consent to the choice of that capital as the seat of the conference in question. I at once took the orders of Her Majesty the Queen in regard to this request, and I am happy to be able to inform you that Her Majesty, our august sovereign, has been pleased to authorize me to reply that it will be particularly agreeable to her to see the proposed conference meet at The Hague.

Consequently, and in accord with the Imperial Russian Government, I have the honour to instruct you to invite the Government of . . . . . to be good enough to be represented at the above-mentioned conference, in order to discuss the questions indicated in the second Russian circular of December 30, 1898 (January 11, 1899), as well as all other questions connected with the ideas set forth in the circular of August 12 24,

[1] French text in *Actes et documents relatifs au programme de la Conférence de la paix*; British Parliamentary Paper, Miscellaneous, No. 1, 1899, p. 7. English version in *The Hague Conventions and Declarations of 1899 and* [illegible], 2d ed., p. xix.

1898, excluding, however, from the deliberations everything which refers to the political relations of States or to the order of things established by treaties.

I trust that the Government to which you are accredited will participate in the great humanitarian work to be entered upon under the auspices of His Majesty the Emperor of All the Russias, and that it will be disposed to accept our invitation and to take the necessary steps for the presence of its representatives at The Hague on May 18 next, for the opening of the conference, at which each Power, whatever may be the number of its delegates, will have only one vote.

Please accept, Mr. Minister, renewed assurance of my high consideration.

W. H. DE BEAUFORT.

THE PEACE CONFERENCE OF 1899

Opening Address of his Excellency Mr. de Beaufort, Minister of Foreign Affairs of the Netherlands, May 18, 1899 [1]

In the name of Her Majesty my august sovereign, I have the honour to bid you welcome and to express here my profound respect for His Majesty the Emperor of All the Russias and my heartfelt gratitude to him for the great honour he has shown our country in designating The Hague as the meeting-place of the Peace Conference.

In taking the noble initiative, which has been acclaimed by the whole civilized world, it was the desire of His Majesty the Emperor of All the Russias to realize the wish of one of his most illustrious predecessors, Emperor Alexander I—that all the sovereigns and all the nations of Europe might agree to live together like brothers and to help each other in their mutual needs. Inspired by these noble traditions of his august ancestor, His Majesty proposed to all the Governments whose representatives are here assembled the meeting of a Conference which should endeavour to discover a way to limit these never-ending armaments and to prevent the calamities which threaten the entire world.

The opening day of this Conference will be without dispute one of the memorable days in the history of the century which is about to close. It coincides with a festival which all His Majesty's subjects celebrate as a national holiday, and in joining with all my heart in every wish for the happiness of this magnanimous sovereign, I shall venture to act as the interpreter of the wishes of the whole civilized world in expressing the hope that His Majesty may see his generous plans realized by the efforts of this Conference and may look back upon this day as one of the happiest of his reign.

Her Majesty my august sovereign, moved by the same sentiments as inspired His Majesty the Emperor of All the Russias, has been pleased to place at the disposal of this Conference the most beautiful historic monument which she possesses. The hall in which you are assembled was decorated by the best artists of the seventeenth century and was erected by the widow of Prince Frederick Henry to the memory of her noble husband. Among the groups and allegorical figures which will call forth your admiration is one associated with the Peace of Westphalia which deserves your special attention. It is the picture which represents Peace entering this hall to close the temple of Janus. I hope, gentlemen, that this beautiful allegory will prove to be a good omen for your labours and that after having completed them you will be able to say that Peace, which art brought into this hall, has sallied forth to shower her blessings upon the whole human race.

I have the honour to make two proposals: first, that we offer His Majesty the Emperor of All the Russias our respectful congratulations by telegraph in the following terms:

> The Peace Conference lays at the feet of Your Majesty its respectful congratulations on the occasion of your birthday and expresses the sincere desire to co-operate in

[1] *Procès-verbaux*, pt. i, p. 10.

accomplishing the great and noble work in which Your Majesty has generously taken the initiative, and for which the Conference begs Your Majesty to accept its humble and profound gratitude.

I do not doubt that my second proposal will likewise meet with your unanimous approval. I venture, gentlemen, to express the wish that the Ambassador of His Majesty the Emperor of All the Russias, his Excellency Mr. Staal, whose wide experience in practical affairs and whose eminent qualities will do much to facilitate the noble work you are about to undertake, be chosen president of this assembly.

Address of his Excellency Mr. Staal, President of the Conference, May 18, 1899[1]

GENTLEMEN:

My first duty is to express to his Excellency the Minister of Foreign Affairs of the Netherlands my gratitude for the noble words he has just uttered concerning my august master. His Majesty will be deeply touched by the lofty sentiments with which Mr. de Beaufort was inspired, as well as by the spontaneity with which the members of this assembly have joined with him.

If it was on the initiative of the Emperor of Russia that the Conference has met, we owe it to Her Majesty the Queen of the Netherlands that we are assembled in her capital. It is a happy presage for the success of our labours that we are gathered together under the auspices of a young sovereign whose charm is felt far and wide and whose heart, ever open to all that is generous, has shown so much sympathy for the cause which brings us here. In this calm atmosphere of The Hague, in the midst of a nation which is so conspicuous a factor in world-wide civilization, we have before our eyes a striking example of what valour, patriotism, and untiring energy can do for the good of nations. It was upon the historic soil of the Netherlands that the greatest problems of the political life of States were discussed; here, it may be said, was the cradle of the science of international law; here for centuries the principal negotiations between European Powers have been conducted. Finally, it was here that the remarkable compromise was signed which brought about a 'truce' in the bloody strife of State with State. We are therefore in the midst of historic tradition.

I have further to thank the Minister of Foreign Affairs of the Netherlands for the flattering—indeed too flattering—words in which he has referred to me. I am sure that I express the sentiments of every member of this high assembly in assuring his Excellency Mr. de Beaufort how happy we should have been to see him preside over our meetings. He was entitled to the presidency not only because of the precedents followed on similar occasions, but also because of the qualities he has shown as the eminent statesman who now directs the foreign policy of the Netherlands. It would, moreover, have been a further homage which we should have liked to pay to the august sovereign who has deigned to extend to us her gracious hospitality.

As for myself, I can only consider that I am chosen because I am the plenipotentiary of the Emperor my master, the august initiator of the Conference ideas. In this capacity I accept with profound gratitude the high honour bestowed upon me by the Minister of

[1] Ibid., p. 11.

Foreign Affairs in proposing for the presidency and by the members of the Conference in ratifying this selection. I shall make every effort to justify this mark of confidence, but I fully realize that the advanced age which I have reached is, alas! a sad privilege and a feeble support. I hope at least, gentlemen, that it will entitle me to your indulgence.

I now propose that we send to Her Majesty the Queen, whose grateful guests we are the message which I am about to read:

> The members of the Conference, assembled for the first time in the beautiful Castle in the Wood, hasten to lay their best wishes at Your Majesty's feet and to beg you to receive the homage of their gratitude for the hospitality which you, Madam, have so graciously deigned to offer them.

I propose that we confer upon his Excellency the Minister of Foreign Affairs of the Netherlands the honorary presidency of the International Peace Conference, and that we make Jonkheer van Karnebeek, first delegate of the Netherlands, vice-president of this assembly.

Address of his Excellency Mr. Staal, President of the Conference, at the Session of May 20, 1899 [1]

To seek the most efficacious means of assuring to all peoples the blessings of a real and lasting peace, such, in the words of the circular of August 12, is the chief aim of our deliberations.

The name 'Peace Conference', which the popular mind, outstripping a decision by the Governments in this respect, has given to our meeting, well indicates the essential object of our labours. The Peace Conference cannot fail in the mission incumbent upon it; its deliberations must lead to a tangible result which the whole human race confidently expects.

The eagerness with which every Power accepted the proposal contained in the Russian circulars is the most eloquent witness to the favour which peaceful ideas have found in the eyes of all. It is therefore my pleasant duty to request the delegates of all the States here represented to transmit to their respective Governments the repeated expression of the Russian Government's thanks.

The very membership of this assembly is a sure guarantee of the spirit in which we shall approach the task entrusted to us. The Governments are represented here by statesmen who have taken active part in shaping the destinies of their countries; by eminent diplomats who have handled the most important matters and who all know that the first need of nations is the maintenance of peace. Beside them are scholars who enjoy a well-deserved renown in the field of international law. The general and higher officers of the army and navy who will assist us in our labours will give us the benefit of their great technical knowledge.

The mission of diplomacy, as we all know, is to prevent and to smooth over disputes between States; to moderate rivalries; to conciliate divergent interests; to remove misunderstandings and to substitute good understanding for disagreement.

[1] *Procès-verbaux*, pt. 1, p. 12.

Let me say that, following a general law, diplomacy is no longer merely an art in which personal ability plays an exclusive part; its tendency is to become a science which shall have fixed rules for settling international disputes. Such at the present time is the ideal which it should have before its eyes, and it cannot be disputed that great progress will have been made if diplomacy succeeds in establishing in this Conference some of the rules of which I have just spoken. Accordingly, we shall devote ourselves especially to the generalization and codification of arbitral practice, and of mediation or good offices. These ideas are, so to speak, the very essence of our task, the general goal toward which we are to direct our efforts: the prevention of conflicts by peaceful means. It is not for us to enter into the domain of Utopia. In the work which we are about to undertake we must consider what is possible: we must not devote ourselves to the pursuit of abstractions. Without sacrificing any of our further hopes, we must remain in the land of reality, sound its very depths, so as to lay solid foundations and build on a practical basis.

Now, what does reality show us? We perceive that there is a community of material and moral interests between nations, which is constantly increasing. The ties which bind the various branches of the great human family are ever drawing them closer to each other. If a nation wished to remain isolated, it could not. It is one of the gear-wheels of a living mechanism, fruitful in blessings for all. It is part of a single organism. Rivalries doubtless exist; but do they not seem to be rather in the economic field, in the field of great commercial expansion, arising from the same need to spread abroad the surplus energy which cannot find sufficient employment in the mother country? Rivalry in this sense can indeed do good, provided the ideal of justice and the lofty sentiment of the great brotherhood of man soar above it.

If, therefore, nations are bound together by so many ties, would it not be well to see what all this means? When a dispute arises between two or more nations, the others, without being directly involved, are seriously affected. The effects of an international conflict in any quarter of the globe echo far and wide in every direction. That is why third parties cannot remain indifferent to such a conflict. They must bring their powers of conciliation into play to stop it. These truths are not new. At all times there have been thinkers to suggest them, statesmen to apply them; but they claim our attention more than ever at the present time, and the fact that they have been proclaimed by an assembly such as ours will mark an important date in the history of mankind.

Peace is the crying need of the nations, and we owe it to mankind, we owe it to the Governments which have entrusted us with their powers and in whose care is the welfare of their people, we owe it to ourselves to do a useful work by specifying the method of employing some of the means of assuring peace.

Arbitration and mediation must be included among these means. Diplomacy long ago admitted them in its practice, but diplomacy has not laid down definite rules for applying them; it has not specified the cases to which they may be applied. That is the noble work upon which we are about to direct our energies, sustained by the conviction that we are labouring for the good of all mankind along the road which former generations have laid out for us.

But inasmuch as we are firmly resolved to keep away from wild schemes, inasmuch as we recognize that our present task, great as it is, has its limitations, we must also consider another side of the question.

If the possibility of armed conflict between nations cannot be absolutely eliminated, it would still be a labour in behalf of humanity to mitigate the horrors of war. The Governments of civilized States have already made international agreements which have marked important stages. It is our task to mark new stages, and in this category of questions the co-operation of the many competent men who are present at this meeting cannot but be most valuable.

There are, moreover, certain matters, very far-reaching and very difficult to handle, which likewise pertain to the maintenance of peace, and which, in the opinion of the Imperial Russian Government, might come within the scope of the Conference's investigations. It might be well to investigate whether a limitation of increasing armaments is not required for the well-being of nations. In this matter, it is for the Governments to weigh in their wisdom the interests which they have in charge.

Such, gentlemen, are the essential ideas which, it would appear, should guide us in our deliberations.

We shall, I am sure, examine them in a spirit at once high-minded and sincerely conciliatory, so as to proceed along the road which leads to more enduring peace. We shall thus perform a useful work for which future generations will thank the sovereigns and heads of States represented in this hall.

One of our tasks, gentlemen, should be, in order to assure the progress of our work, to proceed to a division of the labour, a distribution of the burden.

I venture, therefore, to submit the following plan for your approval:

Three Commissions shall be constituted:

The First Commission shall take charge of Articles 1, 2, 3, and 4 of the circular of December 30, 1898.

The Second Commission shall take charge of Articles 5, 6, and 7 of the said circular.

The Third Commission shall take charge of Article 8 of the same circular.

Each Commission may be subdivided into subcommissions.

It is understood that the Conference does not consider itself authorized to investigate any question other than those mentioned above. In case of doubt, the Conference shall decide whether or not such and such a proposition brought up in the Commissions comes within the scope of these questions.

Each State shall have the right to be represented in each of the Commissions.

The first delegates shall designate the members of the respective delegations who are to be members of each Commission. These members may serve on two or more Commissions.

As is the rule in plenary sessions, each State shall have only one vote in each Commission.

The delegates representing the Governments may take part in all of the meetings of the Commissions.

Technical and scientific delegates may attend the plenary meetings of the Conference.

The Commissions shall constitute their own bureaus and shall regulate the order of their labours

Address of his Excellency Mr. Staal, President of the Conference, July 29, 1899 [1]

GENTLEMEN,

We have reached the end of our labours. Before we part and shake hands with each other for the last time in this beautiful Palace in the Wood, I come to ask you to join with me in repeating the tribute of our gratitude to the gracious sovereign of the Netherlands for the hospitality so lavishly showered upon us. The wishes which Her Majesty recently expressed in a voice at once charming and determined have been of good omen for the progress of our deliberations. May God crown with His blessings the reign of Her Majesty the Queen of the Netherlands, for the good of the noble country under her rule.

We beg Mr. de Beaufort, in his capacity of honorary president of the Conference, kindly to lay the homage of our good wishes at the feet of Her Majesty. We likewise request his Excellency and the Netherland Government to accept the expression of our gratitude for the kindly assistance they have given us, which has so greatly facilitated our task.

With all my heart I assume the rôle of your spokesman in warmly thanking the eminent statesmen and jurists who have presided over the work of our Commissions, of our subcommissions, and of our committees. They have displayed the rarest qualities, and we are happy to be able to congratulate them here.

Our reporters also deserve your gratitude. In their reports, which are indeed masterpieces, they have given the authorized commentary on the texts adopted.

Our secretariat has performed an arduous task with a zeal which is worthy of every praise. The accurate and complete *procès-verbaux* of our long and frequent sessions bear witness to this fact.

Finally, I have to thank you myself, gentlemen, for all the indulgent kindnesses which you have shown to your president. It is indeed one of the greatest honours of my long life, which has been devoted entirely to the service of my sovereigns and my country, to have been called by you to the presidency of our high assembly. In the course of the years during which I have been an attentive witness of events which will form the history of our century, in some of which I have taken part as a modest workman, I have seen a gradually increasing influence of moral ideas in political relations. This influence has to-day reached a memorable stage.

His Majesty the Emperor of Russia, inspired by family traditions, as Mr. Beernaert has happily reminded us, and animated by constant solicitude for the welfare of nations, has in a measure opened the way for the realization of these conceptions. You, gentlemen, who are younger than your president, will no doubt make further progress along the road upon which we have set out.

After so long and laborious a session, while you have before your eyes the result of your labours, I shall refrain from burdening you with an historical account of what you have accomplished at the cost of so much effort. I shall confine myself to a few general observations.

In response to the call of the Emperor my august master, the Conference accepted the programme outlined in the circulars of Count Mouravieff, and examined it attentively and at length.

[1] *Procès-verbaux*, pt. i, p. 104.

If the First Commission, which had taken charge of military questions, the limitation of armaments and of budgets, did not arrive at important material results, it is because the Commission met with technical difficulties and a series of allied considerations which it did not deem itself competent to examine. But the Conference has requested the various Governments to resume the study of these questions. The Conference unanimously supported the resolution proposed by the first delegate of France, to wit: 'That the limitation of military charges, which at present weigh down the world, is greatly to be desired for the increase of the material and moral welfare of humanity'.

The Conference likewise accepted all the humanitarian proposals referred to the Second Commission for examination.

In this class of questions the Conference was able to meet the long-expressed desire that the application of principles similar to those embodied in the Geneva Convention be extended to naval warfare.

Resuming a work started at Brussels twenty-five years ago under the auspices of Emperor Alexander II, the Conference succeeded in giving a more definite form to the laws and customs of war on land.

Such, gentlemen, are the positive results achieved by conscientious labour.

But the work which opens a new era, so to speak, in the domain of the law of nations, is the Convention for the peaceful settlement of international disputes. It bears as a heading the inscription: 'The Maintenance of General Peace.'

A few years ago, in closing the Bering Sea arbitration, an eminent French diplomat expressed himself as follows: 'We have endeavoured to preserve intact the fundamental principles of that august law of nations which spreads like the vault of heaven over all nations and borrows the laws of nature herself, to protect the peoples of the world one from the other by inculcating upon them the essentials of mutual good-will.'

The Peace Conference, with the authority possessed by an assembly composed of civilized States, has endeavoured also to safeguard, in matters of the utmost importance, the fundamental principles of international law. It has undertaken to give them precision, to develop them, and to apply them more completely. It has created upon several points a new law to meet new necessities, the progress of international life, the exigencies of the public conscience, and the highest aspirations of humanity. Especially has it accomplished a work which will doubtless be called hereafter 'The First International Code of Peace', to which we have given the more modest name of 'Convention for the pacific settlement of international disputes'.

In inaugurating the sessions of the Conference, I pointed out as one of the principal elements of our combined endeavours—'the very essence of our task'—the realization of the progress so impatiently awaited in the matter of mediation and arbitration. I was not mistaken in believing that our labours in this direction would be of exceptional importance.

This work is to-day an accomplished fact. It bears witness to the great solicitude of the Governments for all that concerns the peaceful development of international relations and the well-being of nations.

No doubt this work is not perfect, but it is sincere, practical, and wise. It endeavours to conciliate, in safeguarding them, the two principles which are the foundation of the law of nations—the principle of the sovereignty of States and the principle of a just international solidarity. It gives precedence to that which unites over that which divides.

It affirms that the dominant factor in the era upon which we are entering should be works which spring from the need of concord and which are made fruitful by the collaboration of States seeking the realization of their legitimate interests in a durable peace governed by justice.

The task accomplished by the Hague Conference in this direction is indeed meritorious and noble. It is in keeping with the magnanimous sentiments of the august initiator of the Conference. It will have the support of public opinion everywhere, and will, I hope, receive the commendation of history.

I shall not, gentlemen, enter into the details of the Act which many of us have just signed. They are set forth and analysed in the incomparable report which is in your hands.

At the present moment it is perhaps premature to judge as a whole the work which has barely ended. We are still too near the cradle: we lack the perspective of distance. What is certain is that this work, undertaken upon the initiative of the Emperor my august master and under the auspices of the Queen of the Netherlands, will develop in the future. As the president of our Third Commission said on a memorable occasion, 'The further we advance along the highway of time, the more clearly will the importance of this work appear'.

Well, gentlemen, the first step has been taken. Let us unite our good-will and profit by experience.

The good seed is sown. Let the harvest come.

As for me, who have reached the end of my career and the decline of life, I consider it a supreme consolation to see new prospects opening up for the good of humanity and to be able to peer into the brightness of the future.

Closing address of Mr. de Beaufort, Minister of Foreign Affairs of the Netherlands, July 29, 1899 [1]

Before to-day's session closes I desire to say a few words.

It has been a source of happiness to the Government of the Netherlands to see you here. We have followed your deliberations with the greatest interest, and rejoice that your labours have borne fruit.

If the Peace Conference has not been able to realize the dreams of Utopians, the fact should not be lost sight of that in this respect it is like all gatherings of serious and intelligent men who seek a practical goal. If, on the other hand, the Conference has disproved the gloomy predictions of pessimists, who beheld in it merely a generous effort about to be lost in the utterance of a few wishes, it has proved by this very fact the clearsightedness of the august monarch who chose a propitious time for its meeting.

It is not my desire to emphasize at the present moment the great importance of the results accomplished. It is true that it has not been possible to express unanimous agreement upon the principle of disarmament in a practical formula applicable to the internal legislation of the different countries and in harmony with their divergent needs. Let us remember in this connexion the saying of an eminent historian, the Duke of Broglie, who a few weeks ago remarked in speaking of the Conference: 'We are living at a time

[1] *Procès-verbaux*, pt. i, p. 107.

when as much account should be taken of the moral effect of an important measure as of its material and immediate results—indeed more account.'

Without doubt the moral effect of your deliberations, already perceptible, will make itself felt more and more and will not fail to show itself strikingly in public opinion. It will also be of the utmost assistance to the Governments in their efforts to solve the problem of the limitation of armaments, a problem which will continue to be, and rightly, the serious and legitimate concern of the statesmen of all countries.

Permit me, before concluding, to express the hope that His Majesty the Emperor of Russia may find, in renewed energy to continue the great work he has undertaken, the most effectual consolation for the great and cruel sorrow through which he has passed. For ourselves, the memory of your sojourn here will remain for ever a bright spot in the annals of our country, because it is our firm conviction that this sojourn has opened a new era in the history of international relations between civilized peoples.

FINAL ACT OF THE INTERNATIONAL PEACE CONFERENCE[1]

The International Peace Conference, convoked in the best interests of humanity by His Majesty the Emperor of All the Russias, assembled, on the invitation of the Government of Her Majesty the Queen of the Netherlands, in the Royal House in the Wood at The Hague, on May 18, 1899.

The Powers enumerated in the following list took part in the Conference, to which they appointed the delegates named below :

Germany :

His Excellency Count Münster, German Ambassador at Paris, delegate plenipotentiary.

The Baron von Stengel, professor at the University of Munich, second delegate.

Dr. Zorn, Judicial Privy Councillor, professor at the University of Königsberg, scientific delegate.

Colonel Gross von Schwarzhoff, Commandant of the 5th Regiment of Infantry, No. 94, technical delegate.

Captain Siegel, Naval Attaché to the Imperial Embassy at Paris, technical delegate.

Austria-Hungary :

His Excellency Count R. von Welsersheimb, Ambassador Extraordinary and Plenipotentiary, first delegate, plenipotentiary.

Mr. Alexander Okolicsányi von Okolicsna, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Mr. Cajetan Mérey von Kapos-Mére, Counsellor of Embassy and Chief of Cabinet of the Minister for Foreign Affairs, assistant delegate.

Mr. Heinrich Lammasch, professor at the University of Vienna, assistant delegate.

Mr. Victor von Khuepach zu Reid, Zimmerlehen and Haslburg, Lieutenant-Colonel on the General Staff, assistant delegate.

Count Stanislaus Soltyk, Captain of Corvette, assistant delegate.

Belgium :

His Excellency Mr. Auguste Beernaert, Minister of State, President of the Chamber of Representatives, delegate plenipotentiary.

The Count de Grelle Rogier, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The Chevalier Descamps, Senator, delegate plenipotentiary.

[1] *Procès-verbaux*, pt. i, appendix, p. 1.

China :

Mr. Yang Yü, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate, plenipotentiary.

Mr. Lou Tseng-tsiang, second delegate.

Mr. Hoo Wei-teh, second delegate.

Mr. Ho Yen-cheng, Counsellor of Legation, assistant delegate.

Denmark :

Chamberlain Fr. E. Bille, Envoy Extraordinary and Minister Plenipotentiary at London, first delegate plenipotentiary.

Mr. J. G. F. von Schnack, Colonel of Artillery, ex-Minister for War, second delegate plenipotentiary.

Spain :

His Excellency Duque de Tetuán, ex-Minister for Foreign Affairs, first delegate plenipotentiary.

Mr. W. Ramirez de Villa Urrutia, Envoy Extraordinary and Minister Plenipotentiary at Brussels, delegate plenipotentiary.

Mr. Arturo de Baguer, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

The Count de Serrallo, Colonel, Military Attaché to the Spanish Legation at Brussels, assistant delegate.

The United States of America :

His Excellency Mr. Andrew D. White, United States Ambassador at Berlin, delegate plenipotentiary.

The Honourable Seth Low, president of the Columbia University at New York, delegate plenipotentiary.

Mr. Stanford Newel, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

Captain Alfred T. Mahan, United States Navy, delegate plenipotentiary.

Mr. William Crozier, Captain of Artillery, delegate plenipotentiary.

Mr. Frederick W. Holls, advocate at New York, delegate and secretary to the delegation.

The United States of Mexico :

Mr. de Mier, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Mr. Zenil, Minister-Resident at Brussels, delegate plenipotentiary.

France :

Mr. Léon Bourgeois, ex-President of Council, ex-Minister for Foreign Affairs, member of the Chamber of Deputies, first delegate, plenipotentiary.

Mr. Georges Bihourd, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

The Baron d'Estournelles de Constant, Minister Plenipotentiary, member of the Chamber of Deputies, third delegate, plenipotentiary.

Mr. Mounier, General of Brigade, technical delegate.

Mr. Péphau, Rear-Admiral, technical delegate.

Mr. Louis Renault, professor of the Faculty of Law at Paris, Legal Adviser to the Ministry for Foreign Affairs, technical delegate.

Great Britain and Ireland :

His Excellency the Right Honourable Sir Julian Pauncefote, member of Her Majesty's Privy Council, Ambassador Extraordinary and Plenipotentiary of the United Kingdom at Washington, first delegate, plenipotentiary.

Sir Henry Howard, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Sir John A. Fisher, Vice-Admiral, technical delegate.

Sir J. C. Ardagh, Major-General, technical delegate.

Lieutenant-Colonel C. à Court, Military Attaché at Brussels and The Hagne, assistant technical delegate.

Greece :

Mr. N. Delyanni, ex-President of the Council, ex-Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Italy :

His Excellency Count Nigra, Italian Ambassador at Vienna, Senator of the Kingdom, first delegate, plenipotentiary.

Count A. Zannini, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

The Chevalier Guido Pompilj, Deputy in the Italian Parliament, third delegate, plenipotentiary.

The Chevalier Louis Zuccari, Major-General, technical delegate.

The Chevalier Auguste Bianco, Captain, Naval Attaché to the Royal Embassy at London, technical delegate.

Japan :

The Baron Hayashi, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, first delegate, plenipotentiary.

Mr. I. Motono, Envoy Extraordinary and Minister Plenipotentiary at Brussels, second delegate, plenipotentiary.

Colonel Uehara, technical delegate.

Captain Sakamoto, Japanese Navy, technical delegate.

Mr. Nagao Ariga, professor of international law at the Superior Military School and the Naval School of Tokio, technical delegate.

Luxemburg :

His Excellency Mr. Eyschen, Minister of State, President of the Grand Ducal Government, delegate plenipotentiary.

The Count de Villers, Chargé d'Affaires at Berlin, delegate plenipotentiary.

Montenegro :

His Excellency Mr. Staal, Privy Councillor, Russian Ambassador at London, delegate plenipotentiary.

The Netherlands :

Jonkheer A. P. C. van Karnebeek, ex-Minister for Foreign Affairs, member of the Second Chamber of the States-General, delegate plenipotentiary.

General J. C. C. den Beer Poortugael, ex-Minister for War, member of the Council of State, delegate plenipotentiary.

Mr. T. M. C. Asser, member of the Council of State, delegate plenipotentiary.

Mr. E. N. Rahusen, member of the First Chamber of the States-General, delegate plenipotentiary.

Captain A. P. Tadema, Chief of the Staff of the Netherland Navy, technical delegate.

Persia :

Aide-de-Camp General Mirza Riza Khan, Arfa-ud-Dovleh, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg and Stockholm, first delegate, plenipotentiary.

Mirza Samad Khan, Momtas-es-Saltaneh, Counsellor of Legation at St. Petersburg, assistant delegate.

Portugal :

The Count de Macedo, Peer of the Kingdom, ex-Minister of Marine and the Colonies, Envoy Extraordinary and Minister Plenipotentiary at Madrid, delegate plenipotentiary.

Mr. d'Ornellas de Vasconcellos, Peer of the Kingdom, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg, delegate plenipotentiary.

The Count de Selir, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

Captain Augusto de Castilho, technical delegate.

Captain on the General Staff Ayres d'Ornellas, technical delegate.

Roumania :

Mr. Alexandre Beldiman, Envoy Extraordinary and Minister Plenipotentiary at Berlin, first delegate, plenipotentiary.

Mr. Jean N. Papiniu, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate, plenipotentiary.

Aide-de-Camp Colonel Constantin Coanda, Director of Artillery at the Ministry for War, technical delegate.

Russia :

His Excellency Mr. Staal, Privy Councillor, Russian Ambassador at London, delegate plenipotentiary.

Mr. Martens, permanent member of the Council of the Imperial Ministry for Foreign Affairs, Privy Councillor, delegate plenipotentiary.

Mr. Basily, Councillor of State, Chamberlain, Director of the First Department of the Imperial Ministry for Foreign Affairs, delegate plenipotentiary.

Mr. Raffalovich, Councillor of State, Agent in France of the Imperial Ministry for Finance, technical delegate.

Mr. Gilinsky, Colonel on the General Staff, technical delegate.

Count Barantzew, Colonel of Horse Artillery of the Guard, technical delegate.

Captain Scheine, Russian Naval Agent in France, technical delegate.

Mr. Ovtchinnikow, Naval Lieutenant, professor of jurisprudence, technical delegate.

Serbia :

Mr. Miyatovitch, Envoy Extraordinary and Minister Plenipotentiary at London and The Hague, delegate plenipotentiary.

Colonel Maschine, Envoy Extraordinary and Minister Plenipotentiary at Cettinje, delegate plenipotentiary.

Dr. Voislave Veljkovitch, professor of the Faculty of Law at Belgrade, assistant delegate.

Siam :

His Excellency Phya Suriya Nuvatr, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg and Paris, first delegate, plenipotentiary.

His Excellency Phya Visuddha Suriya Sakdi, Envoy Extraordinary and Minister Plenipotentiary at The Hague and London, second delegate, plenipotentiary.

Mr. Ch. Corragioni d'Orelli, Counsellor of Legation, third delegate.

Mr. Edouard Rolin, Siamese Consul-General in Belgium, fourth delegate.

Sweden and Norway :

Baron Bildt, Envoy Extraordinary and Minister Plenipotentiary at the Royal Court of Italy, delegate plenipotentiary.

Sweden :

Colonel P. H. E. Brändström, Chief of 1st Regiment of Grenadiers of the Guard, technical delegate.

Captain C. A. M. de Hjulhammar, Swedish Navy, technical delegate.

Norway :

Mr. W. Konow, President of the Odelsting, technical delegate.

Major-General J. J. Thaulow, Surgneo-General of the Army and Navy, technical delegate.

Switzerland :

Dr. Arnold Roth, Envoy Extraordinary and Minister Plenipotentiary at Berlin, delegate plenipotentiary.

Colonel Arnold Künzli, National Councillor, delegate.

Mr. Edouard Odier, National Councillor, delegate plenipotentiary.

Turkey :

His Excellency Turkhan Pasha, ex-Minister for Foreign Affairs, member of the Council of State, first delegate, plenipotentiary.

Noury Bey, Secretary-General to the Ministry for Foreign Affairs, delegate plenipotentiary.

Abdullah Pasha, General of Division of the Staff, delegate plenipotentiary.

Mehemed Pasha, Rear-Admiral, delegate plenipotentiary.

Bulgaria :

Dr. Dimitri I. Stancioff, Diplomatic Agent at St. Petersburg, first delegate, plenipotentiary.

Major Christo Hessaptchieff, Military Attaché at Belgrade, second delegate, plenipotentiary.

In a series of meetings, between May 18 and July 29, 1899, in which the constant desire of the delegates above mentioned has been to realize, in the fullest manner possible, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference has agreed, for submission for signature by the plenipotentiaries, on the text of the Conventions and Declarations enumerated below and annexed to the present Act :

I. Convention for the pacific settlement of international disputes.

II. Convention respecting the laws and customs of war on land.

III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864.

IV. Three Declarations :

1. To prohibit the launching of projectiles and explosives from balloons or by other similar new methods.

2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.

3. To prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

These Conventions and Declarations shall form so many separate acts. These acts shall be dated this day, and may be signed up to December 31, 1899, by the plenipotentiaries of the Powers represented at the International Peace Conference at The Hague.

Guided by the same sentiments, the Conference has adopted unanimously the following resolution :

The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.[1]

It has, besides, uttered the following *vœux* :

1. The Conference, taking into consideration the preliminary step taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *vœu* that steps may be shortly taken for the assembly of a special Conference having for its object the revision of that Convention.

This *vœu* was voted unanimously.

2. The Conference utters the *vœu* that the questions of the rights and duties of neutrals may be inserted in the programme of a Conference in the near future.[2]

3. The Conference utters the *vœu* that the questions with regard to rifles and naval guns, as considered by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.

4. The Conference utters the *vœu* that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.

5. The Conference utters the *vœu* that the proposal which contemplates the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.[3]

6. The Conference utters the *vœu* that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration.[4]

The last five *vœux* were voted unanimously, saving some abstentions.

In faith of which, the plenipotentiaries have signed the present Act, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall be deposited in the Ministry of Foreign Affairs, and copies of which, duly certified, shall be delivered to all the Powers represented at the Conference.

[Here follow signatures.]

Oral Repo.t of Mr. Louis Renault on the Work of the Drafting Committee of the Final Act, July 25 and 27, 1899[5]

Mr. Renault reminds the Conference that by its direction Messrs. Asser, Chevalier Descamps, Seth Low, Martens, Mérey von Kapos-Mére, his Excellency Count Nigra, Renault, and Baron von Stengel met to decide conjointly upon the text of the Final Act,

[1] This resolution was confirmed by the Second Peace Conference, *post*, p. 216.
[2] Cf. *post*, pp. 140, 189.
[3] Cf. *post*, p. 137.
[4] For the Convention adopted by the Second Conference, see *post*, p. 693.
[5] *Procès-verbaux*, pt. 1, pp. 71, 152, 157.

containing the result of the labours of the Conference. Upon the refusal of his Excellency Count Nigra, who had been elected president of the committee, to serve, this office was filled by Mr. Asser.

Mr. Renault has been charged to make an oral report on the resolutions of the committee. He hopes that the Conference will receive this extemporaneous report with indulgence.

The first question which came up was as to what designation should be given to the Final Act which is before the Conference.

Should it be called *Final Act*, *Protocol*, or *Procès-verbal*? The committee was of the opinion that the denomination 'Final Act' would be more in keeping with the importance of the work of the Conference, and that title was decided upon.

As the aim of the Final Act was to state the results of the deliberations of the Conference, the query arose as to whether this document should bear the signatures of all the delegates who took part in the work, or only the names of the delegates plenipotentiary. It was believed that it was proper to mention in the preamble the names of all the delegates who took part in the work, and at the same time to conform to the custom that a diplomatic Act should be signed only by plenipotentiaries, and the following text was adopted in this respect:

> The International Peace Conference, convoked in the best interests of humanity by His Majesty the Emperor of All the Russias, assembled, on the invitation of the Government of Her Majesty the Queen of the Netherlands, in the Royal House in the Wood at The Hague, on May 18, 1899.
>
> The Powers enumerated in the following list took part in the Conference, to which they appointed the delegates named below:

Here follows the enumeration of all the delegates appointed, whether plenipotentiary or not.

After which will come the following formula:

> In a series of meetings, between May 18 and Ju , 1899, in which the constant desire of the delegates above mentioned has been realize, in the fullest manner possible, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference has agreed, for submission for signature by the plenipotentiaries, on the text of the Conventions and Declarations enumerated below and annexed to the present Act.

This instrument indicates, therefore, that all the delegates have taken part in the work of the Conference, but that only the plenipotentiaries have the right to sign the Final Act.

The Final Act next states that the Conference has adopted the text of three Conventions and three Declarations. It must be noted here that the signing of the Final Act is not equivalent to the signing of the Conventions and Declarations. The Final Act has no other purpose than to *state* that the Conference has reached such and such decisions, and that the plenipotentiaries may therefore sign it without in any way whatever binding their Governments in so far as the clauses of the Conventions and Declarations are concerned.

These latter, on the contrary, will not become binding until they have been signed, and they may even be signed by other plenipotentiaries than those who are here assembled. Moreover, they form so many separate acts, each one of which has its own force. Con-

sequently, one State may sign them all, while another State may sign only some of them. It is therefore evident that the Final Act and the Conventions and Declarations may bear different signatures and a different number of signatures.

The question came up as to what date the Conventions and Declarations should bear. The ideal solution clearly would have been that all the States represented at the Conference might be in a position to sign all the acts at the same time and forthwith. As it is unfortunately probable that this will not be the case, an attempt has been made to form a link between the various signatures. It is to be supposed that several States will sign the Conventions at the same time that they sign the Final Act. The Conventions and Declarations will therefore be given the same date as the Final Act, and these Conventions and Declarations, bearing this uniform date, will remain open for signature until December 31, 1899.

After January 1, 1900, conditions will change and the States which have not signed must, if they desire so to do, avail themselves of the adhesion or accession clause, which will be found in each Convention or Declaration, and give notice of such adhesion or accession in the form provided.

It is therefore understood that States, even though represented at the Conference, will fall under the common law, unless they sign before December 31 of this year.

The Final Act contains an enumeration of the Conventions and Declarations in the following form :

I. Convention for the pacific settlement of international disputes.
II. Convention respecting the laws and customs of war on land.
III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864.
IV. Three Declarations :
1. To prohibit the launching of projectiles and explosives from balloons, or by other similar new methods.
2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.
3. To prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

These Conventions and Declarations shall form so many separate acts. These acts shall be dated this day, and may be signed up to December 31, 1899, by the plenipotentiaries of the Powers represented at the International Peace Conference at The Hague.

It will be noted that the title of the third of these Declarations above has been completed by the addition of the clause ' such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions '. The object of restoring the entire formula in the text was to satisfy certain doubts which had arisen as to the advisability of the abbreviation which was made at first. This is not therefore a modification of the subject matter which changes the character of the provision.

Mr. Renault points out further that it was not thought wise to mention the votes upon the Conventions and Declarations. The reason for this is that the Final Act states only that they were adopted and in no way implies that they were approved. It appeared inadvisable therefore to mention whether the Conventions and Declarations received a unanimous vote or not. The Powers have at their disposal a very simple means of showing their approval or disapproval—by signing or not signing.

The Final Act next contains a resolution, which was unanimously adopted upon the proposal of the first delegate of France. It is presented in the following form:

> Guided by the same sentiments, the Conference has adopted unanimously the following resolution:
>
> The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Final Act then takes up the *vœux*. Mr. Renault points out, in passing, that a *vœu* does not bind the Governments, but that it is nevertheless important in the sense that it implies their approval of the idea which prompted this *vœu*. It is therefore necessary in mentioning the *vœux*, and to show the sincerity of the act, to specify whether they received a unanimous vote or what majority they obtained.

The Final Act presents the *vœux* in this form:

> It has, besides, uttered the following *vœux*:
>
> 1. The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, utters the *vœu* that steps may shortly be taken for the assembly of a special Conference having for its object the revision of that Convention.
>
> This *vœu* was voted unanimously.
>
> 2. The Conference utters the *vœu* that the question of the rights and duties of neutrals may be inserted in the programme of a Conference in the near future.
>
> 3. The Conference utters the *vœu* that the questions with regard to rifles and naval guns, as considered by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.
>
> 4. The Conference utters the *vœu* that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.
>
> 5. The Conference utters the *vœu* that the proposal which contemplates the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.
>
> 6. The Conference utters the *vœu* that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration.
>
> The last five *vœux* were voted unanimously, saving some abstentions.

Finally, the Final Act ends with the following formula:

> In faith of which, the plenipotentiaries have signed the present Act, and have affixed their seals thereto.
>
> Done at The Hague, July 29, 1899, in a single original, which shall be deposited in the Ministry of Foreign Affairs, and copies of which, duly certified, shall be delivered to all the Powers represented at the Conference.

Mr. Renault, in concluding, reminds the Conference of the fact that, at the request of Baron Bildt, the words 'States' or 'Governments' were replaced in this last clause, as well as in the second paragraph of the preamble which follows the Declarations, by the word 'Powers'.

Mr. Renault[1] states that it is his duty to give a brief account of the propositions which the Committee submits to the Conference concerning: (1) the Convention relating to the laws and customs of war on land; (2) the Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864; (3) the

[1] *Procès-verbaux*, pt. i, p. 152.

three Declarations concerning the prohibition of asphyxiating projectiles, the launching of explosives from balloons, and the use of bullets which expand in the human body.

The Drafting Committee has inserted each of these decrees of the Conference between a preamble and final clauses.

In the matter of the first Convention,[1] relating to the laws of war on land, the drafters of the preamble have endeavoured to combine the object of the Convention with the object of the Conference. It has been their desire thus to form a link between this work and the work accomplished at Brussels twenty-five years ago, also a result of the initiative of the Russian Government. Finally, there has been incorporated in this preamble the declaration made by Mr. Martens, as unanimously voted by the Second Commission and by the Conference. The following text was adopted :

> Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events which their solicitude could not avert ;
>
> Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization ;
>
> Thinking it important, with this object, to revise the general laws and customs of war, either with a view of defining them with greater precision or of confining them within such limits as would mitigate their severity as far as possible ;
>
> Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight ;
>
> Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.
>
> According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.
>
> It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice.
>
> On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgement of military commanders.
>
> Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.
>
> They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.
>
> The high contracting Parties, wishing to conclude a Convention to this effect, have appointed the following as their plenipotentiaries, to wit : . . .
>
> Who, after communication of their full powers, found in good and due form, have agreed upon the following :

Mr. Renault, before reading the five articles which follow this preamble, explains that the Drafting Committee is of the opinion that it is preferable not to incorporate in the Convention itself the text of the sixty articles adopted relating to the laws and customs of war, but to give them the form of separate Regulations, which should be annexed to the Convention. It goes without saying that this method of procedure does not render

[1] *Post*, p. 126.

the rules contained in this annex any the less binding, and that its only object is to prevent the awakening of certain susceptibilities. In this way it is clearly brought out that these rules are not a recognition of the right of force. Each Power merely engages to limit the action of its troops in case of war.

Consequently, the five articles will have the following form :

ARTICLE 1

The high contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the ' Regulations respecting the laws and customs of war on land ' annexed to the present Convention.

ARTICLE 2

The provisions contained in the Regulations referred to in Article 1 are only binding on the contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between contracting Powers, a non-contracting Power joins one of the belligerents.

ARTICLE 3

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent, through the diplomatic channel, to all the contracting Powers.

ARTICLE 4

Non-signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification, addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 5

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, the . . . one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

In so far as Article 2 is concerned, Mr. Renault observes that it merely sanctions the common law in the matter of the binding effect of the Regulations, which can concern the contracting Powers only in their relations with each other. The same rules are to be found in the Declaration of St. Petersburg.

Article 3 contains the usual clauses .n the matter of ratification. The form of the deposit of ratifications has, however, been simplified. It was not necessary to reserve the right of parliaments to intervene ; each sovereign or head of a State must decide to what extent he is free to ratify the Convention—whether he requires the authorization of the parliament in order to ratify, or the passage of a law to give effect to the Convention.

Article 4 concerns adhesion. The question arose as to whether the Convention should

be open or closed. After a little hesitation, the first of the two solutions was decided upon, and it was decided that all States, even those not represented here and those that have not signed the Convention, might sign it later. The simplest possible method of procedure has been adopted for this adhesion.

Article 5 concerns denunciation. It is evident that the Convention should not be a perpetual engagement. What, then, should the procedure be, if one of the contracting Parties desires to withdraw ?

Although, in principle, this last hypothesis should not be provided for, it nevertheless seemed more prudent to consider it. A case might arise where a State, on the eve of war, might suddenly announce its intention to denounce the Convention. In order to avoid abuses of this kind, it was decided to specify the method of procedure in the matter of denunciation in a clause tending rather to restrict its effect than to encourage its exercise. Moreover, States will adhere more readily to a contractual engagement, if they know in advance that, according to the letter of the law, they may free themselves at a given time, without making their denunciation appear almost violent, as it would in the absence of a special clause.

Mr. Renault passes to the Convention[1] for the adaptation to naval warfare of the principles of the Geneva Convention.

He says that the preamble of this Convention recalls by its form and modest proportions that of the Geneva Convention itself. It is in the following words :

> Animated alike by the desire to diminish, as far as depends on them, the inevitable evils inseparable from war, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of August 22, 1864, have resolved to conclude a Convention to this effect.
>
> They have, in consequence, appointed as their plenipotentiaries, to wit : . . .
>
> Who, after communication of their full powers, found in good and due form, have agreed on the following provisions :

Here follow the ten articles adopted by the Conference, which have been incorporated in the Convention.

Article 11 and those that follow only repeat the clauses of the Convention concerning the laws of war. They are drawn up in the following terms :

ARTICLE 11

> The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.
>
> The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

ARTICLE 12

> The present Convention shall be ratified as soon as possible.
>
> The ratifications shall be deposited at The Hague.
>
> On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 13

> Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.
>
> For this purpose they must make their adhesion known to the contracting Powers

[1] *Post*, p. 156.

by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 14

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, the . . . one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

Mr. Renault points out the fact that Article 13 alone presents a slight difference in the matter of adhesion.

It is clear that, in order to adhere to stipulations which are based upon the Geneva Convention, that Convention itself must first have been accepted. It cannot be considered restrictive, since, inasmuch as the Geneva Convention is open, nothing is easier than to adhere to it first, according to the form provided by that Convention itself, and to accede then to the Hague Convention, in conformity with Article 13.

Mr. Renault then passes to the three Declarations.

He explains that these Declarations are preceded by a very simple preamble which is identical for all of them. It is in these terms :

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments,

Inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 (December 11), 1868,

Declare . . . &c.

Mr. Renault points out that the form of this preamble does not imply the adhesion of the signatory States to the Convention of St. Petersburg of 1868. It means merely that these States, even though they have not signed the said Convention, nevertheless consider it wise 'to be inspired by the sentiments which found expression in the Declaration of St. Petersburg '. They are free, if they so desire, to complete at some future time this manifestation of their sentiments by formally adhering to the Convention of 1868.

As to the final clauses, they are likewise identical in the three Declarations and they correspond exactly with the final provisions of the Conventions relating to the laws of war and the ' Red Cross '.

They are thus formulated :

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of

a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Governments.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, the . . . one thousand eight hundred and ninety-nine, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

Finally, Mr. Renault reads the text of each Declaration, as it will appear between the preamble and the final clauses.

First Declaration [1]

The contracting Powers agree to abstain from the use of projectiles the only object of which is the diffusion of asphyxiating or deleterious gases.

Second Declaration [1]

The contracting Powers agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

Third Declaration

The contracting Powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature.

Mr. Renault [2] presents, in the name of the Drafting Committee of the Final Act, an oral report on the preamble and the final provisions of the ' Convention for the pacific settlement of international disputes '.

He says that the preamble merely repeats in a way the headings of the chapters of the Convention. The text is the work of the eminent reporter of the Third Commission. Therefore, it is unnecessary to speak of it at any length.

The final clauses are contained in Articles 58 to 61.[3]

Article 58, which concerns ratification, and Article 61, which contemplates denunciation, are merely repetitions of provisions of the same kind inserted in the Conventions relating to the ' laws and customs of war on land ' and ' adaptation to naval warfare of the principles of the Geneva Convention of 1864 '. They are identical and concordant provisions. It is only necessary to refer back to the explanations previously given.

Articles 59 and 60 govern the matter of adhesion. They differ from the final clauses of the other Conventions, which are absolutely *open* except for the slight difference which has already been indicated with respect to the Convention relating to the Red Cross.

[1] For the history of these declarations in the Second Conference, see *post*, p. 801.
[2] *Procès-verbaux*, pt. i, p. 157.
[3] *Post*, pp. 41, 42.

The present Convention contemplates two different conditions. a distinction has been made between Powers represented at the Conference and those which are not. Articles 59 and 60 provide for these two conditions.

The Powers represented at The Hague have two methods of becoming contracting Parties: they may sign immediately, or before December 31, 1899. After that date, they will have to *adhere* to the Convention; but they have the *right* so to do. Their adhesion is subject to the same rules as those which govern the other two Conventions. This is the object of Article 59.

Article 60 provides for the case of Powers not represented at the Conference. Such Powers may adhere to the Convention, but the conditions of their adhesion are reserved for a future agreement between the contracting Powers. They, therefore, have not the same right as is recognized with respect to the Powers represented.

This very simple solution was not reached in a very simple way. It gave rise to lively and lengthy discussions, which changed the modest character of the Drafting Committee and caused it to take up questions which were diplomatic and political rather than questions of style and wording. The reporter believes that he cannot better state the different systems which were upheld in the committee than by repeating to the Conference the following address, delivered at the last session of the committee by Mr. Asser, its president, which summarizes most completely the origin of Article 60.

> GENTLEMEN: The discussions of international gatherings like our Conference assume at times the character of parliamentary debates, at others that of diplomatic negotiations.
>
> In the matter with which the Drafting Committee has had to deal these last few days, our debates have assumed the latter character.
>
> The result is that, on the one hand, the individual opinions of the members of our committee and of the delegates who have been good enough to lend us their aid are subject—still more than in discussions of a different nature—to the sanction of the Governments; and, on the other hand, to reach a practical result unanimity is indispensable.
>
> If, from this double point of view, we consider the impression which the discussions of these last few days are bound to make, I believe I may state that all of us (delegates and Governments) desire that it may be possible to bring about adhesion to the Convention relating to the pacific settlement of international disputes by Powers who have not taken part in the Peace Conference; but that, at the same time, there exists a great difference of opinion as to whether the right to adhere should be granted absolutely or should be dependent upon certain conditions; and, in the latter case, what these conditions should be.
>
> On the one hand, it was warmly argued that the Convention with which we are dealing should be completely assimilated to the other Conventions, the text of which has been decided upon by the Conference—which assimilation was, indeed, voted by the Committee of Examination of the Third Commission.
>
> This implied the absolute right of all Powers to adhere to the Convention by means of a simple declaration.
>
> On the other hand, it was maintained that this right should depend either on the express consent of all the contracting States, or on their tacit consent, which they would be considered to have given if, within a fixed time, no Power opposed the adhesion; or, lastly, on the consent of a majority, in the sense that the adhesion should, in case of opposition, be sanctioned by a vote of the Permanent Council, composed of all the diplomatic representatives of the Powers accredited to The Hague, a proposition which I had the honour of submitting to you, in the name of my

Government, in order that no one Power might be given the right of veto in this matter.

Lastly, it was proposed that in case of opposition to the request for permission to adhere, the adhesion would affect only the Powers that had given their consent.

I cannot now repeat the arguments which were developed in favour of each of these systems.

I shall confine myself to stating that we have been unable to find a common ground for a unanimous agreement and that it is materially impossible, in the short time we still have, to reach such an agreement, especially since several delegates have not received specific instructions upon this point.

There is nothing left for us to do, therefore, but to choose between the two following systems :

Either to omit purely and simply the clause concerning the adhesion of Powers not represented ;

Or, admitting the principle of their right to adhere, to leave it for a future agreement between the Powers to determine the conditions under which adhesion may take place.

I venture to point out that it would appear from the discussions that the latter solution should be adopted.

It has been recognized by all that it is desirable to open the door to Powers that are not represented. If the Convention remained silent upon this point, it would by that very fact be a *closed* convention, a thing which we do not desire. If, on the contrary, it provides for a future agreement, such a provision is in effect an expression of the hope that this agreement can be brought about.

We are all persuaded that the Powers will endeavour to proceed with the greatest diligence, but we also know that ratifications cannot be obtained between to-day and to-morrow. Let us hope that the time which elapses between now and ratification by the Powers will serve to lessen the difficulties, which at present still exist, and that we shall be more and more convinced that the very nature of the Convention in question seems to admit of a broad and liberal system in the matter of the right to adhere.

The object of the Convention is the peaceful settlement of international disputes, and it determines the means of assuring such a result.

Well ! th authors of this Convention must necessarily desire that all Powers, even those which are not represented here, join in this work of general interest.

Now especially, since the Convention contains no clause concerning compulsory arbitration, they must desire that, in case of a dispute between Powers not represented at the Conference, or between one of them and a Power which is represented, the Convention may bear the same fruits as when there is a dispute between contracting Powers.

Mr. Renault says that this address of Mr. Asser is the best exposition of the reasons that he can give, and that he will add nothing further to the commentary upon the form and subject-matter of the initial and final clauses of the various Conventions, which he has been charged to submit.

CONVENTION (I) FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES[1]

His Majesty the German Emperor, King of Prussia ; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary ; His Majesty the King of the Belgians ; His Majesty the Emperor of China ; His Majesty the King of Denmark ; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom ; the President of the United States of America ; the President of the United Mexican States ; the President of the French Republic ; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India ; His Majesty the King of the Hellenes ; His Majesty the King of Italy ; His Majesty the Emperor of Japan ; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau ; His Highness the Prince of Montenegro ; Her Majesty the Queen of the Netherlands ; His Imperial Majesty the Shah of Persia : His Majesty the King of Portugal and of the Algarves, etc. ; His Majesty the King Roumania ; His Majesty the Emperor of all the Russias ; His Majesty the King of Serbia ; His Majesty the King of Siam ; His Majesty the King of Sweden and Norway ; the Swiss Federal Council ; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria ;

Animated by a strong desire to work for the maintenance of general peace ;

Resolved to promote by their best efforts the friendly settlement of international disputes ;

Recognizing the solidarity uniting the members of the society of civilized nations ;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice ;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result ;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration ;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples ;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, to wit :

[Here follow the names of plenipotentiaries.]

[1] *Procès-verbaux*, pt. i, appendix, p. 7. For the corresponding Convention (I) of 1907, see *post*, p. 292.

Who, after having communicated their full powers, found in good and due form, have agreed on the following provisions :

PART I.—THE MAINTENANCE OF GENERAL PEACE

ARTICLE 1

With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

PART II.—GOOD OFFICES AND MEDIATION

ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form :

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY

ARTICLE 9

In disputes of an international nature involving neither honour nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 10

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

ARTICLE 11

International commissions of inquiry are formed, unless otherwise stipulated in the manner determined by Article 32 of the present Convention.

ARTICLE 12

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

ARTICLE 13

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

ARTICLE 14

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

PART IV.—INTERNATIONAL ARBITRATION

CHAPTER I.—*The System of Arbitration*

ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

ARTICLE 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 18

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—*The Permanent Court of Arbitration*

ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

ARTICLE 23

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

ARTICLE 24

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued :

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

ARTICLE 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labours of the Court, the working of the administration, and the expenditure.

ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

CHAPTER III.—*Arbitration Procedure*

ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules which shall be applicable to arbitration procedure, unless other rules have been agreed on by the parties.

ARTICLE 31

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

ARTICLE 32

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued :

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

ARTICLE 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

ARTICLE 34

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

ARTICLE 36

The tribunal's place of session is selected by the parties. Failing this selection the tribunal sits at The Hague.

The place thus fixed can not, except in case of necessity, be altered by the tribunal without the assent of the parties.

ARTICLE 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defence of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

ARTICLE 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

ARTICLE 39

As a general rule arbitration procedure comprises two distinct phases : pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

ARTICLE 40

Every document produced by one party must be communicated to the other party.

ARTICLE 41

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

ARTICLE 43

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE 46

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

ARTICLE 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

ARTICLE 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

ARTICLE 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

ARTICLE 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

ARTICLE 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

ARTICLE 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

ARTICLE 54

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

ARTICLE 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

ARTICLE 56

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

General provisions

ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers that were represented at the International Peace Conference at The Hague.

ARTICLE 59

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

ARTICLE 60

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.[1]

ARTICLE 61

In the event of one of the high contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

Report to the Conference from the Third Commission on Pacific Settlement of International Disputes[2]

(REPORTER, BARON DESCAMPS)

THE message of His Majesty the Emperor of Russia invites nations to unite their efforts for the 'maintenance of general peace'. He recalls the fact that 'the preservation of peace has been set up as the purpose of international politics'. He asserts that 'that high purpose is in accord with the most vital interests and most legitimate desires of all Powers'.

[1] See *post*, p. 193.
[2] *Procès-verbaux*, pt. i, p. 75.

Mediation and arbitration belong especially to those institutions which tend to the strengthening and establishing of peace.

The circular of his Excellency Count Mouravieff, Minister of Foreign Affairs of Russia, dated December 30, 1898, and that of his Excellency Mr. de Beaufort, Minister of Foreign Affairs of the Netherlands, dated April 6, 1899, placed these subjects upon the programme of the Conference. His Excellency Mr. Staal set forth their importance in his speech upon opening the work of this high assembly. The committee,[1] to which was entrusted the duty of submitting them to a preliminary examination, has attempted to prepare the way for an international agreement containing in some measure, in the words of the hope expressed in the imperial message, 'a united sanction of the principles of equity and right upon which rest the security of States and the well-being of nations.'

It has put the results of its labours into the draft of an international agreement which was presented to the Third Commission before being proposed to the Conference.

The committee thought that the name 'Convention for the pacific settlement of international disputes' might be given to the international agreement worked out by it.

This agreement contains four parts:

I. The maintenance of general peace.
II. Good offices and mediation.
III. International commissions of inquiry.
IV. International arbitration.

This last part contains the three chapters on the system of arbitration, on the Permanent Court of Arbitration, and on arbitration procedure.

The Convention contains, finally, several general provisions concerning ratifications, adhesions, and denunciations.

In the examination of the numerous questions which have come to its attention, the committee followed the general order clearly indicated at the beginning of our labours by Mr. Leon Bourgeois, president of the Third Commission.

Good offices and mediation naturally formed the first chapter for our deliberations. The committee studied them, taking as the starting-point of its work the remarkable draft communicated to the Conference by the Russian delegation, bearing this title: 'Outlines for the preparation of a draft convention to be concluded between the Powers taking part in the Hague Conference.'[2] Several new provisions have been added to this preliminary draft, and the arrangement of the articles has had to be modified.

[1] At the session of May 26, 1899, the Third Commission designated as members of the committee of examination: Messrs. Asser, Chevalier Descamps, Baron d'Estournelles de Constant, Holls, Lammasch, Martens, Odier, and Zorn. Chevalier Descamps was appointed president and reporter of the committee, and Baron d'Estournelles de Constant, secretary. Mr. Bourgeois, president, and their Excellencies Count Nigra and Sir Julian Pauncefote, honorary presidents of the Third Commission, participated in the work of the committee, as well as his Excellency Mr. Staal, the president, and Jonkheer van Karnebeek, the vice-president of the Conference. Mr. Bourgeois and Chevalier Descamps fulfilled the duties of president. Mr. Jarousse de Sillac, Attaché of Embassy, acted as assistant secretary.

[2] *Post*, p. 91.

CONCERNING THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

PREAMBLE

The preamble of the Convention for the pacific settlement of international disputes has been accepted as formulated by the author of this report at the request of the general Drafting Committee,[1] except for the substitution in the fifth paragraph of the expression 'tribunal of arbitration accessible to all' instead of the words 'free tribunal'.

Here is the preamble:

> Animated by a strong desire to work for the maintenance of general peace;
>
> Resolved to promote by their best efforts the friendly settlement of international disputes;
>
> Recognizing the solidarity uniting the members of the society of civilized nations;
>
> Desirous of extending the empire of law, and of strengthening the appreciation of international justice;
>
> Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;
>
> Having regard to the advantages attending the general and regular organization of the procedure of arbitration;
>
> Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;
>
> Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, &c.

PART I. *The Maintenance of General Peace*

ARTICLE 1

> With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

This article is general in scope. It tends to ensure peace. The Powers therein affirm their common desire to prevent, as far as possible, recourse to force in international relations, and they agree to employ every effort to ensure the peaceful settlement of international differences. A spirit of reciprocal good feeling and friendly understanding cannot fail to inspire the Powers in the accomplishment of this work. Furthermore, it is left to them to decide how much co-operation they consider themselves able to render in bringing about the desired result without implying from such co-operation a special agreement by one Power with another.

The committee, upon a remark made by Count de Macedo, decided that reasons existed for giving the greatest scope to the provisions of Article 1. The substitution of the words 'international differences' for the more special provision 'conflicts which may arise between the signatory Powers' is in accord with that intention.

[1] The General Drafting Committee was composed of Messrs. Asser, president, Chevalier Descamps, Martens, Mérey von Kapos-Mére, his Excellency Count Nigra, Seth Low, Baron von Stengel, and Rafaelovich, secretary. Jonkheer Rochussen fulfilled the duties of assistant secretary. See p. 21, *ante*.

PART II.—*Good Offices and Mediation*

ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

The use of good offices and mediation finds its general justification in the ties which bind the members of an international society composed of civilized States one with the other, in the extreme nature of armed warfare as a means of solving international difficulties, in the general interest which exists in the maintenance of peace. The far-reaching differences which [illegible] produce modern wars in the relations among all States make still more necessary in our day the use of good offices and mediation, whether it be to prevent, or to [illegible]

[illegible] distinguished in certain respects from mediation. Practically, these [illegible] by their nature than by their greater or less concern with the [illegible] often, too, one follows the other, and the third Power which [illegible] between disputing States is also named to take part in these negotiations [illegible] to conduct them. Diplomatic documents do not insist upon [illegible]. The present Convention provides for friendly intervention in its [illegible]

From [illegible] that good offices and mediation assume the character of tactful intervention [illegible] within the sphere of friendly conciliation, they offer the double advantage [illegible] the independence of the States to which they are addressed absolutely intact, and lending themselves not only to the settlement of legal disputes, but also to the accommodation of conflicting interests. In these two ways they can place at the service of international peace the most varied resources for settlements.

The conclusion must not be drawn from that that their application is endorsed without restriction. The natural sphere of good offices and mediation is that of serious differences which endanger the maintenance of peaceful relations. Beyond that, their use might constitute unreasonable interference, not without danger.

Article 2 describes in the following manner the international differences wherein the Powers bind themselves to resort to good offices and mediation: 'in case of serious disagreement or dispute . . . before an appeal to arms.'

International practice notes numerous cases where the tactful intervention of a third Power has produced happy results. The use of good offices or mediation was the subject of special agreements in Article 8 of the Treaty of Paris, March 30, 1856, and in Articles 11 and 12 of the General Act of the Conference of Berlin, February 26, 1885. Recourse to this method of adjusting international difficulties formed the subject of a *vœu* of general scope in the 23rd protocol of the Congress of Paris in 1856. International conventions form a firm and substantial basis for the most important progress. The principle of prior mediation, written into some international agreements as a *vœu* or as a special obligation, may be all the more legitimately followed to-day when it appears as an application by the Powers to themselves of the Convention which unites them as to the methods to be used to ensure the peaceful settlement of international disputes.

Should the agreement in the contract between the Powers be qualified? Will not

reservations be of such a nature as to weaken an obligation which has no sanction behind it? In the committee Mr. Asser, delegate from the Netherlands, particularly brought out this point.

But it has been observed—and President Léon Bourgeois was one of the first—that we were dealing with a provision the varying applications of which could with difficulty be measured in advance. It may be wise not to expose the execution of such a provision to resistance of such a character as to shake the authority of the entire Convention.

Among the qualifications which it was deemed were practically necessary, several formulas were offered, one after the other. Two of them emphasized especially the exceptional nature of the cases in which such recourse might be declined. 'Unless the exceptional circumstances render this method manifestly impossible of application,' said one. 'Unless the exceptional circumstances are not in conflict therewith,' was another. The Russian draft, reproducing the reservation accepted in 1856, provided: 'So far as circumstances admit.' The text finally adopted, at the suggestion of his Excellency Sir Julian Pauncefote, reads: 'So far as circumstances allow.' This qualification has been accepted as being in accord with practical necessities, without, however, being considered contrary to the ideas which inspired the former phraseology.

Article 3

> Independently of this recourse, the signatory Powers deem it expedient that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.
>
> Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.
>
> The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

This article deals with a leading point: the offer of good offices and mediation. This offer may, in certain cases, be considered as the fulfilment of a service due to humanity, or of a duty belonging, under certain conditions, to the society of civilized States. It is to be noted that the remarkable provisions of Article 27 are inspired by this last consideration.

As to the power to offer good offices, it is a right founded upon the freedom of States, and, in many cases, blends with their right to guard their own interests and their property as members of the peaceful society of nations. In order to find a check upon this right we should not contest its existence, but consider the corresponding right to refuse offers which may be made.

This power should be safeguarded at any event. Mr. Veljkovich, in order the better to establish this point, proposed to place the offer of good offices and the 'refusal to accept' on an equal footing in the Convention, expressly declaring at the same time that the latter may never be considered an unfriendly act. While recognizing the justice of this view, the Commission considered that there was no reason to emphasize such a contingency to this extent.

If we consider the difficulties which may present themselves to disputing States when endeavouring to agree to resort to some mediator, we shall appreciate the importance of a spontaneous offer of friendly intervention as a means of preventing armed conflicts.

Unhappily, this offer itself is often so surrounded by obstacles, that the States most sincerely moved by a desire to unite in the preservation of peace are led to take refuge in complete inaction. Under these conditions, it is very important to establish beforehand, in the name of all and without idle verbiage, the fact that courageous and honourable attempts to prevent armed struggles between States are useful. Good intentions will be less restricted, fears will be in some measure allayed, and the general interests of peace will be the first to profit by a general and clearer definition of this matter.

Here again a practical limitation is added to the general provision. The reservation ' as far as circumstances may allow ' indicates clearly that it is not a matter of giving free rein to methods which might not be marked with prudence, opportuneness, and a just appreciation of events and a sincere desire for peace.

At the end of the first paragraph of Article 3 the Serbian delegation desired to replace the words ' Powers at variance ' with the words ' Powers between which a serious dispute has arisen which might lead to a breach of peaceful relations '. The Commission satisfied this suggestion by stating that Article 3 has in view, in effect, the same situation as Article 2, so far as the character of the difference giving rise to good offices and mediation is concerned.

The Russian draft dealt principally with the offer of good offices and mediation as a means of preventing armed conflicts. An additional provision, introduced by his Excellency Count Nigra, insists upon the right of friendly intervention, even during the course of hostilities. At the same time it attaches to the exercise of mediation the character not only of a useful method, but of a measure ' which can never be regarded by one or the other of the parties in dispute as an unfriendly act '. The first delegate from Italy pointed out, and not without reason, the importance of this last provision as a guarantee given in advance to the Powers who may be moved by the desire to exercise their power of intervention without possible apprehension.

Article 4

> The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 4 intends to set forth in a general way the character of the mediator. It summarizes this in two words ' reconciliation and appeasement '. Reconciliation of the opposing claims, appeasing the feelings of resentment to which the conflict may have given rise.

Article 5

> The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

The mission of the mediator may be crowned with success: in that case there is no difficulty to be feared. Having in view a different outcome, it is not unimportant to fix the period when the mediator is discharged from the task which he has assumed. From this point of view Article 5 declares that ' the functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted '

ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

Article 6 insists upon the essential characteristic of good offices and mediation. This characteristic is that of simple advice.

Mediation is not arbitration: the arbitrator is a judge and renders a binding decision.

Mediation is not intervention by authority, whether in the internal affairs of a State or in its foreign relations.

What is called 'armed mediation' is not mediation. These two terms mediation and coercion are contradictory.

Nations cannot deduce from the provisions of the present Convention concerning good offices and mediation any right whatever to exercise supremacy, to impose their individual or collective will by obligation or constraint. The sphere of mediation is and should remain the sphere of advice, offered or requested in a friendly way, freely accepted or declined.

ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

Article 7 deals with the effects of mediation after it has been accepted. Due to the suggestion of his Excellency Count Nigra, the article is inspired by the desire to facilitate the acceptance of mediation by making the immediate consequences thereof in certain respects less dangerous. If the acceptance of mediation should imply, before the opening of hostilities, suspension of preparations for military action, and after the opening of hostilities, suspension of the operations of war, certain Powers would be little disposed to pursue this course. The great military Powers especially would not consent to tie up their actions at this point. It is desirable to smooth the pathway for the acceptance of mediation which shall be free from too burdensome and too dangerous consequences, and, with this in mind to sacrifice what seems desirable as a temporary result to that which should be desired as a final result.

The Powers in controversy are also free to attach to the acceptance of mediation, if they deem it expedient, more far-reaching consequences than ordinarily follow. The words 'unless there be an agreement to the contrary' clearly call attention to this right. Under these conditions the proposition of the first delegate of Italy appeared to be of such a nature as to meet all exigencies and to provide for all possibilities.

ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communi

cation with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

Article 8 was proposed by Mr. Holls, delegate from the Government of the United States of America. It concerns mediation of a particular character which may be very productive of successful results. The committee, in giving it a separate place among the proposed provisions, has intended to preserve the form particularly suited to it, and to recommend it especially in those cases where circumstances will permit of its application. It deals with mediation exercised by common agreement by several Powers chosen respectively by the disputing States as their witnesses or champions, with a view to a peaceful settlement.

The proposition of the delegate of the United States of America rests upon this practical observation, that on the eve of a meeting which is believed to be fateful, instead of leaving debate open to the parties in controversy, it is preferable for the moment to surrender the discussion of the disputed points to witnesses or seconds who respectively possess the confidence of each party, and are less disposed to give way to passion.

'Mediation by common agreement' offers the great advantage of doing away with the necessity of an agreement, sometimes very difficult to reach, as to the choice of a common mediator.

Besides it introduces into the proceedings between nations in dispute another preliminary step. The author of this proposition observed on this point that there may be circumstances where one State feels obliged to say to its adversary, 'One step farther means war'. It would be much better for it to say under these circumstances, 'One step farther and I shall be obliged to name a second'. The interests of peace have everything to gain by the adoption of such procedure.

The exercise of mediation in this form requires the fixing of a period during which the disputing parties cease to communicate directly concerning the matter in dispute. Article 8 provides for this exigency in the following manner: 'For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the parties cease from all direct exchange of communication on the subject of the dispute, this subject being regarded as referred to the Powers exercising mediation jointly. These Powers must use their best efforts to settle it.'

Article 8 contemplates, in short—and this point is important—the practical breach of peaceful relations, and it provides that the Powers invested with the authority of mediator 'are charged with the joint task of taking advantage of any opportunity to restore peace'.

Here is a collection of provisions whose underlying principle seems happily suited to the maintenance and prompt reestablishment of peaceful relations between States.

It was expressly understood, after a question by Mr. d'Ornellas de Vasconcellos, that Article 7, concerning the effects of mediation, is applicable to special mediation as provided for in Article 8.

It was also agreed, after remarks by the author of this report, that certain States may

find themselves, in disputes of certain kinds, in a peculiar position on the question of the selection of mediators and arbitrators. For instance, Belgium would be in this position as regards Powers guaranteeing her independence, when disputes concerning her independence, territorial integrity, neutrality, as well as the other provisions of the treaty of April 15, 1839, arose.

Mr. Miyatovitch requested that note be made of the following declaration :

> In the name of the Royal Government of Serbia, we have the honour to declare that our adoption of the principle of good offices and mediation does not imply a recognition of the right of third States to use these means except with the extreme caution which proceedings of this delicate nature require.
>
> We do not accept good offices and mediation except on condition that their character as purely friendly advice is fully and completely maintained, and we never could accept them in such forms and under such circumstances as would endow them with the character of intervention.

Part III.—*International Commissions of Inquiry*

Article 9

> In disputes of an international nature involving neither honour nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

The question of the formation of international commissions of inquiry has been considered by the committee to be of great importance to the object sought by this Conference. The advantages of the formation of similar commissions have been particularly set forth by Mr. Martens.

The eminent delegate from Russia called our attention to the fact that international commissions of inquiry are not an innovation. They have already proved the value of their services when a conflict breaks out between two States, each acting in good faith ; for example, if a question concerning frontiers arises between them, opinion becomes inflamed in proportion as the incident is unexpected and public opinion lacks information with regard to it, because opinion is ignorant of the origin and real causes of the conflict. Opinion is at the mercy of momentary impressions and there are many opportunities under these circumstances to irritate the spirits and embitter the disagreement. That is why we desired to provide for the possibility of a commission having for its purpose, first and above all, the search for, and the publishing of, the truth as to the causes of the incident and as to the materiality of the facts. That is the principal business of the commission : it is the principal rôle of the commission : it is named to make a report, and not to make decisions which might bind the parties.

But while it is working to make its report, time is gained, and that is the second object we have in view. Spirits grow calmer, and the conflict is no longer acute.

Now this double and important practical result cannot be obtained except on one condition, and that is that the interested Governments shall both agree to take upon themselves the mutual obligation to name these commissions, with the reservation, of course, that no attack shall be made on vital questions, nor on the honour of the States in question.

The obligatory nature of the institution of commissions of inquiry has been the subject of some apprehension, of which Mr. Lammasch, delegate from Austria-Hungary, acted as spokesman before the committee. He proposed, therefore, to characterize this institution as useful and even to recommend it, but to leave recourse thereto optional. At first this point of view did not prevail at all. The committee decided upon the principle of obligation, accompanied by this qualification : 'so far as circumstances allow'.

As a result of this, Article 9, as originally adopted by the committee, included two classes of reservations : one concerning the case where the honour or indeed the vital interests of the interested Powers might be involved, the other leaving to these same Powers the power of deciding whether the circumstances permitted the formation of international commissions of inquiry.

Here is the text of this article :

> In disputes of an international nature arising from a difference of opinion regarding facts which may form the object of local determination, and besides involving neither the honour nor vital interests of the interested Powers, these Powers, in case they cannot come to an agreement by the ordinary means of diplomacy, agree to have recourse, so far as circumstances allow, to the institution of international commissions of inquiry, in order to elucidate at once, by means of an impartial and conscientious investigation, all the facts.

The institution of international commissions of inquiry was vigorously opposed in the commission by the delegation from Roumania. It was represented by Mr. Beldiman to be an innovation contrary to the sovereignty of States and presenting many dangers, especially in view of the obligatory character—in tendency at least—which might be attached to it.

The delegation from Serbia, without appearing hostile to the institution itself, called attention, in its turn, to all the inconveniences which the commissions might bring about, being in some respects a foreign organization acting upon national soil ; and as a source of inequality of treatment between the large and small States.

The delegation from Greece, in its turn, drew up reservations, expressing the hope that an understanding agreeable to all might be reached.

The delegation from Bulgaria, without admitting that international commissions of inquiry were an innovation, expressed the opinion that these commissions should be of a more voluntary character.

Mr. Rolin, delegate from Siam, made a declaration in the name of his Government regarding the extent of the agreements which the latter intends to assume concerning international commissions of inquiry, and concluding with these words :

> We believe that arbitration should normally follow inquiry, in default of an immediate agreement.
>
> It is with this conviction that we have just declared that the Siamese Government will doubtless be led to consider the agreement having in view a possible arbitration or, in other words, the prior conclusion of a *compromis*, as the principal condition on which it could consent to the entry of an international commission of inquiry into its territory to inquire into disputed facts.

In the course of a long discussion in which Messrs. Beldiman and Veljkovitch took part on one side, and Mr. Martens, Chevalier Descamps, his Excellency Mr. Eyschen, Messrs. Zorn, Asser, and Stancioff took the other side, the omission of Articles 9 to 13 was demanded by the former.

His Excellency Mr. Eyschen proposed, on his side, to add to the guaranties contained in these articles new guaranties analogous to those which exist for arbitral procedure.

These various propositions were sent to the committee for examination. The latter adopted a new form for Article 9, as follows :

> In disputes of an international nature arising from a difference of opinion regarding facts, the signatory Powers deem it expedient, to facilitate the solution of these disputes, that the parties who have not been able to come to an agreement by means of diplomacy, should institute international commissions of inquiry in order to elucidate all the facts by means of an impartial and conscientious investigation.

The committee thought that the voluntary character given to these commissions by this article rendered needless the reservations contained in the preceding text.

It believed, too, that these words, 'which may form the object of local determination', applied to the facts upon which the commissions of inquiry are called to act, were neither absolutely exact nor always applicable. At the request of Mr. Asser, it proposed to omit these, as well as the words ' at once ' near the end of the article.

At a session of the commission held at the close of the meeting of the committee, the delegations of Serbia and Greece declared themselves ready to adhere to the provisions proposed by the committee.

The delegation from Roumania proposed on its part a new draft of Article 9 in the following terms :

> In disputes of an international nature involving neither honour nor essential interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

This article restores to the new text the two modifications inserted in the original text. It substitutes the words ' essential interests ' for the words ' vital interests '.

The commission finally agreed to this as a form reached by agreement and giving general satisfaction.

As for the proposition of his Excellency Mr. Eyschen, as developed and made more definite, it was adopted and forms Article 10 of the Convention. We reproduce it under this latter article.

Article 10

> The international commissions of inquiry are constituted by special agreement between the parties in dispute.
>
> The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.
>
> It settles the procedure.
>
> At the inquiry both sides must be heard.
>
> The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

This additional article, introduced by his Excellency Mr. Eyschen, was inspired by the desire to protect the operation of international commissions of inquiry. It was first proposed to the commission in the following language :

Where there are not special provisions, the procedure for inquiry shall be determined by the principles contained in the rules in Articles 30 *et seq.* relating to arbitration procedure, so far as these principles are applicable to the institution of international commissions of inquiry.

At the session of the committee to which the examination of this article was referred, his Excellency Mr. Eyschen summarized as follows the guarantees which he thought it important to establish :

1. The agreement instituting the inquiry shall state exactly the facts to be examined (enumeration of facts) ;
2. Procedure shall be after hearing both parties (the adverse party should be advised of all opposing statements) ;
3. The commission shall determine the form and the periods to be observed.

His Excellency Count Nigra insisted that the necessary special agreement should be mentioned, like the *compromis* in arbitration.

The final text was consequently redrawn as follows :

The international commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined and the extent of the powers of the commissioners.

It settles the procedure.

At the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

This provision was unanimously adopted by the committee.

ARTICLE 11

International commissions of inquiry are formed, unless otherwise stipulated, in the manner determined by Article 32 of the present Convention.

Article 15 of the Russian project provided a mode of nomination of the members of the commission of inquiry similar to that provided by the arbitral code for the nomination of the members of the arbitral tribunals.

The committee thought it was advantageous simply to refer here to Article 32 of the present Convention, recalling the fact that this article is applicable only in case the parties have not adopted by common agreement another method of constituting the commission.

Mr Holls, delegate of the United States of America, set forth, in this connexion, the inconveniences which might arise in forming the commission of members belonging to the interested States, giving only the deciding voice to a neutral president. The presence of three neutral commissioners would, he believed, give greater authority to the results of the commission's work.

ARTICLE 12

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

Certain apprehensions were expressed in the committee with regard to Article 16 of the Russian draft, corresponding to Article 12 of the committee's draft. The obligation

provided by this article certainly cannot include the obligation of a Power to furnish information which might endanger its own security. In order to prevent too rigid an interpretation, the committee modified the general agreement contained in Article 16 by this qualification : ' as fully as they may think possible '.

The phraseology of this qualification is borrowed from Article 31 of the General Act of the Brussels Conference, July 2, 1890.

Article 13

The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

This article corresponds to Article 17 of the Russian draft. It indicates clearly the nature of the work within the jurisdiction of the commission. The latter is limited to the statement of the positive results of its inquiry into the facts, embodied in a report signed by all of its members.

Article 14

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

This article was adopted at first by the committee as a reproduction of Article 18 of the Russian draft, except for a twofold modification.

The possible recourse to mediation was noted along with the ultimate recourse to arbitration.

The following words, placed at the end of the article, ' whether to resort finally to means accepted in intercourse between nations ', were omitted at the suggestion of Baron d'Estournelles de Constant. The committee thought that these last words contained a special and explicit reservation of the right to resort to war, a reservation which it seems useless to make in the act of a Peace Conference. It appears from the explanation given by Mr. Martens that the Russian delegation had in mind only certain methods compatible with a state of peace and, being of this character, authorized by the law of nations. The committee, however, persisted in preferring the draft which it had decided upon.

The articles relating to commissions of inquiry having been referred back for a re-examination by this committee, following the discussion in the commission, Mr. Stancioff proposed to redraft the second part of the final article of this title as follows :

> The report of the international commission of inquiry leaves to the Governments in controversy entire freedom, either to conclude a friendly settlement based upon this report, or to consider the report as never having been made.

The committee thought it unnecessary to state thus strongly a right which was not contested. It agreed to the following proposition of Mr Odier :

> The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the Powers in dispute entire freedom as to the effect to be given to this finding.

PART IV.—*International Arbitration*

Humanity, in its constant evolution, daily tends in increasing measure to place respect for the law as the foundation of its existence. The society of civilized nations recognizes the existence of legal principles and rules set to a common standard—international law. Under the requirements of this law each State retains its autonomy, in accordance with its primary and unchangeable inclination to live its own life, according to its own idea, on its own territory, by the activity of its people, by means of its own resources, with a view to increasing its moral and material well-being and assuring its legitimate growth in all things. But at the same time, it recognizes that it is bound to the other States in the international community.

The farther law progresses, and the more it enters into the society of nations, the more clearly arbitration appears woven into the structure of that society.

As a principle for the pacific and judicial solution of international differences it is presented to us as an instrument suited to ensure the rights of each, while safeguarding the dignity of all.

A voluntary system of jurisprudence in origin as well as in jurisdiction, it agrees with the just demands of sovereignty, of which it is only an enlightened exercise. For, if there is no power superior to the States which can force a judge upon them, there is nothing to oppose their selection of an arbitrator by common agreement to settle their disputes, thus preferring a less imperfect means of securing justice to a method more problematical and more burdensome.

CHAPTER I.—*The System of Arbitration*

ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice, and on the basis of respect for law.

International arbitration does not aspire to supplant direct negotiation: it is applicable to disputes which could not be settled by diplomatic means.

Furthermore it does not prevent mediation; by the very fact that the latter can proceed on the basis of conciliation and compromise, it possesses resources for settlement which arbitration does not have.

Among all methods for the settlement of differences between States arbitration occupies a distinct position and preserves its own character.

Article 15 concisely describes this position and character.

International arbitration settles—that is to say, decides finally—international disputes which are submitted to it.

It settles these disputes on the basis of respect for law, according to the demands of justice.

It settles them by means of judges chosen by virtue of the agreement of the States themselves.

Such are the fundamental features of arbitration.

Article 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

Article 16 determines the nature of controversies which are within the proper jurisdiction of arbitration. These are questions of a legal nature and principally questions of the interpretation or application of treaties. It is not difficult to perceive the bond which unites the institution of arbitration with the safeguarding of the principle of good faith in international agreements.

To say that the arbitrator is judge and acts according to law is to say that arbitration is not applicable to every variety of dispute between States. Differences where the opposing claims of the parties cannot be stated as legal propositions are thus, to some extent, by their very nature, outside of the jurisdiction of an institution called upon to 'speak the law'. Conflicting interests, differences of a political nature, do not belong, properly speaking, to arbitration.

But for differences which have the character of disputes as to questions of law, and which cannot be settled through the ordinary diplomatic channels, Article 16 recognizes that arbitration is the surest and most equitable method of arriving at a peaceful solution. It is the most effective because it settles the disputed question finally. It is the most equitable, because it renders to each what is justly due to it

Article 16, however, does not go beyond that general recognition. It does not contain the positive agreement of a given Power, confronting some other, to refer a given dispute to arbitration. Under the provisions of the present Convention each State decides in its sovereign capacity, from its own view-point, whether this or that case shall be submitted to arbitration—under the restriction imposed by obligations which it may have contracted by other treaties.

Such is the scope of Article 16.

Mr. Beldiman requested note to be made of the following declaration :

> The Royal Government of Roumania, being completely in favour of the principle of voluntary arbitration, of which it appreciates the great importance in international relations, nevertheless, does not intend to assume, by Article 15 (Article 16 here), an obligation to accept arbitration in every case there provided for, and it believes it ought to state express reservations upon this point.
>
> It cannot therefore vote for this article except under that reservation.

Article 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Article 17 contains no agreement on the part of the Powers, but it determines in a convenient manner what the agreement to arbitrate may contain.

The agreement to arbitrate may be concluded after the origin of one or more disputes in order to secure the judicial settlement thereof. Properly speaking it is the *compromis*.

It may deal also with possible disputes, that is to say, simply with those which may arise in the future. That is the clause providing for the making of a *compromis*.

The validity of such a provision is not admitted in national law by all positive legislation; jurisprudence is not everywhere settled upon this point. In international law, it would seem impossible for doubt to exist. The agreement to enter into a *compromis* does not create an institution to compete with official tribunals; it creates an organic institution of justice itself, in a sphere where this institution is lacking.

The agreement to enter into a *compromis* may be special and contemplate one or several particular classes of disputes out of all the disputes of a legal character among States. The theory of this class of stipulations is worth noting. States are endeavouring to protect themselves against their own passions in the future, adopting the method of peaceful solution before the birth of controversies, and providing in advance in certain classes of their relations for peace based upon a treaty.

The agreement to enter into a *compromis* may also be general: it then embraces all, or at least almost all, disputes between States. It is a general treaty of arbitration, a real organic contract for a judicial peace, positive sanction of arbitration as the proper, normal mode, accepted in advance, for the settlement of international disputes.

The present status of positive international law, from the point of view of the different ways in which the contract for arbitration has been extended, is characterized by the following features:

1. Increasing growth in the number of *compromis* applying arbitration to disputes which have already arisen. The treaty law of England and the United States offers us the most numerous cases where *compromis* have been concluded for such disputes.

2. Increase of provisions for entering into *compromis* covering particular classes, more or less numerous, of disputes which may arise in the future. We have endeavoured to enumerate these provisions in a 'General survey of the clauses of mediation and arbitration' made at the request of the Third Commission of the Conference.[1] The greater number of these clauses belong to the law of special treaties between two States. Some of them are common to all Powers or to a considerable group of them, like the provision for entering into a *compromis* contained in the convention known as the 'Universal Postal Union'.

3. The conclusion of certain conventions extending the provision for entering into a *compromis*, either to all controversies without exception between States or to all these disputes, with a necessary qualification with respect to that class of disputes which States do not believe they can submit to the possibilities of arbitration.

The declaration between the Netherlands and Portugal dated July 5, 1894, contains a provision for entering into a *compromis* with reservation. It is drawn up in these words:

> All questions or all differences concerning the interpretation or execution of the present declaration and also every other question which may arise between the two countries, provided that it does not concern their independence nor autonomy, if it cannot be settled in a friendly manner, shall be submitted to the decision of two arbitrators, one of whom shall be named by each of the two Governments. In case of difference of opinion between the two arbitrators, they shall designate by common agreement a third who shall decide.

[1] *Post*, p. 111.

The treaty of arbitration between Italy and the Argentine Republic, dated July 23, 1898, contains a provision for the making of *compromis* without reservation. It is as follows :

ARTICLE I

> The high contracting Parties bind themselves to submit to arbitral decision all disputes, whatever may be their nature and cause, which may arise between the said parties, if they have not been able to settle them in a friendly manner by direct diplomatic negotiation. The arbitral clause extends even to disputes which may have arisen prior to the stipulation of the said treaty.

Among the general provisions for arbitration negotiated between Powers represented at the Conference, but as yet existing in tentative form only, it is important to note the draft adopted by the Swiss Federal Council, July 24, 1883, and presented to the Government of the United States ; the draft worked out by the Pan American Conference which began in Washington on October 2, 1889, and closed April 19, 1890 ; the draft treaty between the United States and Great Britain, signed at Washington, April 11, 1897.

These various documents have often been referred to in the course of the discussions.

At the time of the deliberations in the Commission concerning Article 17, Mr. Beldiman asked that the following declaration be noted in the minutes :

> The Royal Government of Roumania declares that it is unable to adhere to Article 16 (Article 17 here) except under the express reservation noted in the *procès-verbal*, that it is determined not to accept in any case an international arbitration of disputes and differences arising prior to the conclusion of the present convention.

ARTICLE 18

> The arbitration convention implies an engagement to submit in good faith to the arbitral award.

In arbitration the disputing States by agreement refer the settlement of their disputes to the judgement of one or several persons endowed with the power of ' stating the law ' for the parties to the cause.

The obligation to submit in good faith to the arbitral decision is, under these conditions, a positive obligation implied in the convention entered into. An arbitration is not an attempt at conciliation. The characteristic feature of arbitration is, to be exact, the common submission by the States to a judge of their choice, with the agreement, which naturally flows therefrom, to carry out the sentence loyally. In the absence of special provisions in the *compromis* attaching some particular effect or other to an arbitral decision, and except for the use of legitimate methods of appeal, the failure to carry out the decision of the arbitrators is no more permissible in law than the violation of contracts, and this for the very reason that it is in fact the violation of a contract.

The original draft of Article 18 was as follows :

> The arbitration convention contains an engagement to submit in good faith to the arbitral award.

The word ' implies ' substituted for the word ' contains ' at the suggestion of Mr. Rolin, clearly accentuates from our point of view the character and consequences of the agreement to arbitrate.

ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new agreements, general or private, with a view to extending arbitration to all cases which they may consider it possible to submit to it.

This article replaces Articles 8–12 of the draft proposed by the Russian delegation. This draft, accepted in its principal features, at first reserved entirely questions of law touching the vital interests or national honour of the parties in controversy.

As for other controversies, it divided them into two classes. One, composed of two subdivisions only, of clearly specified controversies, was made the subject of obligatory arbitration. The other—and this by far the larger—was given over to voluntary arbitration, with a recommendation, however, that arbitration be used.

In a notable explanatory note [1] the Russian delegation justified the system presented by it in the following manner :

> It cannot be doubted that in international life differences often arise which may absolutely and at all times be submitted to arbitration for solution : these are questions which concern exclusively special points of law and which do not touch upon the vital interests or national honour of States. We do not desire that the Peace Conference should, so far as these questions are concerned, set up arbitration as the permanent and obligatory method.
>
> The recognition of the obligatory character of arbitration, were it only within the most restricted limits, would strengthen legal principles in relations between nations, would guarantee them against infractions and encroachments, it would ***neutralize***, so to speak, more or less, large fields of international law. For the States, obligatory arbitration would be a convenient means of avoiding the misunderstandings, so numerous, so troublesome, although of little importance, which sometimes fetter diplomatic relations without any reason therefor. Thanks to obligatory arbitration, States could more easily maintain their legitimate claims, and what is more important still, could more easily escape from the unjustified demands.
>
> Obligatory arbitration would be of invaluable service to the cause of universal peace. It is very evident that the questions of the second class, to which alone this method is exclusively applicable, very rarely form a basis for war. Nevertheless, frequent disputes between States, even though with regard only to questions of the second class, while not forming a direct menace to the maintenance of peace, nevertheless disturb the friendly relations between States and create an atmosphere of distrust and hostility in which some incident or other, like a chance spark, may more easily cause war to burst forth. Obligatory arbitration, resulting in absolving the interested States from all responsibility for any solution of the difference existing between them, seems to be fitted to contribute to the maintenance of friendly relations, and in that way to facilitate the peaceful settlement of the most serious conflicts which may arise within the field of their most important mutual interests.

At the same time that they outlined in this way the lofty sphere of obligatory arbitration, the authors of the project recognized the necessity of determining, with precision and care, the field within which this arbitration could be applied.

In this work they decided upon two classes of international controversies :

1. Pecuniary claims to recover for unlawful injuries.

> The history of international relations proves without doubt that in the great

[1] *Post*, pp. 97–98

majority of cases demands for damages by way of indemnity are the very cases which have been the subject of arbitration. . . . It goes without saying that in exceptional cases where the pecuniary question involved assumes a position of first importance as regards the interests of the State—for example, in a case concerning the bankruptcy of a State—each Power, invoking national honour or vital interests, has the power to decline arbitration as a means of deciding the dispute.

2. The interpretation or application of certain international conventions which have not a political character, and, above all, of treaties known as ' universal unions '.

Since treaties, as a general rule, are only *artificial settlements of opposing interests*, treaties of a universal character always express necessarily the agreement upon *common* and *identic* interests. That is the reason that within the scope of these treaties serious disputes incapable of settlement, or conflicts of a national character in which the interests of one are absolutely opposed to those of another, never arise and cannot arise. So far as momentary misunderstandings are concerned—concerning their interpretation, each State will willingly confide the solution to an arbitral tribunal, it being understood that all the Powers have an equal interest in maintaining the treaties in question, which serve as bases for extensive and complex systems of international institutions and regulations which are the only means of serving vital and permanent needs.

It should be noticed that the first attempt to introduce obligatory arbitration into international practice was in fact made in a treaty of a universal character, that relating to the Postal Union of 1874 : Article 16 of this treaty establishes obligatory arbitration for the solution of all the differences arising with reference to the interpretation and application of the treaty in question.

The Hague Conference would seem therefore to be perfectly justified in extending the provisions of Article 16 of the treaty of Berne to all treaties of a universal character, which are entirely analogous to this one.

The general system proposed by the Russian delegation having been approved by the committee, the latter gave itself up to a detailed examination of Article 10 of the advance draft presented by this delegation.

With regard to pecuniary claims, the committee examined the question whether it was suitable to limit the requirement of obligatory arbitration either to claims not exceeding a certain sum for indemnity—a provision which is found in the Anglo-American draft treaty—or to cases where the principle of indemnity is recognized by the parties. This last guarantee was provisionally adopted.

In dealing with conventions the interpretation or application of which should be eventually submitted to obligatory arbitration, the committee could not secure a unanimous vote for the retention of monetary conventions and conventions relative to the navigation of international rivers and interoceanic canals. Consequently, these treaties were provisionally laid aside. Treaties regarding civil procedure and providing for free assistance by both parties to the indigent sick were added to the original list. Commercial treaties and the Geneva Convention, the addition of which was also proposed, met a less favourable fate. The other treaties first mentioned were retained.

The text of Article 10 as amended is as follows :

Arbitration is obligatory between the high contracting Powers in the following cases, so far as they do not concern the vital interests or national honour of the States in controversy :

I. In case of disputes concerning the interpretation or application of the conventions enumerated herein :

1. Postal, telephone, and telegraph conventions.
2. Conventions concerning the protection of submarine cables.
3. Conventions concerning railroads.
4. Conventions and regulations concerning means of preventing collisions of vessels at sea.
5. Conventions concerning the protection of literary and artistic works.
6. Conventions concerning the protection of industrial property (patents, trade-marks, and trade-names).
7. Conventions concerning the system of weights and measures.
8. Conventions concerning reciprocal free assistance to the indigent sick.
9. Sanitary conventions, conventions concerning epizooty, phylloxera, and other similar scourges.
10. Conventions concerning civil procedure.
11. Extradition conventions.
12. Conventions for delimiting boundaries so far as they touch upon purely technical and non-political questions.

II. In the case of disputes concerning pecuniary claims for damages when the principle of indemnity is recognized by the Parties.

Articles 8–12 of the Russian draft were adopted as a whole with these conditions, except for final drafting. Upon the second reading, a request was made for the omission of Article 10 by Dr. Zorn, German delegate, who declared that his Government, without desiring to modify those conventions which at the present time sanction obligatory arbitration, does not believe that experience to-day is sufficient to justify a more general and immediate development of these conventions. He added that a too rapid introduction of obligatory arbitration into international law might present more dangers than advantages from the point of view of peace among nations. A new Russian proposition tending to sanction obligatory arbitration for cases only on which agreement had been reached by previous conventions, and to recommend specially recourse to arbitration for the other cases mentioned in the list previously adopted, brought forth objections of various kinds and was unable to secure general support. In this situation, and without finally binding themselves, the members of the committee deemed it desirable to adopt in place of Articles 8–12 of the Russian draft, a single article containing a twofold provision.

The first calls attention to the general treaties and the special treaties which already provide an obligation on the part of the signatory Powers to resort to arbitration.

The second is a declaration by which the Powers reserve the right to conclude, either before the ratification of the present treaty, or afterward, new agreements, general or special, with a view to extending obligatory arbitration to all cases which they deem possible of submission thereto. It is important, in short, to note that if agreement to a considerable extension of the sphere of obligatory arbitration cannot be reached, all the Powers retain the greatest freedom for the realization of their ideals in this matter, not only by means of special treaties, between two States, but by means of conventions of as universal a character as possible. The future therefore remains largely open for the realization of all progress in this respect, a realization which will be due entirely to voluntary action, too, as was declared by Messrs. Beldiman and Veljkovitch.

All the members of the committee recognized the fact that the vote cast under these circumstances was in the nature of a compromise, inspired by the desire to secure unanimous agreement to the propositions to be presented to the Commission.

CHAPTER II.—*The Permanent Court of Arbitration*

No project was welcomed with more sympathy than that for the establishment of a Permanent Court of Arbitration. The suggestion made by his Excellency Sir Julian Pauncefote for this purpose was brilliantly presented at the opening of our sessions.

To recall at this point this memorable and fruitful suggestion is but to fulfil a duty to justice and to indicate at the same time the general field of our work upon this subject.

At the session of May 26, 1899, his Excellency Sir Julian Pauncefote made the following remarks :

> Mr. President, permit me to ask, before going further in this matter, whether it would not be useful and opportune to sound the Commission upon the subject of the most important question—as I believe—which you mentioned in your address, the establishment of an international Permanent Court of Arbitration.
>
> Many codes of arbitration and rules of procedure have been made, but procedure has been regulated up to the present by the arbitrators and by special or general treaties.
>
> Now, it seems to me that new codes and rules of arbitration, whatever may be their merit, do not advance very much the great cause which brings us here.
>
> If we desire to take a step in advance, I believe that it is absolutely necessary to organize a permanent international tribunal which can assemble instantly at the request of contesting nations. This idea established, I believe that we shall not have very much difficulty in coming to an understanding upon the details. The necessity for such a tribunal and the advantages which it would offer, as well as the encouragement and even impetus which it would give to the cause of arbitration, have been set forth with vigour and clearness—and equal eloquence—by our distinguished colleague, Mr. Descamps, in his interesting 'Essay upon Arbitration', an extract from which appears among the acts and documents so graciously furnished the Conference by the Netherland Government. There is nothing left for me to say upon this subject, therefore, and I would be grateful, Mr. President, if, before proceeding further, you would consent to gather the ideas and sentiments of the Commission upon the proposition which I have the honour to submit to you concerning the establishment of an international Permanent Court of Arbitration.

The first delegate from Great Britain had given to the institution which he proposed to organize the name of 'Permanent Tribunal of Arbitration'.

Dr. Zorn suggested the adoption of the term 'Court of Arbitrators'. The expression 'Arbitral Court' seemed for a time as though it ought to be reserved to designate the members of the Court acting as arbitrators in the various cases which they were called upon to decide. The term 'Arbitral Tribunal' was finally agreed upon since it was already sanctioned by practice and as it was of such a character that it would be more easily accepted by all the Powers.

The establishment of a Permanent Court of Arbitration is in response to the highest aspirations of civilized peoples, to those ideas of progress which have been realized in international relations, to the modern development of international litigation, to the need which urges nations in our day to seek a more accessible justice in a less uncertain peace. This great institution can be a powerful auxiliary for the strengthening of the feeling for law in the world.

The organization of the court does not present insurmountable obstacles, provided we become imbued with the idea that the international community is a society of co-ordination

and not of subordination, and that consequently the new instrument of international justice preserves the character ' of a free tribunal among independent States '.

The plan worked out by the Interparliamentary Union at Brussels sought to meet this fundamental demand.

The drafts submitted at the Hague Conference by the delegates of the three great States have, in various ways, sought to realize the same end.

The project of his Excellency Sir Julian Pauncefote was taken, with the kind consent of the authors of the Russian and American plans, as a basis for the work to which the committee devoted itself.

The fundamental features of the English plan [1] are as follows :

I. Designation by each of the signatory Powers of an equal number of arbitrators, entered upon a general list as members of the Court.

II. Free choice, from this list, of arbitrators called upon to form the active Tribunal for the various cases where resort is had to arbitration.

III. Institution at The Hague of an International Bureau serving as a registry for the Court and providing for the work of administration.

IV. Institution of a permanent Council of Administration and supreme control, composed of the diplomatic representatives of the Powers accredited to The Hague, under the presidency of the Minister of Foreign Affairs of the Netherlands.

The draft prepared by the Russian delegation [2] rested upon the following bases :

I. Designation of five Powers by the present Conference to serve for a term to expire at the meeting of the next Conference, each Power, in case of a request for arbitration, to name a judge either from among its nationals or others.

II. Establishment at The Hague of a permanent Bureau whose duty it shall be, when the occasion arises, to advise the five Powers of requests for arbitration addressed to it.

The American plan [3] was distinguished from the other plans principally by the following characteristics :

I. Nomination by the highest court of justice of each State of a member of the International Tribunal.

II. Organization of the Tribunal as soon as the adhesion of nine Powers thereto should be assured.

III. Formation of the Court called upon to sit in each particular case according to conventions to be entered into between the States in controversy. These conventions may call upon all the members of the tribunal to sit or several of them, in unequal number—at least three members. When the Court is composed of only three judges, none of them shall be a native, subject, or citizen of the States whose interests are in controversy.

IV. Right of the States, in certain specified cases and after a given period, to a second hearing of the case before the same judges.

In the committee the general discussion concerning the institution of a Permanent Court of Arbitration assumed a character of exceptional importance.

The French delegation, believing that common principles and ideas were to be found in the various plans which we have just analysed, which might serve as a basis for the discussions of the Conference, declared that it did not believe it necessary for it to submit a draft of its own. But, with the double assurance of freedom to resort to the permanent tribunal

[1] *Post*, p. 108. [2] *Post*, p. 101. [3] *Post*, p. 110.

and freedom in the choice of arbitrators, it did not hesitate to support the new institution at once.

> With this double assurance [said Mr. Léon Bourgeois] we do not hesitate to support the idea of a permanent institution accessible at all times and charged with the duty of applying the rules and following the procedure established by the Powers represented at The Hague Conference.
>
> We agree, therefore, that an International Bureau should be established to ensure the continuous services of a recording office, secretarial staff, a continuous set of archives concerning arbitration; we believe that the continuity of these services is absolutely necessary not only to the maintenance of a common point for intercourse between nations, and to render more certain uniformity of procedure, and, later, uniformity of jurisprudence, but also to bring to the attention of all peoples, by some visible and respected token, the high ideal of law and humanity for the realization of which civilized States are permitted to strive through the invitation of His Majesty the Emperor of Russia.
>
> The French delegation considers it possible to give this permanent institution a more powerful position. It believes that the Bureau could be given international authority, definitely limited, to begin proceedings, sufficient in most cases to facilitate recourse to arbitration by the Powers.
>
> If one of the disputes recognized by the Convention as properly subject to arbitration should arise between two or more of the signatory States, the Permanent Bureau would have authority to call the attention of the disputant parties to the articles of the Convention governing this subject and the power or obligation agreed to therein to resort to arbitration in that case; consequently it would offer to serve as an intermediary between them to set arbitral procedure in motion, and give them access to its jurisdiction.
>
> It is often a legitimate prejudice, a sentiment of the highest character, which actually prevents two nations from resorting to the path of pacific settlement. In the existing state of public opinion the first of the two Governments to ask for arbitration may fear that its taking the initiative will be considered even in its own country as an act of weakness, and not as an evidence of its confidence in its own right.
>
> By giving the Permanent Bureau a special power to initiate proceedings, we believe we could avoid this apprehension. In avoiding a scruple of a similar character, but in cases of a more serious and more general nature, the Third Commission did not hesitate to recognize that neutrals had the right to offer mediation, and to encourage them to exercise this right it declared that their intervention could not be considered as an unfriendly act. With all the more reason, in the special cases provided for in the present Convention for arbitral procedure, it is possible to give to the Permanent Bureau a well-defined authority to initiate action. It will be given the power to call the attention of the parties to the articles of the international Convention which may seem to have provided for the dispute which divides them, and will ask them, consequently, if, under circumstances anticipated by themselves, they will consent to resort to arbitral procedure, that is to say, simply to carry out their own agreements. The answer to a question thus put will be easy, and any scruple on the score of dignity, which might perhaps have prevented all recourse, will disappear. To set in action one of those powerful machines by which science transforms the world, it is sufficient to place one finger upon a contact point: but it is still necessary to entrust some one with the duty of making this simple motion.
>
> The French delegation believes that the institution to which this international authority would be confided would play a noble and useful rôle in history.

The idea first presented in these terms by the French delegation, later took the form of a proposal and it became Article 27 of the present Convention.

The general discussion opened with an address by the reporter, who set forth the prime

importance of the presentation by three great Powers of plans concerning the establishment of a Permanent Court of Arbitration. He recalled the precedents which most nearly approached the present proposition. He insisted upon the necessity of developing and solidifying the organic institutions of peace.

With regard to the reservations of Dr. Zorn, German delegate, concerning the future establishment of a Permanent Court of Arbitration—an institution considered premature and too far removed from the original scope of our labours—Mr. Asser, delegate from the Netherlands, brought out the fact that experiments with occasional arbitration had been made and that experiments still to be made were the subject of the very plan under discussion.

His Excellency Count Nigra, for his part, called attention particularly to the dangers of declining to decide a question which interests all humanity to such a great degree.

> The impatience with which public opinion awaits the results of our labours has become so great that it would be dangerous to refuse to accept an arbitral tribunal. If the Conference should meet this impatience with a *non possumus*, or fail to satisfy it, it would really be guilty of deceit. In that case the Conference would incur a grave responsibility to history, to the nations, and to His Majesty the Emperor of Russia himself.

Supporting the remarks made by Count Nigra, Mr. Odier, Swiss delegate, stated that more than a mere hope had been awakened in the world, it was an expectation; and popular opinion was convinced that, on the subject of arbitration above all, important results would come from the deliberations of the Conference.

> No one can deny, in short [said Count Nigra], that we are able at this time to take a new and decisive step along the pathway of progress. Are we going to draw back, or restrict to insignificant proportions the scope of this new thing which is expected of us? We should cause universal disappointment for which the responsibility would weigh heavily upon us and upon our Governments. The real improvement which we could bring to humanity is the formation of a permanent body to show to the eyes of the world, in tangible form, so to speak, some progress realized.

Mr. Lammasch, delegate from Austria-Hungary, without being able to declare that his Government would be ready to support the establishment of a permanent tribunal, considered the plan of his Excellency Sir Julian Pauncefote suitable as a starting point for the preparatory discussion.

Mr. Martens brought out especially the voluntary nature of the permanent tribunal of arbitration and the intentions of the Russian Government in formulating its first propositions concerning arbitration.

His Excellency Sir Julian Pauncefote stated, in his turn, that the plan proposed by him absolutely and expressly safeguarded the liberty of the parties.

Mr. Holls, after having recalled the fact that no country had spoken with more energy than the United States in favour of the suggestion of the Emperor of Russia, insisted upon the necessity of establishing a permanent tribunal, not only on the high ground of the interests of humanity, but from a practical and experimental point of view. He said that public opinion is anxious. He believed that we should have accomplished nothing positive if we separated without having established a permanent tribunal of arbitration.

ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 20 of the plan proposed by the committee is the reproduction, except for some points of detail, of the first article of the English plan concerning the Permanent Court of Arbitration.

This article clearly determines the general purpose of the institution of the Court: 'facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy.'

It contains the agreement made by the signatory Powers to organize the Permanent Court of Arbitration.

It indicates the general rules of procedure under which the new institution will act: these are the rules inserted in the present Convention in the chapter on arbitral procedure, so far as they agree with the organization of the Court as it is determined by Articles 20–30, and except for the right of the parties to agree upon other rules.

ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

This article was proposed by the Russian delegation with a view to stating precisely and clearly a twofold point: the general jurisdiction of the Court for every case of arbitration, whether obligatory or voluntary; the right retained by the Powers to form special tribunals distinct from the Court.

This provision is, in a way, the translation into the law of nations of the fundamental maxim to which we have already called attention: 'A free tribunal among independent States'.

Count de Macedo suggested, in this connexion, the adoption of a provision declaring that 'the signatory Powers agree that they prefer the jurisdiction of the Permanent Court of Arbitration to any other special jurisdiction, on every occasion where circumstances will permit'. This provision was very favourably received. If it was not inserted in the Convention it is, first, because we desired to avoid too direct action with regard to the freedom of States; secondly, because we believed that the sanction of the general jurisdiction of the Court in Article 21 indicates sufficiently the desire of the Powers.

Without fully sharing this opinion, Count de Macedo stated that he would not press his proposition.

ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at

The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

This article corresponds with Article 2 of the English draft and is to a large extent a reproduction thereof.

The name of 'International Bureau' was substituted for that of 'Central Bureau' at the request of the reporter.

The proposition for establishing at The Hague an International Bureau to serve as registry office of the Permanent Court of Arbitration, was received with the most lively sympathy.

The committee thought it possible to concentrate at The Hague, as in some rich depository, the most important documents concerning the operation of all arbitral Courts, general or special.

Two provisions proposed by Messrs. Asser, delegate from the Netherlands, and Martens, Russian delegate—and forming the last two paragraphs of Article 22—were adopted by the committee for this purpose.

The archives of the International Bureau at The Hague, thus developed, will be of the greatest importance and of the greatest value.

Mr. Rolin asked that the words 'duly certified' be added to the word 'copy' of paragraph 4. This proposition was accepted.

The American delegation urged broad provisions regarding the communication of documents in all forms of which the recording office of the Court has charge and custody. The committee decided that it should above all consider the rights of the interested States in the matter. With these restrictions, the committee believed that the general provisions of Article 22 and the regulations to be carried out by virtue of these provisions, would permit every legitimate satisfaction of the desire expressed by the American delegation.

Article 23

Within the three months following its ratification of the present Act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed.

The fundamental provision of this article still corresponds exactly with the proposition of Article 3 of the plan of his Excellency Sir Julian Pauncefote. Each Power designates an equal number of arbitrators, and the persons thus designated are entered as members of the Court upon a general list.

The following modifications were adopted by the committee.

In the original draft, each State designated two arbitrators. Upon the suggestion of Dr. Zorn, delegate from Germany, this number was increased to four. It will be easier, under these conditions, for the States who desire it, to appoint members of diversified abilities on their arbitral delegations.

The increase in the number of arbitrators to be designated by the States was, however, regretted by many members who pointed out the practical inconveniences of this provision from many points of view. Count de Macedo even took the initiative for a return to the original number. The number of four arbitrators was finally accepted by agreements and compromise.

The original plan did not fix any exact limit to the time for which the arbitrators should be designated. The committee thought that there was reason for adopting the term of six years, stipulating that the appointment could be renewed.

It is admitted that two Powers can by agreement designate in common one or several members of the Court and the same person may be designated by different Powers.

These provisions, proposed by the reporter, are borrowed from the draft of the Interparliamentary Conference at Brussels.

In case of death or retirement of a member of the Court it is provided that he shall be replaced according to the method provided for his appointment. It was understood that the word 'retirement' is to be taken in a broad enough sense to indicate all events which may occur.

Mr. Stancioff insisted on stating that no restriction upon the freedom of the Powers in the choice of arbitrators should be made as regards nationality.

Article 24

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

This article corresponds to the first paragraph of Article 4 of the draft of his Excellency Sir Julian Pauncefote. It modifies somewhat the procedure adopted by that draft to bring within the jurisdiction of the Court the dispute which may be submitted to it. According to the original draft the Powers which desired to resort to the tribunal notified the secretary of the International Bureau of their intention. The secretary transmitted to them the list of the members of the Court, and the Powers then proceeded to form the arbitral tribunal called upon to act.

It seemed preferable to adopt the following rules :

Every change in the list of members of the Court is brought to the attention of the Powers through the Bureau : Article 23, section 3, provided for this exigency.

From the general list, thus kept up to date, the choice of arbitrators should be made when the Powers wish to approach the Court for the settlement of a dispute which has arisen between them.

The arbitral tribunal may be constituted at once by agreement of the parties. In that case there is no difficulty.

But it is very important to provide for the case where there may be no such agreement, and to determine, in that event, an easy and sure method of forming the arbitral tribunal.

The first rule would naturally appear to be : the nomination by each party of an equal number of arbitrators and the designation, by all of the latter, of an umpire, whose function is most important in prospective cases of equal division of votes

This rule is good, but incomplete, because it does not provide for a situation where there is no agreement as to the choice of the umpire. Hence, the importance of a second rule, complementary to the first, substituting for direct choice a choice confided to a third Power designated by common agreement.

This rule is still excellent, but it is in its turn insufficient. It becomes inefficient every time that the parties cannot agree upon this selection of the third Power. Hence the necessity of a third rule, in its turn subsidiary to the above.

Mr. Lammasch proposed to confide to the heads of neutral States the choice of an umpire.

The committee agreed with the Russian delegation in admitting that the most practical measure to be adopted is the designation by each interested party of a different Power, authority being delegated to the Powers thus designated to name the umpire jointly.

In arbitration this proceeding corresponds to that adopted for special mediation at the suggestion of Mr. Holls. While not theoretically perfect, it seems to be of a character to meet all possibilities for which it is practically convenient to provide.

These rules are the same as those which we find again in the chapter on arbitral procedure.

Baron Bildt proposed to give the Powers a possible right to challenge the umpire named by the arbitrators designated in the first place. With this in mind he submitted the following amendment :

Each party names two arbitrators and the latter together choose an umpire.

Their choice must, however, be submitted to the approval of the parties, each of whom has the right to challenge him without giving reasons therefor.

In the latter case, or in case of an equal division of votes, the choice of umpire is confided to a third Power, designated by common agreement by the parties.

The positive approval of this system seemed by its very nature to cause difficulty. It was not deemed necessary by the committee to safeguard in practice the rights of parties in litigation.

Messrs. Asser and Holls nevertheless urged this point, that until the formation of the tribunal the arbitrators should be considered as agents of their respective Governments. Baron Bildt on his part also supported this interpretation.

The proposal to accord to the members of the Court, in the exercise of their powers, the enjoyment of diplomatic privileges and immunities, was considered a happy addition

to the original plan. It brings out the high position of the members of the Court and can only contribute to increase the prestige which should surround them.

Count Grelle Rogier, Belgian delegate, supported by Jonkheer van Karnebeek, asked that the scope of this provision be clearly set forth. To that end the declaration was made that it concerned the actual exercise of duties of arbitrator, and that the enjoyment of diplomatic privileges and immunities should be granted to the members of the arbitral tribunal only outside their own countries. This last point was covered by the text.

His Excellency Sir Julian Pauncefote believed that diplomatic immunities should be accorded to the arbitrators who, after their nomination, appeared at the place of meeting of the Court and then returned to their own countries. This point was considered as incidental to the practice of international courtesy.

Article 25

> The tribunal of arbitration sits ordinarily at The Hague.
>
> Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

This article, which corresponds to paragraph 2 of Article 4 of the draft of his Excellency Sir Julian Pauncefote, fixed the usual seat of the arbitral tribunal at The Hague and permits the tribunal to sit elsewhere with the consent of the parties in controversy. It also authorizes the tribunal, in case of *force majeure*, to proceed to change its place of meeting.

The original draft gave the tribunal the power to change its place of meeting ' according to the circumstances and its convenience or the convenience of the parties in controversy '. It seemed necessary not to divorce the interest of the litigating parties so completely from the question of a change in the place of meeting, and to provide for their consent in this matter.

This article has been made to agree with Article 36, regarding the meeting-place of arbitral tribunals in general.

Article 26

> The International Bureau at The Hague is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.
>
> The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

The first paragraph of this article is new. It was proposed by his Excellency Sir Julian Pauncefote and Mr. Asser, with a view to permitting the Powers which might establish special courts to profit, if agreeable to them, by the offices established and the administrative force acting at The Hague.

The Powers non-signatory to the present Convention will not enjoy the same favour when they establish special courts. But access to the jurisdiction of the Permanent Court of Arbitration may be given them. The draft of his Excellency Sir Julian Pauncefote already provided in a general way for this situation. It was more definitely stated by an amendment from Mr. Renault, in the following words :

The jurisdiction of the Permanent Court may be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

Mr. Renault believed it would be proper to leave to the Permanent Council complete freedom to establish a schedule of costs if it deemed it proper in this connexion. His Excellency Count Nigra expressed the opinion that it was necessary to leave the door to arbitration as wide open as possible.

ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature . good offices.

This provision is due to the suggestion of the French delegation. It was received with marked sympathy by all of the members of the committee.

Obstacles which may in many cases work against recourse to arbitration by two Powers between whom a serious dispute has arisen, become of moment in the then existing state of public opinion. It is of the utmost importance, therefore, in the interest of peace, to smooth the way for such recourse, as desirable as it is difficult in some cases.

If the Conference wishes to perform a work productive of helpful results, it should face this practical side of the peace problem.

Is it possible, from this view-point, to invest the Bureau at The Hague with an international authority, clearly limited, to call the attention of Powers which find themselves at any time in sharp conflict, to the provisions of the present Convention, and to the ever-open door of the Permanent Court ?

Baron d'Estournelles de Constant urged especially the idea that there is more than a right to be exercised : there is a duty to be fulfilled, the accomplishment of which duty can alone give to the act of the Hague Conference its full moral value and efficacy. He therefore proposed to the committee the adoption of the following provision :

The signatory Powers, considering it a duty, in case a sharp dispute threatens to break out between two or more of them, to call the attention of the disputants to the fact that the Permanent Court is open to them, hereby authorize the secretary-general of the Bureau, when occasion arises, to place himself at the service of each of the interested parties, by writing to their representatives in the Netherlands.

The exercise of this authority shall not be considered an unfriendly act.

This proposition had the advantage of creating an organization acting to some extent by itself and whose modest but certain duty appeared to be of a nature to produce the desired result, without offending the States in controversy.

From other standpoints it presented such difficulties that the committee, not without regret, was obliged to renounce it.

The idea of confiding international authority, in this matter, to the Powers which are ' neutral in principle ' also gave rise to serious objections.

In calling attention to the reasons which might recommend the proposal of Baron

d'Estournelles de Constant, President Léon Bourgeois had called attention to the possibility of attaining the same end by another means: applying, in these special circumstances, the right to offer good offices, guaranteed by Article 3 of the present Convention. He urged especially the importance of considering this act as a duty.

This proposition was a new development of the principle formulated at the beginning for the work of the committee by his Excellency Count Nigra, a principle which was to be extended not only to mediation but to arbitration, in the draft of the first delegate from Italy.

The committee, in spite of certain fears expressed at first, unanimously supported the proposition made to it, and this proposition found expression in Article 27. The committee thought that, in view of the important end to be attained, it was necessary to make a brave attempt in the direction where there is a noble and useful rôle to be played in direct relation to the work carried on by all the Powers at the Hague Conference.

The discussion about Article 27 in the Commission gave rise to a debate exhibiting peculiar breadth of view and notably high ideals.

Mr. Beldiman and Mr. Veljkovitch proposed to substitute for 'the Powers consider it their duty' this expression: 'the Powers believe it desirable'.

Mr. Beldiman presented this amendment because it was involved in the principle of voluntary arbitration adopted by his Government.

Mr. Veljkovitch, while stating that his Government sympathized with the principle of obligatory arbitration, represented that the new provision was useless in view of Articles 1 and 3, as it touched upon such delicate questions that they should form the subject of reservations, since they applied unequally to the large and small Powers.

Baron d'Estournelles de Constant recalled the necessity of stating the fact that States have not only rights but duties in this connexion.

His Excellency Count Nigra stated that the Conference is composed of representatives of States absolutely equal among themselves, who are independently entering into discussion and who have come together with the sole idea of performing a useful work for peace.

Dr. Zorn, after having summarized the reasons for his Government's decision not to support the propositions concerning obligatory arbitration, declared that Germany wished to do all it could for peace, and that, with that idea, she had no objection to Article 27.

Mr. Odier observed that new duties arise in a new era and that the neutral nations of our day should be, to adopt a new word: 'managers of peace' (*pacigérants*).

Mr. Holls set forth in his turn the importance of the assertion of the existence of a moral duty on the part of the States as a corollary of the joint and several liability which unites peoples.

Mr. Stancioff believed that, if we admit that it is a duty to call attention to the existence of the Permanent Court and that would always be a benefit—it is important also to indicate the manner in which this duty is to be performed.

In setting forth definitely the scope of Article 27, President Léon Bourgeois stated that, 'the disputes contemplated by Article 27 are those which menace peace'. 'As for the fear expressed by the delegate from Serbia that a strong Power will make use of Article 27 to attempt objectionable intervention into the affairs of a weaker Power, I simply maintain', said the president, 'that, if a Power should act in that manner, far from possessing the spirit of Article 27, that Power would, it seems to me, act absolutely against its purpose and against its spirit. So far as we are concerned, if this article could produce such a conse-

quence, we not only would not nave taken the initiative with regard thereto, but, if it had been presented by others, we would have energetically fought against it and refused to vote for it.'

Defining, then, the practical value of Article 27, the president stated 'that it was necessary to recall in considering arbitration the principles written in the first article of the Convention whereby the signatory Powers agree to use every effort to ensure the peaceful settlement of international disputes'.

The first application of these principles was made in the articles concerning offers of good offices and mediation.

Article 27 is a new application of these same principles.

> But it is not only a question of the practical usefulness of this provision (the president added). What makes us determined to defend it so energetically is that it appears to us to have a moral usefulness the greatness of which will be better comprehended every day that passes after the conclusion of our labours.
>
> The moral value of Article 27 consists entirely in the fact that a common duty for the maintenance of peace among men is recognized and affirmed among nations. Do you believe that it is a small thing to have proclaimed in this Conference—not in a meeting of theorists and philosophers, discussing with freedom and upon their personal responsibility alone, but in an assembly where the Governments of nearly all civilized nations are represented—the existence of this international duty, and to have declared that the concept of this duty, henceforth for ever introduced into the conscience of peoples, is in the future to be impressed upon the acts of governments and nations ?
>
> International institutions like this (said the president in conclusion) will be the guarantee of the weak against the strong. In conflicts in strength when it is a question of lining up soldiers of flesh and steel, there are the great and the small, the weak and the strong. When swords are thrown into the two trays of the balance, one may be heavier and the other lighter. But, when we throw in ideas and rights, the inequality ceases and the rights of the smallest and the weakest weigh equally with those of the greatest.
>
> This idea has dictated our work, and we have thought especially of the weak in carrying it out.
>
> May they understand our idea and respond to our hope by joining in the efforts made to regulate more and more the future of humanity by law!

Following these words, which were greeted by the prolonged applause of the assembly, the retention of Article 27 as it stood was unanimously agreed upon.

Article 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labours of the Court, the working of the administration, and the expenditure.

The original draft provided for the nomination by the Government of the country selected as the seat of the Court, of a Permanent Administrative Council, composed of five members and a secretary, with the duty of establishing and organizing the International Bureau as well as determining questions concerning the operation of the Court.

During the debate his Excellency Sir Julian Pauncefote proposed to substitute for this machinery, the advantages of which were being discussed, another permanent Council composed of the diplomatic representatives of the signatory Powers residing at The Hague, under the presidency of the Minister of Foreign Affairs of the Netherlands. This excellent modification received general endorsement.

At the suggestion of Baron Bildt the words ' residing at The Hague ' were replaced by the broader expression ' accredited to The Hague '. It is always understood that non-resident diplomats shall have such an understanding with the Permanent Council that all communications—and especially notices of meetings—may be addressed to them at The Hague.

The greater part of the original organic provisions were applied to the new Council. To it was also confided the duty of notifying the Powers of the constitution of the Court and of providing for the installation of the latter.

The provisions proposed in this connexion can only further increase the high dignity of the Permanent Court of Arbitration. They will give to The Hague special authority and prestige.

At the suggestion of his Excellency Count Welsersheimb, the essentially administrative character of the Council was clearly set forth, notably with regard to its powers in connexion with the operation of the Court.

The Council itself will bear the title ' Permanent Administrative Council '.

Communication to the Powers of the rules adopted by the Council has been provided for, without this communication resulting in subjecting these rules to the approval of each Power.

It was also understood that the Permanent Council should be formed as soon as possible after the ratification of the present act by nine Powers at least.

Article 20

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The rules for the division of expenses agreed to by all the States in connexion with the International Bureau of the Universal Postal Union, have been considered equitable and applied several times since then in similar conventions.

It appeared to the committee that the best solution here was purely and simply to adopt these rules, the application of which causes no difficulty.

CHAPTER III.—*Arbitration Procedure*

General rules of law accepted by agreement among the States do not at present exist with regard to arbitration procedure. As a result we have delays, uncertainty, injurious impediments to the prompt and smooth progress of cases submitted to arbitrators.

Each special *compromis* can, doubtless, provide to a certain extent for this lack, and the history of international arbitration informs us of numerous provisions drawn up, in fact, with this end in view. It is none the less true that as the number of cases of actual recourse to arbitration increases, and as the treaty stipulations for the making of *compromis* increase, the lack of common fundamental rules concerning the procedure to be followed by arbitrators produces more and more damaging results.

The Institute of International Law has, for a long time, led the way in this matter. After having worked out a draft of a set of rules of arbitral procedure at Geneva in 1874, it finally adopted this draft at The Hague, April 28, 1875, making the following note as the preamble thereof:

> The Institute, desiring that recourse to arbitration for the settlement of international disputes be resorted to more and more by civilized peoples, hopes to be of service toward the realization of such progress by proposing, for arbitral tribunals, the following eventual regulations. It recommends them for adoption, in whole or in part, to States that may conclude *compromis*.

The very remarkable work of the Institute has since been completed by others, the works of eminent jurisconsults. It has been enriched by the practice in numerous international arbitrations which have occurred during the last quarter of a century. We may to-day, drawing from the double source of science and experience, bring together a collection of rules relative to the guidance and decision of arbitral matters, which seem to merit general approval.

Such rules should be limited to fundamental principles. They could not be too detailed without being a hindrance and a danger. But within the just limits where it is convenient to accept them, they may render important service to the arbitral courts often called upon to act *ex tempore*. They may serve as typical rules to which it will be expedient to refer. They may aid in filling up the gaps in the *compromis*, which ordinarily formulate only a few and very incomplete rules. As they will also, under all circumstances, always retain their character as auxiliary rules, the wishes of the litigating parties may always override them, modify them, or do away with them. They will not control the points which they cover except in the event and so far as the States have not otherwise provided.

In the development of these rules, the committee took for its guide the draft of the arbitral code submitted to the Conference by the Russian delegation.[1] Revised by men of special ability, and particularly by a jurisconsult in whom we all recognize an embodiment of international arbitration, this code cannot fail to bear the seal of wise experience. The provisions therein contained closely approach, in many regards, the rules of procedure adopted by the tribunal at present sitting in Paris under the presidency of Mr. Martens, for the settlement of the disputes between Great Britain and Venezuela.[2]

[1] *Post*, p. 102.

[2] *Post*, p. 105.

ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules, which shall be applicable to arbitration procedure unless other rules have been agreed on by the parties.

This article corresponds to Article 13 of the Russian draft. This last provision dealt with arbitral procedure with a view to setting forth the double character of the rules proposed in this connexion :

Auxiliary rules of such a character as to facilitate recourse to arbitration and its application.

Also rules of an optional character, that is, rules that may always be modified by common agreement between the parties in litigation.

Article 19 attributes these same characteristics to the fundamental rules of arbitration procedure which form Chapter III of the present Convention.

ARTICLE 31

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

The convention for international arbitration is an agreement between States for a judicial settlement of existing or possible international disputes by judges of their choice.

This convention implies an adequate determination, on the one hand, of disputes susceptible of arbitration, and, on the other hand, of the tribunal called upon to pass upon these disputes.

Disputes to arise in the future are adequately specified by a statement of their character.

The arbitral tribunal is sufficiently described by an indication of the process according to which it is to be formed.

The parties which conclude an arbitral convention for future disputes, may retain the right to set forth exactly, by a special and further convention in each case of actual recourse to arbitration, the points upon which the dispute bears, as well as the authority conferred upon the arbitrators.

They may also reserve the right to make the final arrangements necessary to nominate the arbitrators.

When parties conclude a *compromis* properly speaking, in other words, when they agree to settle an existing dispute by arbitration, they have the right to set forth exactly in their agreement the points referred to the judgement of the arbitrators and the constitution of, or the method of forming, the tribunal called upon to act.

The first general rules of procedure, the adoption of which is proposed to the States, contains in two separate articles these two elements of the *compromis*.

To describe the first point which the *compromis* should set forth in exact terms in order not to run the risk of being without any real foundation, Article 2 of the draft for the arbitral code used the following terms : 'questions submitted to the decision of the arbitrators and all of the facts and points of law involved therein'.

The last part of this phrase was criticized by Mr. Asser. We cannot, for instance, demand that the *compromis* should specify 'all of the facts which are involved in the question submitted to the decision of the arbitrators'. It seems, in fact, that it would have been preferable to say 'the points of law and fact submitted to the decision of the arbitrators'. The committee believed it could use the following words as a still more satisfactory formula: 'the subject of the dispute and the extent of the powers conferred upon the arbitrators'.

It thus approached the provisions contained in Article 2 of the general treaty of arbitration between Italy and Argentine, July 23, 1898.

The second part of Article 31, declaring that 'in the *compromis* is to be found a confirmation of the engagement of the parties to submit in good faith to the arbitral award', appeared to be difficult to explain in view of Articles 17 and 18 of the draft, where it is said that the arbitral convention, concluded to cover existing disputes, implies this same obligation.

The committee believed there was reason for adopting in Article 31 the same terms as in Article 18. It accepted, therefore, the following revision: 'This act implies an engagement of the parties to submit in good faith to the arbitral award'.

Article 32

> The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.
>
> Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued:
>
> Each party appoints two arbitrators, and these together choose an umpire.
>
> If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.
>
> If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

Article 32 is of considerable importance because it attempts above all to determine the best method of forming the arbitral tribunal, when the latter is composed of several arbitrators and is not fully constituted at the beginning.

The choice of arbitrators belongs in the first place to the interested Powers.

The designation of a single arbitrator, if the affair is important, is of exceptional seriousness: it is proper, in short, to observe that the award to be rendered cannot, according to the existing practice, be subject to appeal.

When the parties prefer a number of arbitrators to a single arbitrator they may agree upon the complete organization of the tribunal at the start. This procedure prevents all further difficulty. But, in default of the formation of the tribunal by direct agreement of the parties, there is need to determine a normal method for forming the arbitral tribunal. Article 32 provides for this exigency. The rules adopted in this article are similar to those which we have indicated in Article 24. We have already set forth the theory thereof.

Article 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

When the arbitrator chosen is the head of a State, it would not, for reasons of the highest expediency, be suitable to permit any provision for procedure other than that set up by his supreme will. This principle is sanctioned in Article 33.

Article 34

The umpire is *ex officio* president of the tribunal.
When the tribunal does not include an umpire, it appoints its own president.

It seemed necessary to settle finally and in a separate provision the question of who should act as president.

When there is an umpire in the tribunal it is proper to reserve the presidency for him, *de jure*.

In the contrary case, it is convenient to allow the tribunal itself to make its choice.

Article 34 sanctions this double rule.

With regard to this article Mr. Papiniu, delegate from Roumania, called the attention of the Commission to the difficulties which might arise from the formation of a tribunal consisting of an equal number of arbitrators, or from circumstances which might accidentally bring about this situation, at the moment of rendering the decision.

The Commission recognized the importance to be attached to the organization of tribunals composed of an unequal number of arbitrators, as is provided elsewhere in the general system adopted by the present Convention.

Article 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

The question of the effect to be given to the decease, retirement, or disability of an arbitrator, for any special reason, was vigorously discussed in the committee.

The Russian draft declared the entire *compromis* invalid in such a case, unless a contrary stipulation was provided in advance by the parties.

In support of this view the argument was made that the designation of the arbitrators is intimately associated with a feeling of personal confidence. The legal argument was relied upon that as soon as the representative disappeared the authority conferred upon him no longer existed. It was alleged to be necessary to ensure the strongest guarantees to States which adopted arbitration.

According to another opinion, it would at least be convenient to put in force the rule proposed by the Russian delegation in case of death, retirement, or disability of the umpire, because of the peculiarly important rôle of the latter in the operation of arbitral courts.

These considerations did not prevail.

The importance of ensuring the existence of the *compromis* and its results, by protecting it as much as possible from the extreme consequences of unforeseen circumstances, was set forth. When two Governments have agreed upon arbitration, there is great interest in preventing any chance occurrence from destroying the fruit of their labours.

On the other hand, it was observed that in requiring a provision for replacing the umpire according to the method chosen for his election, the guarantees originally established would in fact be preserved.

The view based upon these latter arguments was finally adopted by the committee as sanctioning a rule favourable to the maintenance of arbitration. The parties retain entire freedom to provide, if they prefer, for the possible nullification of the *compromis*.

Article 36

The tribunal's place of session is selected by the parties. Failing this selection, the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be altered by the tribunal without the assent of the parties.

The question of the meeting-place of the tribunal may be of great importance to the parties in litigation from various view-points. It is important especially to leave the choice in this matter to them.

Furthermore, it is not to be presumed that they would consent to divest themselves completely of all interest in a change of the place of meeting.

That is the reason why Article 36 provides that in this also their joint assent is necessary, except in case of *force majeure*.

If no provision is made by the parties, the seat of the Permanent Court of Arbitration seems naturally to receive preference.

Article 36 translates into law these practical observations.

Let us note that, with regard to the Permanent Court, Article 25 fixes The Hague as the customary seat and first in order.

Article 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defence of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

The delegates or special agents of the parties play an important rôle in arbitral procedure: they are the intermediaries between the parties and the tribunal.

Article 13 of the rules of the Institute of International Law is as follows:

> Each of the parties may appoint one or more representatives before the arbitral tribunal.

The appointment of such representatives exists everywhere in practice.

Article 37 sanctions it by making a distinction between these principal official agents and the counsellors and lawyers who are, under different conditions, also aids to arbitral justice.

Mr. Seth Low called attention to the inconsistencies in exercising the functions of a member of the Permanent Court and those of special agent or lawyer before this Court. The committee, to which the examination of this question was referred, expressed the opinion that no member of the Court can, during the exercise of his functions as a member of an arbitral tribunal, accept a designation as special agent or attorney before another arbitral tribunal. The committee did not feel itself in a position to go farther in the matter of inconsistencies applicable to all States.

At the request of Mr. Asser it was stated that the expression ' arbitral tribunal ' did not designate any tribunal except one formed from the Permanent Court of Arbitration.

His Excellency Sir Julian Pauncefote, Mr. Lammasch, and Mr. Holls were of the opinion that it was important to establish the duties of a member of the Permanent Court of Arbitration as generally inconsistent with those of special agent or attorney before this Court, making an exception only in the case where a member of the Court might represent as attorney or special agent the country which appointed him to the Court.

Article 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

It may be indispensable, to avoid multifarious difficulties, and in certain cases to make it possible for the arbitrators to perform their duties, to decide the question of the language which will be authorized before the arbitral tribunal.

It should be within the province of the tribunal to decide in this matter upon what measures it believes necessary : that is what Article 38 formally decides.

An amendment proposed by the first delegate from Italy completed the provision originally voted by the committee by authorizing the tribunal to decide upon which language it will use itself, especially in the decision to be rendered.

Article 39

As a general rule arbitration procedure comprises two distinct phases : pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

Procedure prior to the award generally covers two periods, which it is desirable to distinguish : pleadings and oral discussions.

The first is always indispensable ; the second is ordinarily a necessary complement of the first.

Important consequences are attached to the close of the pleadings.

The Russian draft designated these two periods of arbitral procedure as follows : ' preliminary phase and final phase '.

Article 40

Every document produced by one party must be communicated to the other party.

The committee believed it important to sanction positively in a separate article this rule of judicial procedure : ' Every document produced by one party must be communicated to the other party '.

This is a guaranty of prime importance, the sanction of which finds its natural place in the general code of arbitral procedure.

ARTICLE 41

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in the minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

Article 41, after having given the control of the discussions to the president, deals with the possible publicity of the discussions and with their record in minutes of an authentic character.

So far as the first point is concerned, it did not seem possible to formulate as a rule the principle of publicity. Publicity, however, is not forbidden. It is conditioned upon two things: a decision by the tribunal upon this point and the consent of the parties. If accepted within these limits, publicity does not present any of the difficulties which the application of a broader measure might offer in international arbitral procedure.

Regarding the second point, practice has shown the necessity of giving an authentic character only to the minutes drawn up by the secretaries named by the president of the tribunal.

ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

The fairness of the discussions, no less than the general demands of judicial procedure, require that after the close of the pleadings, the tribunal shall have, to a certain extent, the power to refuse to consider papers and documents presented late.

The committee, however, considered the rule contained in Article 12 of the Russian draft as too rigid. It was thought that the authority of the tribunal ought not to be permitted to be exercised except with regard to new papers and documents which the representatives of one of the parties wished to submit to the tribunal without the consent of the other party. It did not appear desirable for the tribunal to be able to sacrifice one means of arriving at the truth, honestly agreed to by the adverse party. Even within the limits where the power of the tribunal is recognized, foreclosure seems to be a grave measure which should not be followed except with a full appreciation thereof.

ARTICLE 43

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

The freedom of the tribunal to take into consideration the papers and documents of which use has been made by the agents or counsel of the parties in litigation during their arguments before the arbitral tribunal, should of course remain unimpaired.

The right of the tribunal to require the production of these papers and documents appears equally incontestable.

The Russian draft recognized simply the right of the tribunal to give notice of these

documents to the adverse party. The committee believed that it was not an optional right which must be sanctioned in this case, but an obligation.

The text of the Russian draft was modified to this end.

Article 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

Among the powers recognized as appertaining to the Arbitral Court, to enable it to discover the truth, the Russian draft admitted the right of the tribunal ' to require the agents of the parties to present all papers or explanations which it needs '.

The committee thought that the sanction of this power, without reservation, was not desirable, and that there might be cases where refusal would be justified. The tribunal is to take note of such refusals, but it should not go beyond that.

This necessary reservation is clearly indicated in Article 44.

Article 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defence of their case.

Article 45 cannot give rise to any difficulty; it sanctions the possible rights of the defence in open discussion before the Arbitral Court. It is a reproduction of the provision contained in the Russian draft, in almost the same terms.

Article 46

They are entitled to raise objections and points. The decisions of the tribunal on these points are final, and cannot form the subject of any subsequent discussion.

Article 46 reproduces again, except for a more accurate revision, a provision borrowed from the Russian draft.

It deals with exceptions and points of procedure which may be raised before the international arbitral tribunal, in the same way as before national tribunals.

The rights of the parties in litigation should be safeguarded in this matter, but it is important on the other hand that the decisions of the Arbitral Court upon such points should settle the difficulties finally.

Article 46 satisfies this double requirement.

Article 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by members of the tribunal in the course of the discussions can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

Article 47 contains a provision so natural that it seems, at first sight, almost unnecessary. It presents, however, a practical point which was very well brought out in the committee by Mr. Martens.

In order that the right of investigation and control possessed by the members of the tribunal may be effectively exercised, the arbitrators must be protected in the questions which they think necessary to ask and the observations which they believe they should make, from interpretations which one may be led too easily to attach to attempts to seek information which may be indispensable to the discovery of the truth.

From this point of view it is very expedient after having recognized their right, to declare expressly that neither the questions asked nor the observations made by the members of the tribunal in the course of the discussions can be regarded as an expression of the opinion of the tribunal in general, or of its members in particular.

Such is the purpose and the reason for Article 47.

Article 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

The right of the tribunal to determine the scope of its powers by the interpretation of the *compromis* and of the other treaties which may be invoked in the proceeding, and by the application of principles of international law must be recognized. Not to accept this view would be to place the tribunal in the condition of a court incapable of acting, and obliged to divest itself of jurisdiction of the controversy every time that it might please one of the parties to maintain, even against the evidence, that the tribunal could not take cognizance of such a question.

The more arbitration assumes the character of an institution of international common law, the more the power of the arbitrators to decide upon this matter appears to be of the very essence of the arbitral function and one of the inherent requirements for the exercise of this function.

The parties may, of course, limit as they may agree the extent of the powers of the arbitrators; they may submit the exercise of this power to such reservations as they deem necessary or opportune. They may, if they choose, formulate the principles which the arbitrators shall follow to guide them in their decision. But it does not seem possible to refuse the arbitrators the power of deciding in case of doubt whether the points are within or without their jurisdiction.

Such is the principle sanctioned by Article 48.

The reporter asked that Article 48 be completed by a provision setting forth the rules according to which the arbitrators should give judgement. This point was considered, properly speaking, as not coming within the field of arbitral procedure.

Article 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

The principal provisions contained in Article 19 of the Russian draft and contained in Article 49 of the committee's draft are borrowed from Article 5 of the rules of the Institute of International Law.

They concern the right to issue rules of procedure for the conduct of the case, and to decide the forms and time in which each party must present its conclusions.

It seems useless to set forth, as did Article 19 of the Russian draft, 'the right to pass upon the interpretation of the documents produced and communicated to the two parties.'

But it was not thought unimportant to insist upon the right to arrange all the formalities required for dealing with the evidence. Upon this vital point it is important to invest the arbitrators with the most extended powers.

Article 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

Article 50 concerns the closing of the discussions and cannot cause any difficulty. It is a reproduction in almost its exact words of a provision contained in the Russian draft.

Article 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

Article 51 deals with the deliberations, which take place in secret. According to this article, each decision shall be reached by a majority vote of the members of the tribunal.

The Russian draft required only a majority of the members present, which seemed an insufficient guarantee.

Any refusal on the part of a member to take part in the vote should be stated in the minutes.

Article 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

The Russian draft, in providing regulations on various points concerning the decision, did not speak of the obligation of the arbitrators to give the reasons for their award. This omission arises from considerations of a practical nature. The obligation to give the reasons for the award may be a delicate matter to accomplish and particularly difficult for the arbitrators belonging to the country against which the decision is rendered.

While recognizing the value of this remark, the committee, at the suggestion of Dr. Zorn, and after mature deliberation, declared in favour of the insertion in Article 52 of the obligation to set forth the reasons for the arbitral decision. That is a fundamental guaranty which cannot be renounced. There is scarcely an example of an arbitral award without the reasons therefor. The duty to state the reasons may, furthermore, be exercised in varying degrees, thereby permitting the difficulties mentioned to be avoided without evading the obligation.

The obligation to set forth the reasons for the award, which was discussed in the Commission again, was finally adopted, at the same time noting the statement that the form and scope of this duty are practically of wide extent.

Mr. Rolin expressed the view that arbitrators should be required to set forth the

reasons for possible votes contrary to the opinion of the majority. But it was observed that this would expose us to the possibility of having two awards in each case and of bringing the disagreement of the arbitrators before the public.

His Excellency Count Nigra asked that the tribunal be authorized to fix a period within which the award should be executed. Dr. Zorn opposed this. At the close of the discussion of a draft communicated to the various Governments it was recognized that it was preferable not to make an absolute statement upon this point, and his Excellency Count Nigra declared that he would not insist upon his proposition.

Article 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present or duly summoned to attend.

Article 53 deals with the reading of the decision in public session. 'In the presence of the agents and counsel of the parties,' ran the Russian draft. 'Or duly summoned to attend,' added the draft of the committee.

'The agents and counsel of the parties being present or duly summoned to attend,' says the text finally adopted at the suggestion of Mr. Odier.

Article 54

The award, duly pronounced and notified to the agents of the parties at variance, settles the dispute definitively and without appeal.

Article 54 is uniform, except for details of revision, with the corresponding provision of the Russian draft, and insists upon the decisive and unappealable character of the arbitral award.

Article 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award, and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

The question of the revision of the arbitral award was first vigorously discussed in the committee, and then again in the general meeting of the Third Commission.

The plan for the institution of a Permanent Court of Arbitration presented by the American delegation provided as follows, in Article 7:

> Every litigant party which submits a case to the international tribunal shall have the right to a second hearing of its cause before the same judges, within the three months following the announcement of the decision, if it declares that it can call new witnesses or raise questions of law not raised or decided at the first hearing.[1]

[1] Cf. *post*, p. 110.

The American delegation proposed the introduction of this rule into general arbitral procedure in whatever form it might be deemed best.

The judicial principle upon which revision is based was set forth and recognized. The necessity of finally deciding disputes referred to an arbitral tribunal, and not shaking the authority of the award rendered by the arbitrators, was also defended.

The committee, at the suggestion of President Léon Bourgeois, by a majority vote adopted a provision writing into the general code of arbitral procedure the rule of revision restricted as to the Court to take cognizance thereof, as to the facts which should furnish a basis therefor, and as to the period within which it would be allowed.

Revision should be requested of the tribunal which rendered the decision.

It cannot be based upon anything except the discovery of a new fact which would have been of such a nature as to exercise a decisive influence upon the award, and which, after the close of the discussions, was unknown to the tribunal and to the party which demanded the revision.

As to the period within which the request for a revision may be received, it was at first fixed at three months, then at six months, at the suggestion of Messrs. Corragioni d'Orelli and Rolin, delegates from Siam.

His Excellency Count Nigra proposed the adoption of the provisions of Article 13 of the recent treaty of arbitration between Italy and Argentine.

A compromise proposal was then made in the committee by Mr. Asser, delegate from the Netherlands. By the terms of this proposition the parties may reserve the right in the *compromis* to demand the revision of the arbitral award, and in providing for this request, the revision is, under the code of arbitral procedure, subject to the same conditions as heretofore proposed.

However, the *compromis* is to determine the period within which the demand for revision shall be made. This last proposition, made by the American delegation, was adopted by the Commission at the same time as the proposition of Mr. Asser.

So far as the general question of the causes which may nullify an arbitral award are concerned, the Russian draft contained the following provision: 'The arbitral award is void in case of a void *compromis* or exceeding of powers, or of corruption proved against one of the arbitrators.' Mr. Asser asked, for his part, if some Power could not be found which should have the duty of declaring an award void, in order not to leave so serious a decision to arbitrary determination or to the initiative of the State against which the award was rendered.

In the examination of this question, the committee stopped before the difficulties of providing for cases of invalidity without determining at the same time who should be made the judge of these cases. It was observed, however, that the Permanent Court of Arbitration could guide States to a solution of this matter.

Article 56

The award is binding only on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

The provision contained in Article 56 is due to the suggestion of Mr. Asser.

A question of interpretation may arise between two Powers concerning a convention to which other Powers were parties. When it is a question of so-called 'Universal Unions' the parties in litigation ordinarily represent but a very small number of the contracting parties.

Mr. Asser believed it was important to provide for notifying the other Powers of the *compromis* entered into by parties litigant, so that the former might be in a position to intervene in the case.

When they avail themselves of this opportunity the interpretation contained in the decision becomes equally binding on them.

Mr. Asser drew up a provision along this line. It was unanimously adopted.

Article 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

The question of the expenses of the operation of arbitral tribunals was regulated according to actual practice.

Each party bears, independently of its own expenses, an equal part of the expenses of the tribunal.

The honorariums of the arbitrators are included in the latter expenses.

There are some expenses which can only be determined in each case by the tribunal. For others the administrative council in case of need may adopt a schedule of charges. Custom will assist in establishing rules in this regard.

General Provisions

The Convention for the pacific settlement of international disputes contains under the title 'General Provisions' some final rules concerning ratification, adhesions and denunciations. The rules follow.

Article 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers that were represented at the International Peace Conference at The Hague.

As Mr. Renault observed:

> This article is only a reproduction of the provisions of the same character inserted in the Conventions concerning the laws and customs of war on land and the adaptation of the principles of the Geneva Convention to maritime warfare. They are identical and corresponding provisions.
>
> [They comprise] the ordinary provisions regarding ratification. The form for the deposit of ratifications has, however, been simplified.
>
> It was not necessary to make a reservation for the action of parliaments. Each sovereign or head of a State should decide to what extent he is free to ratify the convention.

ARTICLE 59

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

ARTICLE 60

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

Mr. Renault says, in the report of the Drafting Committee of the Final Act :

Articles 59 and 60 govern the matter of adhesion. They differ from the final clause of the other Conventions, which are absolutely *open* except for the slight difference which has already been indicated with respect to the Convention relating to the Red Cross.

The present Convention contemplates two different conditions : a distinction has been made between Powers represented at the Conference and those which are not. Articles 59 and 60 provide for these two conditions.

The Powers represented at The Hague have two methods of becoming contracting Parties : they may sign immediately, or before December 31, 1899. After that date, they will have to *adhere* to the Convention ; but they have the ***right*** so to do. Their adhesion is subject to the same rules as those which govern the other two Conventions. This is the object of Article 59.

Article 60 provides for the case of Powers not represented at the Conference. Such Powers may adhere to the Convention, but the conditions of their adhesion are reserved for a future agreement between the contracting Powers. They, therefore, have not the same right as is recognized with respect to the Powers represented.

This very simple solution was not reached in a very simple way. It gave rise to lively and lengthy discussions, which changed the modest character of the Drafting Committee and caused it to take up questions which were diplomatic and political rather than questions of style and wording. The reporter believes that he cannot better state the different systems which were upheld in the committee than by repeating to the Conference the following address, delivered at the last session of the committee by Mr. Asser, its president, which summarizes most completely the origin of Article 60 :

GENTLEMEN : The discussions of international gatherings like our Conference assume at times the character of parliamentary debates, at others that of diplomatic negotiations.

In the matter with which the Drafting Committee has had to deal these last few days, our debates have assumed the latter character.

The result is that, on the one hand, the individual opinions of the members of our committee and of the delegates who have been good enough to lend us their aid are subject—still more than in discussions of a different nature—to the sanction of the Governments ; and, on the other hand, to reach a practical result unanimity is indispensable.

If, from this double point of view, we consider the impression which the discussions of these last few days are bound to make, I believe I may state that all of us (delegates and Governments) desire that it may be possible to bring about adhesion to the Convention relating to the pacific settlement of international disputes by Powers who have not taken part in the Peace Conference ; but that, at the same time, there

exists a great difference of opinion as to whether the right to adhere should be granted absolutely or should be dependent upon certain conditions; and, in the latter case, what these conditions should be.

On the one hand, it was warmly argued that the Convention with which we are dealing should be completely assimilated to the other Conventions, the text of which has been decided upon by the Conference—which assimilation was, indeed, voted by the Committee of Examination of the Third Commission.

This implied the absolute right of all Powers to adhere to the Convention by means of a simple declaration.

On the other hand, it was maintained that this right should depend either on the express consent of all the contracting States, or on their tacit consent, which they would be considered to have given if, within a fixed time, no Power opposed the adhesion; or, lastly, on the consent of a majority, in the sense that the adhesion should, in case of opposition, be sanctioned by a vote of the Permanent Council, composed of all the diplomatic representatives of the Powers accredited to The Hague, a proposition which I had the honour of submitting to you, in the name of my Government, in order that no one Power might be given the right of veto in this matter.

Lastly, it was proposed that in case of opposition to the request for permission to adhere, the adhesion would affect only the Powers that had given their consent.

I cannot now repeat the arguments which were developed in favour of each of these systems.

I shall confine myself to stating that we have been unable to find a common ground for a unanimous agreement and that it is materially impossible, in the short time we still have, to reach such an agreement, especially since several delegates have not received specific instructions upon this point.

There is nothing left for us to do, therefore, but to choose between the two following systems:

Either to omit purely and simply the clause concerning the adhesion of Powers not represented;

Or, admitting the principle of their right to adhere, to leave it for a future agreement between the Powers to determine the conditions under which adhesion may take place.

I venture to point out that it would appear from the discussions that the latter solution should be adopted.

It has been recognized by all that it is desirable to open the door to Powers that are not represented. If the Convention remained silent upon this point, it would by that very fact be a *closed* convention, a thing which we do not desire. If, on the contrary, it provides for a future agreement, such a provision is in effect an expression of the hope that this agreement can be brought about.

We are all persuaded that the Powers will endeavour to proceed with the greatest diligence, but we also know that ratifications cannot be obtained between to-day and to-morrow. Let us hope that the time which elapses between now and ratification by the Powers will serve to lessen the difficulties which at present still exist, and that we shall be more and more convinced that the very nature of the Convention in question seems to admit of a broad and liberal system in the matter of the right to adhere.

The object of the Convention is the peaceful settlement of international disputes, and it determines the means of assuring such a result.

Well! the authors of this Convention must necessarily desire that all Powers, even those which are not represented here, join in this work of general interest.

Now especially, since the Convention contains no clause concerning compulsory arbitration, they must desire that, in case of a dispute between Powers not represented at the Conference, or between one of them and a Power which is represented, the Convention may bear the same fruits as when there is a dispute between contracting Powers.

Mr. Renault says that ' This speech is the best exposition of the reasons which he can make, and he will add nothing further to the comment which he has been authorized to make concerning the form and the bases of the initial and final clauses of the Conventions '.

Article 61

In the event of one of the high contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

The possibility of the denunciation of the Convention by some State has been provided for, especially with a view to preventing any immediate and far-reaching consequences therefrom. Of the same clause inserted in the Convention concerning the laws and customs of war, Mr. Renault spoke in these words :

> In order to avoid surprises we have decided to determine the procedure for denunciation by a clause which tends rather to restrict the consequences than to encourage the practice thereof. Besides, States will only the more freely adhere to a contractual engagement from which they know in advance that they may withdraw at a given time in case of need, without giving to the denunciation the almost violent character which it would seem to possess in the absence of a special provision.

Two declarations of a general character were made concerning the Convention, one by the delegation from the United States of America, and one by the Ottoman delegation.

Declaration of the United States of America

The delegation of the United States of America, on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration :

> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State ; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

Declaration of the Ottoman Delegation

The Ottoman delegation, considering that the work of this Conference has been a work of high loyalty and humanity, destined solely to assure general peace by safeguarding the interests and the rights of each one, declares, in the name of its Government, that it adheres to the project just adopted, on the following conditions :

> 1. It is formally understood that recourse to good offices and mediation, to commissions of inquiry and arbitration, is purely facultative and could not in any case assume an obligatory character or degenerate into intervention.
>
> 2. The Imperial Government itself will be the judge of the cases where its interests would permit it to admit these methods without its abstention or refusal to have recourse to them being considered by the signatory States as an unfriendly act.
>
> It goes without saying that in no case could the means in question be applied to questions concerning interior regulation.

The reporter has completed his task. In the few hours allotted to him to accomplish his work he has not been able to be as complete as he would have desired. He has nevertheless endeavoured to be exact.

The minutes wherein the eminent secretary of the committee of examination has recorded so many remarkable debates have made the reporter's task easier. The co-operation of such distinguished and devoted members of the general secretarial staff has also contributed to the lightening of his work.

In glancing over the grand total of the work accomplished by it, the Third Commission may credit itself with having pursued the noblest and highest purpose in a spirit which has constantly maintained itself on a plane coequal with this high purpose.

The maintenance of general peace by the loyal co-operation of all; good offices and mediation developed into a powerful instrument for the preservation or re-establishment of peaceful relations; international commissions of inquiry regulated under conditions which safeguard liberty and give important guarantees; arbitral justice broadly recognized without being imposed; a Permanent Court of Arbitration established and attached to the International Bureau at The Hague and to a Permanent Council composed of the diplomatic representatives of the Powers; arbitral procedure defined and generalized in its fundamental principles: such a work surely answers the highest aspirations of our age.

When we search the history of the law of nations, from the day when this law was established upon a firm basis by that man of genius to whom America has recently rendered striking homage upon his native soil; when we search for some page comparable with that which the Hague Conference is going to write, it seems difficult to find a more fruitful one.

It is just to credit this honour to the magnanimous author of this Conference, His Majesty the Emperor of Russia.

The work undertaken upon his high initiative and under the gracious auspices of Her Majesty the Queen of the Netherlands, will develop in the future. As the president of the Third Commission said on a memorable occasion, 'the farther we advance along the pathway of our age, the more clearly its importance will appear'.

History will bear witness to the Hague Conference, because that great assembly will have worked sincerely and effectively to establish and organize peace through justice.

Annexes to the Report upon the Convention for the Pacific Settlement of International Disputes

ANNEX A[1]. DOCUMENTS PRODUCED BY THE RUSSIAN DELEGATION

I. OUTLINES FOR THE PREPARATION OF A DRAFT CONVENTION TO BE CONCLUDED BETWEEN THE POWERS TAKING PART IN THE HAGUE CONFERENCE

Good Offices and Mediation

ARTICLE 1

With the purpose of obviating, as far as possible, recourse to force in international relations, the signatory Powers have agreed to use their best efforts to bring about by pacific means the settlement of disputes which may arise between them.

[1] *Procès-verbaux*, pt. i, p. 110.

ARTICLE 2

Consequently, the signatory Powers have decided that, in case of serious disagreement or dispute, before an appeal to arms, they will have recourse, so far as circumstances admit, to the good offices or mediation of one or more friendly Powers.

ARTICLE 3

In the case of mediation accepted spontaneously by the litigant States, the object of the Government acting as mediator is to reconcile the opposing claims and appease the feelings of resentment which may have arisen between these States.

ARTICLE 4

The part of the Government acting as mediator is at an end when the settlement proposed by it or the bases of a friendly settlement which it may have suggested are not accepted by the litigant States.

ARTICLE 5

The Powers consider it useful in case of serious disagreement or conflict between civilized States concerning questions of a political nature, independently of the recourse which these Powers might have to the good offices and mediation of Powers not involved in the dispute, for the latter, on their own initiative and so far as circumstances will allow, to offer their good offices or their mediation in order to smooth away the difficulty which has arisen, by proposing a friendly settlement, which without affecting the interest of other States, might be of such a nature as to reconcile in the best way possible the interests of the litigant parties.

ARTICLE 6

It is of course understood that mediation and good offices, whether offered on the initiative of the litigant parties or upon that of the neutral Powers, have strictly the character of friendly advice and no binding force whatever.

International Arbitration

ARTICLE 7

With regard to those controversies concerning legal questions, and especially with regard to those concerning the interpretation or application of treaties in force, arbitration is recognized by the signatory Powers as being the most effective and at the same time the most equitable means for the friendly settlement of these disputes.

ARTICLE 8

The contracting Powers consequently agree to have recourse to arbitration in cases involving questions of the character above mentioned, so far as they do not concern the vital interest or national honour of the litigant Powers.

ARTICLE 9

Each State remains the sole judge of whether this or that case should be submitted to arbitration, excepting those enumerated in the following article, in which cases the signatory Powers to the present document consider arbitration as obligatory upon them.

ARTICLE 10

Upon the ratification of the present document by all the signatory Powers, arbitration will be obligatory in the following cases, so far as they do not concern the vital interests nor national honour of the contracting States :

I. In case of differences or dispute relating to pecuniary damages suffered by a State, or its nationals, as a consequence of legal actions or negligence on the part of another State or its nationals :

II. In case of disagreement relating to the interpretation or application of the treaties and conventions mentioned below:

1. Treaties and conventions relating to the posts and telegraphs, railroads, and also those bearing upon the protection of submarine telegraph cables; regulations concerning methods to prevent collisions of vessels on the high seas; conventions relating to the navigation of international rivers and interoceanic canals.

2. Conventions concerning the protection of literary and artistic property as well as industrial property (patents, trade-marks, and trade-names); conventions relating to money and measures; conventions relating to sanitation and veterinary surgery, and for the prevention of phylloxera.

3. Conventions relating to inheritance, exchange of prisoners, and reciprocal assistance in the administration of justice.

4. Conventions for marking boundaries, so far as they concern purely technical and non political questions.

ARTICLE 11

The enumeration of the cases mentioned in the above article may be completed by subsequent agreements between the signatory Parties of the present Act.

Besides, each of them may enter into a special agreement with any other Power, with a view to making arbitration obligatory in the above cases before general ratification, as well as to extend the scope thereof to all cases which the State may deem it possible to submit to arbitration.

ARTICLE 12

In all other cases of international disputes, not mentioned in the above articles, arbitration, while certainly very desirable and recommended by the present Act, is only voluntary; that is to say, it cannot be resorted to except upon the suggestion of one of the parties in litigation, made of its own accord and with the express consent and full agreement of the other party or parties.

ARTICLE 13

With a view to facilitating recourse to arbitration and its application, the signatory Powers have agreed to define by common agreement the fundamental principles to be observed by the institution, and the rules of procedure to be followed during the examination of the dispute and the delivery of the arbitral decision in cases of international arbitration.

The application of these fundamental principles, as well as of arbitral procedure, indicated in the appendix to the present article, may be modified by a special agreement between the States which resort to arbitration.

International Commissions of Inquiry

ARTICLE 14

In cases which may arise between the signatory States where differences of opinion with regard to local circumstances have given rise to a dispute of an international character which cannot be settled through the ordinary diplomatic channels, but wherein neither the honour nor the vital interests of these States is involved, the interested Governments agree to form an international commission of inquiry in order to ascertain the circumstances forming the basis of the disagreement and to elucidate the facts of the case by means of an impartial and conscientious investigation.

ARTICLE 15

These international commissions are formed as follows:

Each interested Government names two members and the four members together choose the fifth member, who is also the president of the commission. In case of equal

voting for the selection of a president, the two interested Governments by common agreement address a third Government or a third person, who shall name the president of the commission.

Article 16

The Governments between which a serious disagreement or a dispute under the conditions above indicated has arisen, undertake to supply the commission of inquiry with all means and facilities necessary to a thorough and conscientious study of the facts in the case.

Article 17

The international commission of inquiry, after having stated the circumstances under which the disagreement or dispute has arisen, communicates its report to the interested Governments, signed by all the members of the commission.

Article 18

The report of the international commission of inquiry has in no way the character of an award; it leaves the disputing Governments entire freedom either to conclude a settlement in a friendly way on the basis of the above-mentioned report, or to resort to arbitration by concluding an agreement *ad hoc*, or finally, to resort to such use of force as is accepted in international relations.

II. Explanatory Notes Concerning Articles 5 and 16 of the Above Outlines for the Preparation of a Draft Convention[1]

(*a*) Explanatory Note concerning Article 5 of the Russian Draft

The Conference which is about to meet at The Hague is essentially different from those which were held at Geneva (in 1864), at St. Petersburg (in 1868), and at Brussels (in 1874).

These early conferences intended to humanize war after war had been declared; while the assembly convoked at The Hague must devote itself especially to the discovery of methods to prevent the very declaration of war. The Hague Conference therefore must be a *Peace* Conference in the most positive sense of the term.

Practice in international law has worked out a complete set of methods to prevent war by the pacific settlement of international disputes, and among these must be set above all, good offices, mediation and arbitration. It seems very natural that the Conference should consider the perfecting of the guarantees and methods already existing for the assurance of lasting peace among nations instead of seeking new means which have not been tried and sanctioned by practice. With this in mind the Conference should especially give its attention to 'good offices' and 'mediation' by third parties; that is, by Powers which are not involved in the conflict presumed to exist.[2]

Mediation should doubtless be, from its very nature, placed among the most useful and practical methods in the law of nations. Being a necessary response to that real community of material and moral interests which creates an international union among the various States, mediation should inevitably acquire a continually increasing importance and value, in proportion to the increasing intimacy among States and the development of their international relations. The possible advantage of mediation, if we compare it with the other methods used to settle international disputes, is especially the remarkable elasticity of its operation, the ease with which it is adapted to the particular circumstances of each given case, as well as the variety of forms arising from this ease of adaptation. Being dependent upon the free consent of the parties, mediation does not in the least

[1] *Procès-verbaux*, pt. 1, p. 1-1

[2] The distinction made between 'good offices' and 'mediation' is entirely theoretical. These methods are legally identical in character and differ only in degree and the importance of their results. Diplomacy has never insisted upon this distinction. (Cf. Article 9 of the Treaty of Paris of 1856, and Article 23 of the protocol of the Congress of Paris, 1856.)

threaten the principle of their sovereignty nor the liberty or independence of States; it *influences* the arbitrator freely chosen by them without ever opposing him, without ever calling him in question.

There is no doubt that arbitration, generally speaking, is a more effective and more radical method than mediation; but arbitration being of a legal nature, its application is essentially and even exclusively restricted to cases where there is a conflict of international rights, while mediation, although of a political character, is equally applicable to the conflicts of interests which most often threaten peace among nations. Finally, it is equally essential to note that mediation is distinguished from other analogous modes of action by an astonishing simplicity of application which demands no previous preparation whatever. This instrument, in daily use in diplomacy, tactfully and skilfully handled and guided by a sincere desire to serve in the work of peace, seems called upon to play a striking and beneficent rôle in the future.

However, mediation has up to the present played a most modest rôle in the settlement of international difficulties; this statement is supported by the history of even the most recent disputes.

If we look for the reason for this fact, we must consider first how unsatisfactory is the status of mediation in the theory as well as in the practice of international law.

By the terms of Article 8 of the Treaty of Paris the Sublime Porte, as well as the other signatory Powers to that treaty, is bound to submit every future disagreement which may arise between any of them to the mediation of the other Powers, to prevent the use of force.

Giving this idea a more general scope, Article 23 of the protocol of the Congress of Paris, inserted at the suggestion of Lord Clarendon, British plenipotentiary, expresses the desire that States between which serious disagreements may arise shall request the good offices of a friendly Power so far as circumstances permit rather than resort to arms.

In the same way, at the African Conference at Berlin, in 1885, the Powers mutually agreed to resort first of all to mediation by one or several neutral States in case disagreement arose between them concerning the Kongo and its basin.

The provisions above set forth are inspired by one and the same thought expressed in almost identical terms. They oblige all the States interested in the dispute to *request* mediation; they do not mention the duty of neutrals to *propose* it. From this point of view mediation imposes duties upon the States directly interested but not upon neutral States.

This sort of mediation, very irregular from a theoretical point of view, has also the disadvantage of making mediation unattainable from a practical point of view. The request for mediation necessarily presupposes a previous agreement between the interested States with regard to the necessity and the opportunity for it. Now, such an agreement is not always possible in the heat of a dispute between interests diametrically opposed to each other. In any case we cannot consider the making of the request for mediation *obligatory* on the part of the States whose interests are in question, especially since that requires that opposing desires be harmonized and that the parties agree in the choice of a mediator.

Treaties, unhappily still less numerous, which make the request for arbitration obligatory, at the same time regulate, and generally in advance, the organization of the tribunal called upon to render the arbitral decision, without making this organization dependent upon the consent or dissent of the interested parties.[1]

It goes without saying that treaties cannot deal with the obligation of parties to choose a mediator, whose advice could be only of moral effect proportionate to the respect and confidence which he inspired in the interested parties. The designation of mediators must necessarily be brought about by the agreement of the parties; now, since this agreement depends absolutely upon their good-will, and may, even if this good-will is secured, be unattainable, it follows that we should not consider the request for mediation as obligatory upon the States directly interested. Even if the treaties did impose such a duty upon States, in case of a dispute this duty would still be, generally speaking, ineffective, because

[1] See, for example, Article 16 of the General Postal Convention signed at Berne in 1874, and Article 8 of the treaty signed at Washington in 1890.

conventions could not oblige States, in spite of everything, to agree upon this or that mediator.

This view is confirmed by the history of international relations since the Congress of Paris, 1856. Thus within the last forty years there have been several cases where neutral States, referring to Article 23 of the protocol of the Congress of Paris, have *offered* their mediation and good offices to States in controversy; but there ***has not been a single*** case where the States in controversy have ***addressed*** a request for mediation to neutral States. Last year, at the time of the dispute between France and England concerning Fashoda, neither one nor the other of these Powers thought of resorting to the provisions adopted at the Conference at Berlin in 1885, and did not appeal to the mediation of a third Power. We might cite other examples of a similar character.

As for the obligation of neutral States to offer mediation to States in controversy when not established by treaty, this is not recognized nor observed by any one. In theory, too, some authors have gone so far as to assert that neutral States are not only not obliged to offer mediation to disputing States, but that they have not the right to do so. Bluntschli and Heffter consider mediation as a dangerous and injurious interference in the affairs of others. Hautefeuille and Galiani advise States prudently to abstain from mediation, fearing to alienate the sympathies of one or other of the parties in controversy without justification. In short, we might cite, as a matter of practice, a number of examples of serious disputes, which later ended in war, which did not suggest to neutrals the least idea of attempting to offer mediation; however, proposals of this character, especially in cases where they might have come simultaneously from several Powers, could have prevented wars the effects of which have been incalculable upon all the States constituting the international community.

In many cases the offer of mediation comes so late and in such uncertain terms that it cannot prevent war. For example, such was the case when the French Government in 1870 refused the 'good offices' of England when the war broke out between France and Germany.

Finally, it often happens that mediation is proposed not with the view to prevent war, but in order to end it.

Several recent wars—the Austro-Prussian War of 1866, that between Chile, Peru, and Bolivia in 1882, that between Greece and Turkey in 1897, and still others—were terminated thanks to the mediation of neutral Powers. If these same Powers had made use of all the energy they employed to ***terminate*** these wars in an effort to ***prevent*** them, it is possible that Europe would have been spared more than one armed conflict.

After what has just been said, it is not difficult to indicate the way for the Conference to increase the importance and enlarge the scope of mediation, by making it a permanent and necessary institution in international law. Innumerable reciprocal entangling interests envelop civilized States in a close and inextricable net. The principle of isolation, which but lately still dominated the political life of each nation, has given way henceforth to a close solidarity of interests, to common participation in the moral and material benefits of civilization.

Modern States cannot stand indifferent to international conflicts wherever they may arise and whoever may be the parties in controversy. At the present time, a war between even two States seems to be an international evil. To fight this evil it is necessary to employ methods of a general character; we must combine the efforts of each and every State.

From this point of view, each Power must employ its every effort to bring into action all its energies to prevent conflicts which threaten peace, while respecting, of course, the independence of other sovereign States. In particular, each State should, so far as circumstances allow, offer mediation to disputing States the moment it has the least hope of preventing thereby the terrible evils of war.

It is because they realize the serious consequences which one or another result of war may have for the international community, that neutral States ordinarily offer to the belligerent parties mediation for the conclusion of peace. Mediation of this character, generally

collective, often makes it impossible for the victor to derive from his victories the advantages for which the war was undertaken.

The important fact, without doubt, so far as neutral States are concerned, is not merely the result of a war but the very fact that it has taken place. It follows that the interests of neutrals require that mediation should be proposed by them not only to end a war already begun, but above all to *prevent* the outbreak. This is also to the interest of the States in controversy, and all the more so since when war breaks out, each belligerent State is interested, to-day, to know the attitude of the neutral Powers with regard to the conflict in order to be able to calculate and determine, not only the power of resistance of the adversary during the war, but also the pressure which will come from the neutral Powers at the conclusion of peace

The theory of international law, as shown by its most highly respected representatives, such as Travers Twiss, Phillimore, Pradier-Fodéré, Martens, and others, has for a long time considered mediation as a *duty on the part of neutral States*. The Peace Conference will perhaps deem it useful to proclaim this duty before all humanity, so that mediation will be given the value of a powerful instrument for peace.

(*b*) Explanatory Note concerning Article 10 of the Russian Draft[1]

In entering upon an examination of the question of arbitration, we must first of all bear in mind the essential difference between *obligatory* and *voluntary* arbitration.

As a general question, it is difficult to conceive of any dispute whatever of a legal character, arising in the field of positive international law, which could not *by virtue of agreement between the parties be decided* by means of voluntary international arbitration. Even in case international law, which unfortunately still contains so many gaps, does not furnish a generally recognized rule for the solution of the concrete question, the *compromis* concluded between the parties prior to the arbitration may, however, create a principle *ad hoc*, and in this way facilitate considerably the task of the arbitrator.

It is different with obligatory arbitration, which does not depend upon the special consent of the parties. It goes without saying that this form of arbitration cannot apply to all cases and all kinds of disputes. There is no Government which would consent *in advance* to assume the obligation to submit to the decision of an arbitral tribunal every dispute which might arise in the international domain if it concerned the national honour of a State, or its highest interests, or its inalienable possessions. In fact, the mutual rights and duties of States are determined to a marked degree by the totality of what we call political treaties, which are nothing but the *temporary* expression of chance and transitory relationship between the various national forces. These treaties restrict the freedom of action of the parties so long as the political conditions under which they were produced are unchanged. Upon a change in these conditions the rights and obligations following from these treaties necessarily change also. As a general rule, disputes which arise in the field of political treaties in most cases concern not so much a difference of interpretation of this or that principle, as the changes to be made in the treaty, or the complete abrogation thereof.

Powers which take an active part in the politics of Europe cannot therefore submit disputes arising in the field of political treaties to the examination of an arbitral tribunal, in whose eyes the principle established by the treaty would be just as obligatory, just as inviolable, as the principle established by the positive law in the eyes of any national tribunal whatever.

From the point of view of practical politics, the impossibility of universal obligatory arbitration seems evident.

But from another point of view, it cannot be doubted that in international life differences often arise which may absolutely and at all times be submitted to arbitration for solution; these are questions which concern exclusively special points of law and which

[1] *Proces-verbaux*, pt. 1, p. 124.

do not touch upon the vital interests, or national honour of States. We do not desire that the Peace Conference should, so far as these questions are concerned, set up arbitration as the permanent and obligatory method.

The recognition of the obligatory character of arbitration, were it only within the most restricted limits, would strengthen legal principles in relations between nations, would guarantee them against intractions and encroachments; it would *neutralize*, so to speak, more or less, large fields of international law. For the States obligatory arbitration would be a convenient means of avoiding the misunderstandings, so numerous, so troublesome, although of little importance, which sometimes fetter diplomatic relations without any reason therefor. Thanks to obligatory arbitration, States could more easily maintain their legitimate claims, and what is more important still, could more easily escape from the unjustified demands.

Obligatory arbitration would be of invaluable service to the cause of universal peace. It is very evident that the questions of the second class, to which alone this institution is applicable, very rarely form a basis for war. Nevertheless, frequent disputes between States, even though with regard only to questions of the second class, while not forming a direct menace to the maintenance of peace, nevertheless disturb the friendly relations between States and create an atmosphere of distrust and hostility in which some incident or other, like a chance spark, may more easily cause war to burst forth. Obligatory arbitration, resulting in absolving the interested States from all responsibility for any solution of the difference existing between them, seems to be fitted to contribute to the maintenance of friendly relations, and in that way to facilitate the peaceful settlement of the most serious conflicts which may arise within the field of their most important mutual interests.

In thus recognizing the great importance of obligatory arbitration it is above all indispensable to set forth accurately the sphere of its application; we must indicate in what cases obligatory arbitration is applicable.

The grounds of international disputes are very numerous and infinitely varied; nevertheless, whatever may be the subject of dispute, demands made by any State whatever upon another State can be listed in the following categories:

1. One State demands of another material indemnity for damages and losses caused to it or to its nationals by the acts of the defendant State or its nationals, which the former State deems contrary to law.

2. A State demands that another shall or shall not exercise certain given attributes of the sovereign Power, shall or shall not perform certain specified acts which do not concern its material interests.

So far as disputes of the first category are concerned, the application of obligatory arbitration is always possible and desirable. Conflicts of this nature relate to questions of law; they do not concern the national honour of States or the vital interests thereof, it being understood that a State whose national honour or vital interests had been attacked would not of course limit itself, and could not limit itself, to demanding material indemnity for damages and losses suffered by it. War, which is always a highly regrettable thing, would lose its significance and would have no moral justification, if it were undertaken for a dispute arising in regard to facts of little real importance, such as accounts to be settled for material damages caused to one State by acts committed by another, and which the former did not consider in accordance with law. But the more impossible war becomes in such cases, the more indispensable it is to recommend obligatory arbitration as the most effective means of action for a peaceful solution of disputes of this character.

The history of international relations proves beyond doubt that in the great majority of cases claims for indemnity for damages suffered have actually been the subject of arbitrations. The bases of these demands vary a great deal. We mention, for example, the violation of neutral duties,[1] violation of the rights of neutral States,[2] the illegal arrest

[1] The case of the *General Armstrong* (1881); the case of the *Alabama* (1872).
[2] Blockade of Portendik (1843), etc.

of a foreign subject,[1] losses caused to a foreign national through the fault of a State,[2] seizure of private property of a belligerent upon land,[3] illegal seizure of vessels,[4] violation of the right of fishery.[5]

In general, whatever may be the bases or circumstances of the dispute, States cannot find any difficulty in submitting it to arbitration if it deals with an indemnity for damages and losses.

It would seem therefore that the Conference should follow the same path, by declaring arbitration obligatory for the examination of disputes of the first class. It goes without saying that in exceptional cases where the financial question involved is of a very important character from the point of view of the interests of the State; for example, in case it concerned the bankruptcy of a State, each Power, invoking national honour or vital interests, may decline to resort to arbitration as a means of settling the difficulty.

It seems that obligatory arbitration could not and should not be applied to disputes of the second class, which are much more important and threatening to the general peace. In this category are included disputes of all kinds arising in connexion with political treaties which concern the vital interests and national honour of States. Obligatory arbitration in these cases would tie the hands of the interested Power, and reduce it to a passive state when dealing with questions upon which its security in large part depends; that is to say, questions of which none but the sovereign Power can be the judge. *In introducing international arbitration into the international life of States we must proceed with extreme care in order not to extend unreasonably its sphere of application, so as to shake the confidence which may be inspired therein, or discredit arbitration in the eyes of Governments and peoples.*

We must not lose sight of the fact that each State, and above all each Great Power, would prefer to propose the abrogation of the treaty making arbitration obligatory, rather than to submit to it questions which absolutely require that the decision thereof shall be made by the sovereign Power acting freely and without restriction. In all cases, in the interests of a greater development of the institution of arbitration, the Conference should limit its application to a specified number of legal questions arising from the interpretation of existing treaties of no political significance. These treaties should be specifically noted in advance by the Conference, and their enumeration can be completed in time as the theory, and above all the practice, of international law may indicate.

Among the treaties the interpretation of which should be submitted entirely and unconditionally to obligatory arbitration, we must note first of all that extensive group of treaties of a world-wide character which have formed a system of *international* relationships—international unions—to serve interests which are also international. Such, for example, are conventions regarding postal and telegraph unions, international protection of literary property, etc. In time, in proportion to the increasing means of intercommunication between States, a great number of their moral and material interests will lose their exclusive national character, and will be raised to the height of interests of the whole international community. To provide for these interests by the efforts and with the means of a single State is an impossible work. And that is why each year adds to the number of treaties of a world-wide character, uniting many States, and determining the ways and means for the common protection of common interests.

Since other treaties, as a general rule, are only *artificial settlements of opposing interests*, treaties of a universal character always express necessarily the agreement upon *common and identic* interests. That is the reason that within the scope of these treaties serious disputes incapable of settlement, or conflicts of a national character in which the interests of one are absolutely opposed to those of another, never arise and cannot arise. So far as momentary misunderstandings are concerned—concerning their interpretation, each State

[1] The case of Captain White (1804); the case of Dundonald (1873), etc.
[2] Butterfield case (1888); dispute between Mexico and the United States (1872), etc.
[3] Case of the *Macedonian*.
[4] Seizure of the vessels *Veloz Mariana*, *Victoria*, and *Vigie* (1852); case of the *Phare* (1879), and others.
[5] Cases of fisheries of Terra Nova (1877), etc.

will willingly confide the solution to an arbitral tribunal, it being understood that all the Powers have an equal interest in maintaining the treaties in question, which serve as bases for extensive and complex systems of international institutions and regulations which are the only means of serving vital and permanent needs.

It should be noticed that the first attempt to introduce obligatory arbitration into international practice was in fact made in a treaty of a universal character, that relating to the Postal Union of 1874; Article 16 of this treaty establishes obligatory arbitration for the solution of all the differences with reference to the interpretation and application of the treaty in question.

The Hague Conference would seem therefore to be perfectly justified in extending the provisions of Article 16 of the Treaty of Berne to all treaties of a universal character which are entirely analogous to this one.

In the category of treaties of a world-wide character susceptible of submission to obligatory arbitration, the treaties contained in the following two subdivisions may be included:

1. Treaties concerning international protection of the great arteries of world-wide intercourse, postal, telegraph, railroad conventions; conventions for the protection of submarine cables, regulations to prevent the collision of vessels on the high seas, conventions regarding navigation of international rivers and interoceanic canals.

2. Treaties providing for the international protection of intellectual and moral interests, whether of particular States, or, in general, of the whole international community. To this subdivision belong conventions regarding the protection of literary, artistic, and musical property, conventions for the protection of industrial property (trade marks, patents), conventions concerning the use of weights and measures, conventions concerning sanitation, veterinary surgery, and measures to be taken to prevent phylloxera.

Besides treaties of a world-wide character, arbitration could also be applied to the solution of differences arising from the interpretation and application of treaties concerning particular fields of private international law, civil and criminal.

It must be noted, however, that the most important questions of international law are actually decided by the particular legislation of each State.

Because of the difficulties of this situation, resulting in a great lack of definition of the mutual rights and duties of individuals in international intercourse, the question of a code of private international law has been considered. So long as this question is not definitely decided, either by the conclusion of separate treaties between States, or by the conclusion of a treaty of a world-wide character, it would be more prudent not to attempt obligatory arbitration except in questions relating to the right of succession to property, which is already, to a certain degree, sufficiently regulated by international treaties.

So far as questions of international criminal law which arise with regard to the interpretation of treaties concerning co-operation between States for the administration of justice are concerned, it would seem that these questions, being exclusively of a legal character, might be decided by obligatory arbitration, this appearing to be equally possible and desirable for all States.

Finally, with a view to preventing those disputes and misunderstandings which are so frequent among States with regard to the delimitation of boundaries, it would also seem most opportune to confide to obligatory arbitration the interpretation of so-called treaties of delimitation, so far as these are of a technical and non-political character.

Such are the limits within which it would be possible and desirable to determine the sphere of action of obligatory arbitration.

We may permit ourselves to believe that in time it will become possible to extend obligatory arbitration to cases not actually provided for in advance; but even within the limits above indicated, this means of action will be a great aid to the success of the great principles of law and justice in the international field.

The Peace Conference, by recognizing so far as possible the use of arbitration as obligatory, will by that fact approach the goal which was set up before the Governments

of the Great Powers at Aix-la-Chapelle in 1818. It will set an example of justice, concord, and moderation; it will sanction the efforts of all Governments for the protection of peaceful arts, for the development of the eternal prosperity of States and for the re-establishment of the high ideals of religion and morality.

III RUSSIAN PROPOSALS CONCERNING THE ARBITRAL TRIBUNAL[1]

(*a*) Articles which might replace Article 13

Article 1

With a view to unifying international arbitral practice as much as possible, the contracting Powers have agreed to establish for a period of . . . years, an arbitral tribunal, to which the cases of obligatory arbitration enumerated in Article 10 will be submitted, unless the interested Powers agree upon the establishment of a special arbitral tribunal for the settlement of the dispute which has arisen between them.

Litigant Powers may also resort to the above-indicated tribunal in all cases of voluntary arbitration if a special agreement concerning the same is made between them.

It is of course understood that all Powers, not excepting those who are not contracting Powers nor those who have made reservations, can submit their differences to this tribunal by addressing the Permanent Bureau provided for in Article . . . of Appendix A.

Article 2

The organization of the arbitral tribunal is given in Appendix A of the present article.

The organization of arbitral tribunals established by special agreements between litigant Powers, as well as the rules of procedure to be followed during the investigation of the dispute and the rendering of the arbitral award, are set forth in Appendix B (Arbitral Code).

The provisions contained in this latter Appendix may be modified by a special agreement between the States which resort to arbitration.

(*b*) Annex to the Russian Proposal

In case Articles 1 and 2 are accepted it would be necessary to:

(1) Redraft Appendix A mentioned in the article.

(2) Introduce corresponding modifications into the draft of the arbitral code.

(*c*) Appendix A, mentioned in the Additional Article 2 of the Russian Proposal

In the absence of a special *compromis* the arbitral tribunal provided for in Article 13 shall be formed as follows:

§ 1. The contracting Parties establish a permanent tribunal for the solution of the international disputes which are referred to it by the Powers by virtue of Article 13 of the present Convention.

§ 2. The Conference shall designate for the period which will elapse before the meeting of another Conference, five Powers, each one of which, in case of a request for arbitration, shall name a judge, either from its own nationals or from others.

The judges thus named form the arbitral tribunal with power to consider the case which has arisen.

§ 3. If one or more Powers among those in litigation are not represented upon the arbitral tribunal, by virtue of the preceding article, each of the two parties in litigation shall have the right to be represented thereon by a person of its own choice acting as judge and having the same rights as the other members of the tribunal.

[1] *Procès-verbaux*, pt. i, p. 128.

4. The tribunal shall choose its president from among its members and he, in case of equal division of votes, shall have the deciding vote.

5. A Permanent Bureau of arbitration shall be established by the five Powers who are designated by virtue of the present act to create the arbitral tribunal. They shall draft the rules governing this Bureau, appoint employees thereof, provide for their successors in case of necessity, and shall fix their salaries. This Bureau, the office of which shall be at The Hague, shall consist of a secretary general, and assistant secretary, a secretary to act as archivist, as well as the rest of the personnel who shall be appointed by the secretary general.

6. The expenses of maintaining this Bureau shall be divided among the States in the proportions established for the International Postal Bureau.

7. The Bureau shall make an annual report of its business to the five Powers which appoint it, and the latter shall transmit this report to the other Powers.

8. The Powers between which a dispute has arisen shall address the Bureau and furnish it with the necessary documents. The Bureau shall advise the five Powers above mentioned and they shall immediately create the tribunal. This tribunal shall meet ordinarily at The Hague; it may also meet in another city, if an agreement to this effect is reached by the interested States.

9. During the work of the tribunal the Bureau shall furnish the secretarial staff. It shall follow the tribunal in case of change of meeting-place. The archives of the international tribunal shall be deposited with the Bureau.

10. Procedure before the tribunal above-mentioned shall be governed by the provisions of the arbitral code [below].

IV. DRAFT OF ARBITRAL CODE PROPOSED BY THE RUSSIAN DELEGATION[1]

Article 1

The signatory Powers have approved the principles and rules below for arbitral procedure between nations, except for modifications which may be introduced in each special case by common agreement between litigant Governments.

Article 2

The interested States, having accepted arbitration, sign a special act (*compromis*) in which the questions submitted to the decision of the arbitrator are clearly defined as well as all of the facts and legal points involved therein, and in which is found a formal confirmation of the agreement of the two contracting Powers to submit in good faith and without appeal to the arbitral decision which is to be rendered.

Article 3

The *compromis* thus freely concluded by the States may adopt arbitration either for all disputes arising between them or for disputes of a special class.

Article 4

The interested Governments may entrust the duties of arbitrator to the sovereign or the chief of State of a third Power when the latter agrees thereto. They may also entrust these duties either to a single person chosen by them, or to an arbitral tribunal formed for this purpose.

In the latter case and in view of the importance of the dispute the arbitral tribunal may be formed as follows: each contracting party chooses two arbitrators and all the arbitrators together choose the umpire who is *de jure* president of the arbitral tribunal.

In case of equal voting the litigant Governments shall address a third Power or a third person by common agreement and the latter shall name the umpire.

[1] *Procès-verbaux*, pt. i, p. 129.

ARTICLE 5

If the litigant parties do not arrive at an agreement upon the choice of the third Government or person mentioned in the preceding article, each of the parties shall name a Power not involved in the dispute so that the Powers thus chosen by the litigant Powers may designate an umpire by common agreement.

ARTICLE 6

The disability or reasonable challenge, even if of but one of the above arbitrators, as well as the refusal to accept the office of arbitrator after the acceptance or death of an arbitrator already chosen, invalidates the entire *compromis* except in cases where these conditions have been foreseen and provided for in advance by common agreement between the contracting Parties.

ARTICLE 7

The meeting-place of the arbitral tribunal shall be fixed either by the contracting States, or by the members of the tribunal themselves. A change from this meeting-place of the tribunal is not permissible except by a new agreement between the interested Governments, or in case of *force majeure*, upon the initiative of the tribunal itself.

ARTICLE 8

The litigant Powers have the right to appoint delegates or special agents attached to the arbitral tribunal for the purpose of serving as intermediaries between the tribunal and the interested Governments.

Besides these agents the above-mentioned Governments are authorized to commit the defence of their rights and interests before the arbitral tribunal to counsel or advocates appointed by them for this purpose.

ARTICLE 9

The arbitral tribunal decides what language shall be used in its deliberations and arguments of the parties.

ARTICLE 10

Arbitral procedure should generally cover two phases, preliminary and final.

The former consists in the communication to the members of the arbitral tribunal by the agents of the contracting parties of all acts, documents, and arguments, printed or written, regarding the questions in litigation.

The second—final or oral—consists of the debates before the arbitral tribunal.

ARTICLE 11

After the close of the preliminary procedure the debates open before the arbitral tribunal and are under the direction of the president.

Minutes of all of these deliberations are drawn up by secretaries appointed by the president of the tribunal. These minutes are of legal force.

ARTICLE 12

The preliminary procedure being concluded the arbitral tribunal has the right to refuse all new acts and documents which the representatives of the parties may desire to submit to it.

ARTICLE 13

The arbitral tribunal, however, is always absolutely free to take into consideration new papers or documents which the delegates or counsel of the two litigant Governments have made use of during their explanations before the tribunal.

The latter has the right to require the production of these papers or documents and to make them known to the opposite party.

ARTICLE 14

The arbitral tribunal besides has the right to require the agents of the parties to present all the acts or explanations which it may need.

ARTICLE 15

The agents and counsel of litigant Governments are authorized to present orally to the arbitral tribunal all the explanations or proofs which will aid the defence of the cause.

ARTICLE 16

These agents and counsel have also the right to present motions to the tribunal concerning the matters to be discussed.

The decisions of the tribunal upon these motions are final and cannot form the subject of any discussion.

ARTICLE 17

The members of the arbitral tribunal are entitled to put questions to the agents or counsel of the contracting Parties or to ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by the members of the tribunal during the deliberations can be regarded as expressions of opinion by the tribunal in general or by its members in particular.

ARTICLE 18

The arbitral tribunal alone is authorized to determine its competence in interpreting the clauses of the *compromis*, and according to the principles of international law as well as the provisions of special treaties which may be invoked in the case.

ARTICLE 19

The arbitral tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and time in which each party must conclude its arguments and to pass upon the interpretation of the documents produced and communicated to the two parties.

ARTICLE 20

When the agents and counsel of the parties have submitted all the explanations and evidence in defence of their case, the president of the arbitral tribunal shall pronounce the discussion closed.

ARTICLE 21

The deliberations of the arbitral tribunal on the merits of the case take place in private.

Every decision, whether final or interlocutory, is taken by a majority of the members present.

The refusal of a member of the tribunal to vote must be recorded in the minutes.

ARTICLE 22

The award given by a majority of votes should be drawn up in writing and signed by each member of the arbitral tribunal.

Those members who are in the minority state their dissent when signing.

ARTICLE 23

The arbitral award is solemnly read out at a public sitting of the tribunal and in the presence of the agents and counsel of the Governments at variance.

ARTICLE 24

The arbitral award, duly pronounced and notified to the agents of the Governments at variance, settles the dispute between them definitively and without appeal, and closes all of the arbitral procedure instituted by the *compromis*.

ARTICLE 25

Each Party shall pay its own expenses and one-half of the expenses of the arbitral tribunal without prejudice to the decision of the tribunal regarding the indemnity that one or the other of the parties may be ordered to pay.

ARTICLE 26

The arbitral award is void in case of a void *compromis* or exceeding of power, or of corruption proved against one of the arbitrators.

The procedure above indicated concerning the arbitral tribunal and beginning with Section 7 commencing with the words 'the seat of the arbitral tribunal' also applies in case arbitration is entrusted to a single person chosen by the interested Governments.

In case a sovereign or head of a State should reserve the right to decide personally as arbitrator, the procedure to be followed should be fixed by the sovereign or the head of the State himself.

V. DOCUMENT PRESENTED BY MR. MARTENS[1]

ARBITRATION BETWEEN THE GOVERNMENTS OF HER BRITANNIC MAJESTY AND THE UNITED STATES OF VENEZUELA

RULES OF PROCEDURE

The tribunal of arbitration, established in virtue of the Treaty of Washington of February 2, 1897, to decide the boundary claims between Great Britain and the United States of Venezuela, has adopted the following rules of procedure for its meetings.

1

At the opening of its meetings the tribunal of arbitration shall, upon the proposal of the president, appoint secretaries, who shall be charged with drawing up full reports of all its proceedings. The agents of the two Governments being in dispute have the right to appoint their special secretaries for the purpose of drawing up reports of all the proceedings of the tribunal, except the deliberations of the tribunal with closed doors.

2

The reports of the proceedings of the tribunal of arbitration shall be signed by the president, the two agents of the Governments in dispute, and countersigned by the principal secretary. These reports alone are authoritative and have full legal force.

3

At all debates and deliberations of the tribunal of arbitration the proceedings shall be carried on in French or in English. The final report of proceedings shall be drawn up in three languages: English, French, and Spanish.

4

The agents of the two Governments in dispute are required to communicate to the tribunal the names of their counsel and special secretaries.

5

The public shall be admitted to the public meetings of the tribunal of arbitration only on presentation of tickets to be obtained from the secretaries of the tribunal.

[1] *Procès-verbaux*, pt. i, p. 132.

6

The president of the tribunal of arbitration has the direction of all the debates and deliberations before the tribunal.

7

In case of the temporary illness of any one of the members of the tribunal of arbitration or of the agents of the Government of the United States of Venezuela or of Great Britain, the meetings of the tribunal may be suspended for a short period of time. In case of the long or serious illness of any one of the members of the tribunal, the second article of the Treaty of Washington of February 2, 1897, shall be put in force.

8

The preliminary proceedings of the tribunal of arbitration, consisting in the communication by the two Governments in dispute of all written acts and documents relative to the present trial being closed, the tribunal of arbitration, by virtue of the Treaty of Washington, shall have the right to refuse to receive any new acts or documents which the representatives of the two above-mentioned Governments may wish to present.

9

At the same time the tribunal of arbitration has full power and liberty to take into consideration any new acts or documents to which the agents or counsel of the two Governments in dispute may invite the attention of the tribunal. It has further the right to demand the production of these acts or documents and to communicate them to the party opposed.

10

The tribunal of arbitration has the right to require the agents of the two Governments in dispute to produce any act or document and to make any explanations it may deem necessary.

11

The agents or counsel of the two Governments in dispute have full right to produce before the tribunal of arbitration any oral explanations they may consider necessary to the due development of their case.

12

The aforesaid agents or counsel have equally the right to submit to the tribunal of arbitration any motion or amendment to the subject under discussion. All decisions arrived at by the tribunal on such motions or amendments shall be regarded as final and not admitting any further debate.

13

The members of the tribunal of arbitration have the right to put questions to the agents or counsel of the two Governments in dispute, or to demand further and more detailed explanations on all doubtful points. Neither the questions that may be put nor the observations made by members of the tribunal shall be regarded as expressing the views of the tribunal in general, or of its members in particular.

14

The tribunal of arbitration is authorized to determine its competency on any point exclusively on the basis of the Treaty of Washington of February 2, 1897, and in accordance with the principles of international law.

15

After the agents or counsel of the two Governments in dispute have laid before the tribunal of arbitration all their explanations and proofs, the president shall declare the debates to be closed.

16

The tribunal of arbitration may, during the debates before it, discuss any question with closed doors.

17

In matters of procedure all decisions are taken by the majority of votes of members present.

18

The failure of any one of the members of the tribunal of arbitration to take part in the voting shall be duly noted in the report of the proceedings.

19

The final award, decided by the majority of votes, shall be drawn up in English, French, and Spanish.

Translations in French and Spanish shall be certified by the agents of the two Governments.

20

The refusal, if any, on the part of the minority of members of the tribunal to sign the award shall be duly noted in the report of the proceedings.

21

The final award shall be solemnly read in public meeting of the tribunal of arbitration in presence of the members. The agents and counsel of the two Governments being in dispute shall be invited to assist at this public meeting.

22

Three copies of the final award shall be drawn up, and, of these copies, one shall be presented to the agent of the Government of Great Britain, to be communicated to his Government, and the second shall be presented to the agent of the Government of the United States of Venezuela, to be communicated to his Government.

The third copy, in French, shall be communicated to the French Government for the archives of the French Republic.

23

Three duplicates of the final award shall be signed by the president and all the members of the tribunal of arbitration. Those of its members who have voted with the minority shall, if they see fit, state in such duplicate their dissent therefrom.

24

The final award, duly declared and communicated to the agents of the two Governments being in dispute, shall be deemed to decide definitely the points in dispute between the Governments of Great Britain and of the United States of Venezuela, concerning the lines of their respective frontiers, and shall finally close all proceedings of the tribunal of arbitration established by the Treaty of Washington, February 2, 1897.

ANNEX B[1]. DOCUMENTS PRODUCED BY THE BRITISH DELEGATION

PERMANENT COURT OF ARBITRATION

(a) *Proposition of his Excellency Sir Julian Pauncefote*[2]

1

With a view to facilitate immediate recourse to arbitration by States which may fail to adjust by diplomatic negotiations differences arising between them, the signatory Powers agree to organize in manner hereinafter mentioned, a permanent 'tribunal of international arbitration' which shall be accessible at all times and which shall be governed by the code of arbitration provided by this Convention, so far as the same may be applicable and consistent with any special stipulations agreed to between the contesting parties.

2

For that purpose a permanent central office shall be established at . . . , where the records of the tribunal shall be preserved and its official business shall be transacted.

A permanent secretary, an archivist, and a suitable staff shall be appointed who shall reside on the spot. This office shall be the medium of communication for the assembling of the tribunal at the request of the contesting parties.

3

Each of the signatory Powers shall transmit to the others the names of two persons of its nationality who shall be recognized in their own country as jurists or publicists of high character for learning and integrity and who shall be willing and qualified in all respects to act as arbitrators. The persons so nominated shall be members of the tribunal, and a list of their names shall be recorded in the central office. In the event of any vacancy occurring in the said list from death, retirement, or any other cause whatever, such vacancy shall be filled up in the manner hereinbefore provided with respect to the original appointment.

4

Any of the signatory Powers desiring to have recourse to the tribunal for the peaceful settlement of differences which may arise between them, shall notify such desire to the secretary of the central office, who shall thereupon furnish such Powers with a list of the members of the tribunal from which they shall select such number of arbiters as may be stipulated for in the arbitration agreement. They may besides, if they think fit, adjoin to them any other person, although his name shall not appear on the list. The persons so selected shall constitute the tribunal for the purposes of such arbitration, and shall assemble at such date as may be fixed by the litigants.

The tribunal shall ordinarily hold its sessions at . . . , but it shall have power to fix its place of session elsewhere and to change the same from time to time as circumstances and its own convenience or that of the litigants may suggest.

5

Any Power, although not a signatory Power, may have recourse to the tribunal on such terms as shall be prescribed by the regulations.

Procès-verbaux, pt. i, p. 134.

[2] This English text is the one furnished by the British delegation, and appears in the *Procès-verbaux* pt. iv, *annexe* 2 B, p. 15.

6

The Government of . . . is charged by the signatory Powers to establish on their behalf as soon as possible after the conclusion of this Convention a Permanent Council of Administration at . . . to be composed of five members and a secretary.

The Council shall organize and establish the central office, which shall be under its control and direction. It shall make such rules and regulations from time to time as may be necessary for the proper discharge of the functions of the office. It shall dispose of all questions which may arise in relation to the working of the tribunal or which may be referred to it by the central office. It shall have absolute power as regards the appointment, suspension or dismissal of all employees, and shall fix their salaries and control the general expenditure.

The Council shall elect its president, who shall have a casting vote. Three members shall form a quorum. The decisions of the Council shall be governed by a majority of votes.

The remuneration of the members shall be fixed from time to time by accord between the signatory Powers.

The signatory Powers agree to share among them the expenses attending the institution and maintenance of the central office and of the Council of Administration.

The expenses of and incident to every arbitration, including the remuneration of the arbiters, shall be equally borne by the contesting Powers.

(b) *New Proposition of his Excellency Sir Julian Pauncefote concerning the Permanent Council*

NEW ARTICLE 6

A permanent Council composed of the representatives of the signatory Powers residing at The Hague and of the Netherland Minister for Foreign Affairs shall be instituted in this town as soon as possible after the ratification of the present Convention. This Council shall have the duty of establishing and organizing the central Bureau, which shall be under its direction and control. It shall proceed to the installation of the tribunal; it shall issue from time to time the necessary rules for the proper operation of the central Bureau. Likewise it shall decide all questions which may arise with regard to the operations of the tribunal, or refer the same to the signatory Powers. It shall have entire control over the appointment, suspension, or dismissal of the officers and employees of the central Bureau. It shall fix the fees and salaries; it shall control the general expenses. The presence of five members at a meeting, duly called, is sufficient to render the discussions valid, and decisions shall be made by a majority vote.

ANNEX C [1]. DOCUMENTS PRODUCED BY THE AMERICAN DELEGATION

1. SPECIAL MEDIATION

Proposition of Mr. Holls, delegate of the United States of America

ARTICLE 7

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference threatening the peace, the States in dispute choose respectively a neutral Power with the mission of entering into direct communication with the object of preventing the rupture of pacific relations.

For a period of twenty days, unless another period is stipulated, the question in dispute is regarded as referred exclusively to these Powers. They must use their best efforts to settle the difference and to restore the *status quo ante* as soon as possible.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

[1] *Procès-verbaux*, pt. i, p. 130.

II. PROJECT FOR AN INTERNATIONAL TRIBUNAL.—PROPOSITION OF THE COMMISSION FROM THE UNITED STATES OF AMERICA SUBMITTED TO THE COMMITTEE OF EXAMINATION

It is decided that, in order to prevent by the employment of peaceful means resort to armed conflicts, the representatives of the sovereign Powers assembled at this Conference are invited by the present resolution to propose to their respective Governments the negotiation and conclusion of a general treaty which shall have for its object the plan given here below, with such modifications as may be necessary to ensure the adhesion of at least nine sovereign Powers, of which eight at least must be European or American Powers, and four at least must have been among the signatories of the Convention of Paris, the Empire of Germany being considered as the successor of Prussia, and the kingdom of Italy that of Sardinia.

(1) The tribunal shall be composed of persons noted for their high integrity and their knowledge of international law, who shall be named by the majority of the members of the highest court existing in each of the adhering States. Each State signing the treaty shall have a representative on the tribunal. The members of the latter shall serve until their successors have been appointed in due form by the same method of election.

(2) The tribunal shall assemble for the purpose of organization at a time and place suiting the convenience of the different Governments. However, this must not be later than six months after the ratification of the general treaty by the nine Powers mentioned above. The tribunal shall designate a permanent clerk and such other employees as it shall judge necessary. The tribunal shall have the power to designate the place where it will meet and may change it from time to time as the interests of justice or the convenience of the litigants seem to require. It shall fix the rules of procedure to be followed.

(3) The tribunal shall have a permanent character and shall always be ready to receive, within the limits of the proper rules of procedure, new cases and counter-cases, whether these cases are submitted by signatory nations, or by all other nations which may desire to resort to it; all the cases and counter-cases as well as testimony and arguments to support or oppose them should be written or printed. All cases, counter-cases, depositions, arguments, and opinion should, after judgement shall have been given, be at the disposal of all those who may be inclined to pay the expense of copying the same.

(4) Every difference whatsoever between signatory Powers may, by common agreement, be submitted by the interested nations to the judgement of the international tribunal, but in all cases of which the tribunal shall have jurisdiction, the interested parties should agree, upon resorting to it, to accept its decision.

(5) In each particular case the Court shall be composed in accordance with the conventions entered into by the litigant nations, whether it be that the whole Court shall sit, or whether it be that the litigant nations shall designate an uneven number of the members, not less than three. In case the Court has but three judges no one of them can be a native subject, or citizen of the States the interests of which are in controversy.

(6) The general expenses of the tribunal shall be shared equally or in fair proportion by the adhering Powers, but the expenses occasioned by each particular case shall be charged against whomsoever the tribunal shall indicate. The salaries of the judges shall be fixed in such a way that they shall not be payable except when the said judges shall actually perform their duties on the Court. Cases where one or both of the parties may be a non-adhering State shall not be received except on condition that the litigant States shall by common agreement consent to pay respectively such sums as the tribunal shall fix to cover the costs of the procedure.

(7) Every litigant which submits a case to the international tribunal shall have the right to a second hearing of its cause before the same judges within three months after the decision has been announced, if it declares that it can cause new witnesses to appear, questions of law not raised or decided the first time.

(8) The treaty here proposed shall go into effect when nine sovereign States, under the conditions set forth in the resolution, shall have ratified its provisions.

ANNEX D[1]. DOCUMENT PRODUCED BY THE ITALIAN DELEGATION

AMENDMENT TO THE RUSSIAN DRAFT REGARDING MEDIATION AND ARBITRATION SUBMITTED BY HIS EXCELLENCY COUNT NIGRA

With the object of preventing or putting an end to international conflicts, the Peace Conference, assembled at The Hague, has resolved to submit to the Governments there represented the following articles which are intended to be made an international agreement.

ARTICLE 1

In case a conflict between two or more Powers is imminent, and after every attempt at reconciliation by means of indirect negotiations has failed, the litigant parties are obliged to resort to mediation or arbitration in the cases indicated in the present act.

ARTICLE 2

In all other cases mediation or arbitration are recommended by the signatory Powers; but remain voluntary.

ARTICLE 3

In any case, and even during hostilities, each one of the Powers signatory to the present act, and not involved in the dispute, has the right to offer to the contending Powers its good offices and mediation, or to propose to them to resort to the mediation of another Power which is also neutral, or to arbitration.

This offer or this proposal cannot be considered by one or the other of the litigant parties as an unfriendly act, even in case mediation and arbitration, not being obligatory, are rejected.

ARTICLE 4

A request for, or offer of, mediation has priority over arbitration.

But arbitration can or should be proposed according to the circumstances, not only when there is no demand for or offer of mediation, but also when mediation would have been rejected or would not have brought about reconciliation.

ARTICLE 5

A proposal for mediation or arbitration, so long as it is not formally accepted by all the litigant parties, cannot, except where there is a contrary agreement, interrupt delay, or hinder mobilization or other preparatory measures, nor military operations then taking place.

ARTICLE 6

Recourse to mediation or arbitration according to Article 1 is obligatory:

(1) .....

(2) .....

ANNEX E[2]. GENERAL SURVEY OF THE CLAUSES OF MEDIATION AND ARBITRATION AFFECTING THE POWERS REPRESENTED AT THE CONFERENCE

It is important to distinguish provisions having a general character, that is, common to all the Powers or to a considerable group of them, from those having the character of special conventional law between the States.

[1] *Procès-verbaux*, pt. i, p. 137.

[2] Ibid., p. 138. Document prepared by Baron Descamps at the request of the Third Commission.

Section 1.—Provisions of a General Character

The principal provisions to be noticed in this class are the following:

1. *General vœu concerning recourse to the good offices of a friendly Power contained in Protocol No. 23 of the Congress of* 1856.

This *vœu* was expressed in the following circumstances:

The Earl of Clarendon having asked permission to lay before the Congress a proposition, which it appears to him ought to be favourably received, states that the calamities of war are still too present to every mind not to make it desirable to seek out every expedient calculated to prevent their return; that a stipulation had been inserted in Article 8 of the treaty of peace, recommending that in case of difference between the Porte and one or more of the other signing Powers, recourse should be had to the mediation of a friendly State before resorting to force.

The first plenipotentiary of Great Britain conceives that this happy innovation might receive a more general application, and thus become a barrier against conflicts, which frequently break forth only because it is not always possible to enter into explanation and to come to an understanding.

He proposes, therefore, to agree upon a resolution calculated to afford for the future to the maintenance of peace that chance of duration, without prejudice, however, to the independence of Governments.

Count Walewski declares himself authorized to support the idea expressed by the first plenipotentiary of Great Britain; he gives the assurance that the plenipotentiaries of France are wholly disposed to concur in the insertion in the protocol of a *vœu*, which, being fully in accordance with the tendencies of our epoch, would not in any way fetter the liberty of action of Governments.

Count Buol would not hesitate to concur in the opinion of the plenipotentiaries of Great Britain and of France, if the resolution of the Congress is to have the form indicated by Count Walewski, but he could not take, in the name of his Court, an absolute engagement calculated to limit the independence of the Austrian Cabinet.

The Earl of Clarendon replies, that each Power is and will be the sole judge of the requirements of its honour and of its interests; that it is by no means his intention to restrict the authority of the Governments, but only to afford them the opportunity of not having recourse to arms, whenever differences may be adjusted by other means.

Baron Manteuffel gives the assurance that the King, his august master, completely shares the ideas set forth by the Earl of Clarendon; that he therefore considers himself authorized to adhere to them, and to give them the utmost development which they admit of.

Count Orloff, while admitting the wisdom of the proposal made to the Congress, considers that he must refer to his Court respecting it, before he expresses the opinion of the plenipotentiaries of Russia. . . .

Count Walewski adds, that there is no question of stipulating for a right or of taking an engagement; that the wish expressed by the Congress cannot in any case oppose limits to the liberty of judgement, of which no Power can divest itself in questions affecting its dignity; that there is therefore no inconvenience in attaching a general character to the idea entertained by the Earl of Clarendon, and in giving to it the most extended application. . . .

Count Buol approves the proposition in the shape that Lord Clarendon has presented it, as having a humane object; but he could not assent to it, if it were wished to give to it too great an extension, or to deduce from it consequences favourable to *de facto* Governments, and to doctrines which he cannot admit.

He desires besides that the Conference, at the moment of terminating its labours, should not find itself compelled to discuss irritating questions, calculated to disturb the perfect harmony which has not ceased to prevail among the plenipotentiaries. . . .

Whereupon, the plenipotentiaries do not hesitate to express, in the name of their Governments, the *vœu* that States, between which any serious misunderstanding may

arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly Power.

The plenipotentiaries hope that the Governments not represented at the Congress will unite in the sentiment which has inspired the *vœu* recorded in the present protocol.

2. *Mediation in case of difference threatening the relations between the Sublime Porte and the other Powers signatory to the Treaty of Paris of* 1856.

Treaty of March 30, 1856: Article 8. If there should arise between the Sublime Porte and one or more of the other signatory Powers a difference threatening the maintenance of their relations, the Sublime Porte or each of the Powers, before having recourse to the employment of force, will put the other contracting Parties in a position to prevent this extremity through their mediation.

3. *Good offices to limit the theatre of war by neutralizing territories comprised in the basin of the Kongo as defined by treaty.*

General Act of the Conference of Berlin, February 26, 1885: Article 11. In the case where a Power exercising rights of sovereignty or of protectorate in the countries mentioned in Article 1 and placed under the *régime* of commercial liberty may be involved in a war, the high signatory Parties of the present act, and those who shall adhere to it subsequently, engage themselves to lend their good offices to the end that the territories belonging to this Power and comprised in the conventional zone of commercial liberty may be, with the common consent of this Power and of the other party or parties belligerent, placed for the duration of the war under the *régime* of neutrality and considered as belonging to a non-belligerent State; the belligerent parties may renounce, thenceforth, the extension of hostilities to the territories thus neutralized, as also their use as a base for the operations of war.

4. *Obligatory mediation and voluntary arbitration in case of serious disagreement arising concerning, or within the limits of, the basin of the Kongo as defined by treaty.*

General Act of the Conference of Berlin, February 26, 1885: Article 12. In cases where serious disagreement with regard to, or within the limits of, the territories mentioned in Article 1 and placed under the *régime* of commercial liberty, may arise between the signatory Powers of the present act or Powers which may adhere thereto in the future, these Powers agree before appealing to arms, to resort to the mediation of one or more friendly Powers.

In the same case the same Powers reserve the right to resort voluntarily to arbitral procedure.

5. *Establishment of an arbitral tribunal by virtue of the General Act of the Conference of Brussels concerning the African Slave Trade.*

General Act of the Conference of Brussels, July 2, 1890: Article 55. The capturing officer and the authority which has conducted the inquiry shall each appoint an arbitrator within forty-eight hours, and the two arbitrators chosen shall have twenty-four hours to choose an umpire. The arbitrators shall, as far as possible, be chosen from

among the diplomatic, consular, or judicial officers of the signatory Powers. Natives in the pay of the contracting Governments are formally excluded. The decision shall be by a majority of votes, and be considered as final.

If the Court of Arbitration is not constituted in the time indicated, the procedure in respect to the indemnity, as well as in regard to damages, shall be in accordance with the provisions of Article 58, paragraph 2.

Article 56. The cases shall be brought with the least possible delay before the tribunal of the nation whose flag has been used by the accused. However, the consuls or any other authority of the same nation as the accused, specially commissioned to this end, may be authorized by their Government to pronounce judgement instead of the tribunal.

Article 58. Any decision of the national tribunal or authorities referred to in Article 56, declaring that the seized vessel did not carry on the slave trade, shall be immediately enforced, and the vessel shall be at perfect liberty to continue on its course.

In this case, the captain or owner of any vessel that has been seized without legitimate ground of suspicion, or subjected to annoyance, shall have the right of claiming damages, the amount of which shall be fixed by agreement between the Governments directly interested, or by arbitration, and shall be paid within a period of six months from the date of the judgement acquitting the captured vessel.

6. *Institution of an arbitral tribunal by virtue of the Universal Postal Union.*

Convention of July 4, 1891: Article 23. Sec. 1. In case of disagreement between two or more members of the Union as to the interpretation of the present Convention, or as to the responsibility of an administration in case of the loss of a registered article, the question in dispute is decided by arbitration. To that end, each of the administrations concerned chooses another member of the Union not directly interested in the matter.

Sec. 2. The decision of the arbitrators is given by an absolute majority of votes.

Sec. 3. In case of an equality of votes the arbitrators choose, with a view of settling the difference, another administration equally uninterested in the question in dispute.

Sec. 4. The stipulations of the present article apply equally to all the agreements concluded by virtue of the preceding Article 19. (Regarding services in connexion with letters and boxes of declared value, postal money orders, parcel post, collection of bills and drafts, certificates of identity, subscriptions to newspapers, etc.)

7. *Establishment of a voluntary arbitration office, by virtue of the International Union for the Transportation of Merchandise by Railroad.*

Convention of October 14, 1890: Article 57. Sec. 1. To facilitate and assure the execution of the present Convention, a central office of international transportation shall be organized, charged with . . . 3. To decide, at the request of the parties, disputes which may arise concerning railroads.

Article 22, section 2, of the Convention of July 4, 1891, authorizes the International Bureau of the Postal Union 'to give at the request of the parties concerned, an opinion upon questions in dispute'. These judicial opinions form a sort of pre-arbitration which it seemed interesting to note.

In fulfilment of Article 57, section 1, of the Convention of October 14, 1890, the Swiss Federal Council published, under date of November 29, 1892, a set of regulations determining the arbitral procedure for disputes brought before the central office for international transportation.

Section 2.—Special Conventional Law

Germany

Article 1 of the Anglo-German agreement of July 1, 1890, provides that the delimitation of the southern frontier of 'Walfish Bay' shall be reserved for decision by arbitration if within two years from the date of the signature of this agreement no understanding is reached between the two Powers regarding the determination of the said frontier.

Austria-Hungary

The Treaty of Commerce of May 17, 1869, between Austria-Hungary and Siam contains a general clause providing for arbitration concerning all differences which may arise between the two countries.

ARTICLE 26

> Should any question arise between the high contracting Powers, which is not settled by amicable diplomatic intercourse or correspondence, it is hereby agreed that the settlement of such question shall be referred to the arbitration of a friendly neutral Power, to be chosen by common accord, and that the result of such arbitration shall be accepted by the high contracting Parties as a final decision.

Belgium

Belgium has concluded eleven treaties containing arbitration clauses.

Six of these clauses are general and cover all possible differences. The other five are of limited scope.

The *general arbitration clauses* are the following:

1. Belgium and the Hawaiian Islands. Treaty of Friendship, Commerce, and Navigation, October 4, 1862. Article 26:

> If, by the concurrence of unfortunate circumstances, differences between the contracting Parties become the ground for an interruption of friendly relations, and if, after they have exhausted all means for a friendly and conciliatory discussion, the object of their mutual desires is not reached, arbitration by a third Power, friendly to both Parties, shall be invoked by common accord, in order to prevent by this means a complete rupture.

2. Belgium and Siam. Treaty of Friendship and Commerce, August 29, 1868. Article 24:

> If any difference shall arise between the two contracting countries which may not be settled amicably by diplomatic correspondence between the two Governments, these Governments shall, by common accord, nominate as arbitrator some third neutral and friendly Power, and the result of the arbitration shall be accepted by the two Parties.

3. Belgium and the South African Republic. Treaty of Friendship, Establishment, and Commerce, February 3, 1876. Article 14. (Same text as that of the treaty with the Hawaiian Islands, above, No. 1.)

4. Belgium and Venezuela. Treaty of Friendship, Commerce, and Navigation, March 1, 1884. Article 2:

> If any difference whatever arises between Belgium and Venezuela, which cannot be settled in a friendly manner, the two high contracting Parties agree to submit the solution of the difficulty to the arbitration of a friendly Power, proposed and accepted by common agreement.

5. Belgium and Ecuador. Treaty of Friendship, Commerce, and Navigation, March 5, 1887. Article 2. (Same text as that of the treaty with Venezuela, *supra*, No. 4.)

6. Belgium and the Orange Free State. Treaty of Friendship, Establishment, and Commerce, December 27, 1894. Article 14. (Same text as that of the treaty with the Hawaiian Islands, *supra*, No. 1.)

The clauses providing for *limited arbitration* are:

1. Belgium and Italy. Treaty of Commerce and Navigation, December 11, 1882. Article 20:

> If any difficulty arises concerning either the interpretation or the execution of the preceding articles, the two high contracting Parties, after having exhausted all direct means of reaching an agreement, agree to resort to the decision of a commission of arbitrators.
>
> This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator chosen by the commission itself.
>
> The procedure to be followed shall be determined by the arbitrators, unless an agreement be reached in regard thereto by the Belgian and Italian Governments.

2. Belgium and Greece. Treaty of Commerce and Navigation, May 25, 1895. Article 21:

> The high contracting Parties agree to resort to arbitration in all disputes which may arise from the interpretation or execution of the present treaty.

3. Belgium and Sweden. Treaty of Commerce and Navigation, June 11, 1895. Article 20. (Same text as that of the treaty with Greece, *supra*, No. 2.)

4. Belgium and Norway. Treaty of Commerce and Navigation, June 11, 1895. Article 20:

> In cases involving a difference between the two contracting Powers arising from the interpretation or application of the present treaty, which cannot be settled in a friendly manner by diplomatic correspondence, the two Powers agree to submit the same to the decision of an arbitral tribunal, whose decision they agree to respect and loyally to execute.
>
> The arbitral tribunal shall be composed of three members. Each of the two contracting Parties shall designate one, not chosen from among its nationals or the inhabitants of its country. These two arbitrators shall name a third. If they cannot come to an agreement thereon, the third arbitra[illegible] shall be named by a Government selected by the two arbitrators, or if they fail [illegible]ree, then by lot.

5. Belgium and Denmark. Treaty of Comme[illegible] and Navigation, June 18, 1895 Article 20. (Same text as that of the treaty with Greece, *supra*, No. 2.)

Denmark

1. Denmark and Venezuela. Treaty of Commerce and Navigation, December 16 1862. Article 26:

> If, by the concurrence of unfortunate circumstances, differences between the two high contracting Parties cause an interruption of friendly relations, and if after they have exhausted the means for friendly and conciliatory discussion the object of their respective claims is not completely attained, arbitration by a third friendly and neutral Power shall be invoked by common agreement before resorting to the awful use of arms.
>
> An exception to the above is made in the case where the Party which believes itself injured cannot secure the consent of the other Party to the choice of an arbitrator by common accord, or in default of common agreement, by lot, within three months counting from the day the invitation to make such choice is extended to it

2. Denmark and Belgium. Treaty of Commerce and Navigation, June 18, 1895. Article 20. (Reproduced under the heading, Belgium.)

Spain

Below are given the treaties concluded by Spain in which the arbitration clause has been inserted :

A. *General clauses of arbitration :*

1. Spain and Venezuela. Treaty of Commerce and Navigation, May 20, 1882. Article 14 :

> If, as is not to be anticipated, there should arise between Venezuela and Spain any difference which it shall not be possible to settle in a friendly manner by the usual and ordinary means, the two high contracting Parties agree to submit such difference to the arbitration of any third Power friendly to both, which may have been proposed and accepted by mutual consent.

2. Spain and Ecuador. Additional Treaty of Peace and Friendship, May 26, 1888. Article 1 :

> Every question or difference which may arise between Spain and Ecuador respecting the interpretation to be placed on the existing treaties, or respecting any other point not foreseen in them, shall, if it cannot be settled in an amicable manner, be submitted to the arbitration of a friendly Power, to be proposed and accepted by common consent.

3. Spain and Colombia. Additional Treaty of Peace and Friendship to the treaty of 1881, signed at Bogota, April 28, 1894. Article 1 :

> Every controversy or difference which may arise between Spain and Colombia regarding the interpretation of the existing treaties, and any others which may hereafter be entered into, shall be decided by an arbitrator whose decision shall be final, and who shall be proposed and accepted by common agreement. The differences which may arise upon points not provided for in the said treaties or agreements shall likewise be submitted to arbitration ; but if there is not any agreement regarding the adoption of this procedure, because the questions affect the sovereignty of the nation or are otherwise incompatible with arbitration, both Governments will be bound in every case to accept the mediation or good offices of a friendly Government for the amicable solution of all differences.
>
> When any difference between Spain and Colombia is submitted to the judgement of an arbitrator, the high contracting Parties shall establish, by common accord, the mode of procedure, terms, and formalities which the judge and the parties must observe, in the course and termination of the judgement by arbitration.

4. Spain and Honduras. Treaty of Peace and Friendship, November 17, 1894. Article 2. (Text identical with that in No. 2.)

B. *Clause providing for limited arbitration :*

Spain and Sweden and Norway. Declarations, June 23, 1887. Article 2 :

> Questions which may arise regarding the interpretation or execution of the treaty of commerce between Spain and Sweden and Norway, of March 15, 1883, suspended by the convention of January 18 last, and of the treaty of navigation between the same countries of March 15, 1883, or concerning the consequences of any violation of those treaties whatever, shall be submitted to arbitral commissions when all direct means of settlement and friendly discussion between the two high contracting Parties have been exhausted, and the decisions of the commissions shall be binding upon the high contracting Parties.
>
> The members of these commissions shall be named by common agreement by the two high contracting Parties, and in case an agreement cannot be obtained, each of them shall name one arbitrator or an equal number of arbitrators, and those thus nominated to these offices shall designate an additional arbitrator who shall act in case of disagreement.

The high contracting Parties shall fix the arbitral procedure in each case, and if they fail to do so, the arbitral commission shall determine it before exercising its powers. In every case, the high contracting Parties shall set forth exactly the questions or matters to be submitted to arbitration.

See the ministerial notes of January 27, 1892, and August 9, 1893, mentioned under the headings, 'Sweden' and 'Norway'.

France

The Treaty of Friendship, Commerce, and Navigation, of June 4, 1886, between France and Korea contains in Article 1, section 2, the following provision:

If differences arise between one of the high contracting Parties and a third Power, the other high contracting Party may be required by the first to lend its good offices with a view to bringing about a friendly settlement.

Great Britain

The treaties concluded by Great Britain and containing the arbitration clauses are as follows:

1. Great Britain and Italy. Treaty of Commerce and Navigation, June 15, 1883. Annexed protocol:

Any controversies which may arise respecting the interpretation or the execution of the present treaty, or the consequences of any violation thereof, shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of commissions of arbitration, and the result of such arbitrations shall be binding upon both Governments.

The members of such commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an arbitrator, or an equal number of arbitrators, and the arbitrators thus appointed shall select an umpire.

The procedure of the arbitrators shall in each case be determined by the contracting Parties, failing which the commission of arbitration shall itself be entitled to determine it beforehand.

2. Great Britain and Uruguay. Treaty of Commerce and Navigation of November 13, 1885. Article 15. (Text identical with that of No. 1.)

3. Great Britain and Greece. Treaty of Commerce and Navigation of November 10, 1886. Annexed protocol. (Text identical with that of No. 1.)

4. Great Britain and Mexico. Treaty of Friendship, Commerce, and Navigation of November 27, 1888. Article 15. (Text identical with that of No. 1.)

5. Great Britain and Portugal. Anglo-Portuguese *modus vivendi* of May 31, 1895. (Delimitation of possessions in Eastern Africa.)

Greece

1. Greece and Italy. Consular Convention of November 27, 1880. Article 32. (Reproduced under the heading, 'Italy'.)

2. Greece and Great Britain. Treaty of Commerce and Navigation, November 10, 1886. Annexed protocol. (Reproduced under the heading, 'Great Britain'.)

3. Greece and Belgium. Treaty of Commerce and Navigation, May 25, 1895. Article 21. (Reproduced under the heading, 'Belgium'.)

Italy

The following treaties contain the clause providing for arbitration (*compromis* clause):

1. Italy and Uruguay. Extradition Convention, April 14, 1879. Article 16:

The high contracting Parties agree that controversies which may arise respecting the interpretation or execution of the present Convention, or the consequences of any infraction of one of its provisions, should, when the means of composing them directly by amicable agreement shall have been exhausted, be submitted to the decision of commissions of arbitration, and that the issue of such arbitration should be ' inding upon both Governments.

The members composing such commissions shall be chosen by the two Governments by common accord ; in default of this, each of the Parties shall appoint its own arbitrator, or an equal number of arbitrators, and the arbitrators appointed shall select another.

The procedure to be observed in arbitration shall in each case be determined by the contracting Parties, and failing this, the commission of arbitrators shall consider itself authorized to determine it beforehand.

2. Italy and Roumania. Consular Convention, August 17, 1880. Article 32. (Text identical with that of No. 1.)

3. Italy and Greece. Consular Convention of November 27, 1880. Article 26. (Text identical with that of No. 1, except for the addition to the first paragraph of the following provision : ' It is understood that the jurisdiction of the respective tribunals in matters of private law is in no way restricted by the provisions of the present article.')

4. Italy and Belgium. Treaty of Commerce, December 11, 1882. Article 20. (Text reproduced above under the heading, ' Belgium '.)

5. Italy and Montenegro. Treaty of Commerce, March 28, 1883. Article 17 :

In case of disagreement concerning the interpretation or execution of the provisions contained in the present treaty, when direct means of reaching an agreement by friendly arbitration have been exhausted, the question shall be submitted to the decision of a commission of arbitrators, and the result of this arbitration shall be binding upon both Governments.

This commission shall be composed of an equal number of arbitrators chosen by each Party, and the arbitrators thus chosen shall, before performing any other operation, choose a last arbitrator. The arbitral procedure, if the Parties do not determine it by agreement, shall be previously decided upon by the commission of arbitrators itself.

6. Italy and Great Britain. Treaty of Commerce, June 15, 1883. Annexed protocol. (Text similar to that of No. 1.)

7. Italy and the Netherlands. Convention for Free Patronage, January 9, 1884. Article 4 :

If any difficulty arises concerning the interpretation of this Convention, the two high contracting Parties agree to submit it to a commission of arbitrators. This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator chosen by the commission itself.

8. Italy and Korea. Treaty of Friendship, Commerce, and Navigation, June 26, 1884. Article 1 :

In case of differences arising between one of the high contracting Parties and a third Power, the other high contracting Party, if requested to do so, shall exert its good offices to bring about an amicable settlement of the difficulty.

9. Italy and Uruguay. Treaty of Commerce, September 19, 1885. Article 27. (Text identical with that of No. 1.)

10. Italy and South African Republic. Treaty of Commerce, October 6, 1886. Article 9. (Text identical with that of No. 7.)

11. Italy and the Republic of San Domingo. Treaty of Commerce, October 18, 1886. Article 28. (Text identical with that of No. 1.)

12. Italy and Greece. Treaty of Commerce, April 1, 1889. Annexed protocol. (Text identical with that of No. 1.)

13. Italy and Orange Free State. Treaty of Commerce, January 9, 1890. Article 9. (Text identical with that of No. 7.)

14. Italy and Mexico. Treaty of Commerce, April 16, 1890. Article 27. (Text similar to that of No. 1.)

15. Italy and Switzerland. Treaty of Commerce of April 19, 1892. Article 14:

> The high contracting Parties agree, should occasion arise, to settle by means of arbitration questions concerning the interpretation and application of the present treaty, which cannot be settled to their common satisfaction by the direct method of diplomatic negotiation.

16. Italy and Colombia. Treaty of Commerce, October 27, 1892. Article 27. (Text similar to that of No. 1.)

17. Italy and Montenegro. Extradition Convention, October 29, 1892. Article 18. (Text identical with that of No. 5.)

18. Italy and Paraguay. Treaty of Commerce, August 22, 1893. Article 23. (Text identical with that of No. 1.)

19. Italy and Argentine Republic. General Treaty of Arbitration, July 23, 1898:

> His Majesty the King of Italy and his Excellency the President of the Argentine Republic, animated by the desire of always promoting the cordial relations which exist between their States, have resolved to conclude a general treaty of arbitration, and have named for this purpose as the ministers plenipotentiary:
>
> His Majesty the King of Italy, his Excellency Count Napoleon Canevaro, Senator of the Kingdom, Vice-Admiral in the Royal Navy, his Minister of Foreign Affairs; and his Excellency the President of the Argentine Republic, his Excellency Don Enrice B. Moreno, his Envoy Extraordinary, &c., Minister Plenipotentiary at the Court of the King of Italy;
>
> Who, having found their respective full powers to be perfectly regular, have agreed upon the following:
>
> ARTICLE 1. The high signatory Powers agree to submit to arbitral decision all controversies, whatever may be their nature and cause, which may arise between them, during the existence of this treaty, and which could not be settled in a friendly manner by direct negotiation.
>
> It makes no difference if the controversies originated in facts prior to the provision of the present treaty.
>
> ARTICLE 2. The high signatory Powers shall conclude a special convention for each case, in order to set forth the exact matter in dispute, the extent of the powers of the arbitrators, and any other matter with regard to procedure which shall be deemed proper.
>
> In default of such convention, the tribunal shall specify, according to the reciprocal claims of the Parties, the points of law and fact which should be decided to close the controversy.
>
> In all other regards, in default of a special convention, the following rules shall apply:
>
> ARTICLE 3. The tribunal shall be composed of three judges. Each one of the signatory States shall designate one of them. The arbitrators thus chosen shall choose the third arbitrator.
>
> If they cannot agree upon a choice, the third arbitrator shall be named by the head of a third State, who shall be called upon to make the selection. This State shall be designated by the arbitrators already named. If they cannot agree upon the nomination of a third arbitrator, request shall be made of the President of the

Swiss Confederation and of the King of Sweden and Norway, alternately. The third arbitrator thus selected shall be of right president of the tribunal.

The same person can never be named successively as third arbitrator.

None of the arbitrators shall be a citizen of the signatory States, nor domiciled or resident within their territories. The arbitrators shall have no interest whatever in the questions forming the subject of arbitration.

ARTICLE 4. When one arbitrator, for whatever reason, cannot take charge of the office to which he has been named, or if he cannot continue therein, his successor shall be appointed by the same procedure as was followed for his appointment.

ARTICLE 5. In default of special agreements between the Parties, the tribunal shall designate the time and place for its meetings outside the territories of the contracting States, choose the language to be used, determine the methods of examination, the formalities and periods which shall be prescribed for the Parties, the procedure to be followed, and, in general, make all decisions necessary for their operations, as well as settle all difficulties concerning procedure which may arise during the course of the argument.

The Parties agree, on their side, to place at the disposal of the arbitrators all means of information within their power.

ARTICLE 6. An agent of each Party shall be present at the sessions and represent his Government in all matters regarding arbitration.

ARTICLE 7. The tribunal has power to decide upon the regularity of its formation, the validity of the *compromis* and the interpretation thereof.

ARTICLE 8. The tribunal shall decide according to the principles of international law, unless the *compromis* applies special rules or authorizes the arbitrators to decide only in the rôle of *amiable compositeurs*.

ARTICLE 9. Unless there is a provision expressly to the contrary, all the deliberations of the tribunal shall be valid when they are secured by a majority vote of all of the arbitrators.

ARTICLE 10. The award shall decide finally each point in litigation. It shall be drawn up in duplicate original and signed by all the arbitrators. In case one of them refuses to sign, the others shall mention it and the award shall take effect when signed by the absolute majority of the arbitrators. Dissenting opinions shall not be inserted in the decision.

The award shall be notified to each Party through its representative before the tribunal.

ARTICLE 11. Each Party shall bear its own expenses and one-half of the general expenses of the arbitral tribunal.

ARTICLE 12. The award, legally rendered, decides the dispute between the Parties within the limits of its scope.

It shall contain an indication of the period within which it must be executed. The tribunal which rendered it shall decide questions which may arise concerning its execution.

ARTICLE 13. The decision cannot be appealed from, and its execution is entrusted to the honour of the nations signatory to this agreement.

However, a demand for revision will be allowed before the same tribunal which rendered the award and before it is executed:

(1) If it has been based upon a false or erroneous document;

(2) If the decision was in whole or in part the result of an error of positive or negative fact which results from the acts or documents in the case.

ARTICLE 14. The present treaty shall run for a period of ten years from the exchange of ratifications. If it is not denounced six months before its expiration, it shall be considered renewed for another period of ten years, and so on in like manner.

ARTICLE 15. The present treaty shall be ratified and the ratifications exchanged at Buenos Aires within six months from this date.

Japan

Japan concluded a treaty of Friendship, Commerce, and Navigation with Siam, February 25, 1898. Article 3 of the annexed protocol contains the following arbitration clause:

> Any controversies which may arise respecting the interpretation or the execution of the treaty signed this day or the consequences of any violation thereof shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of commissions of arbitration, and the result of such arbitration shall be binding upon both Governments.
>
> The members of such commissions shall be selected by the two Governments by common consent, failing which each of the Parties shall nominate an arbitrator, or an equal number of arbitrators, and the arbitrators thus appointed shall select an umpire.
>
> The procedure of the arbitration shall in each case be determined by the contracting Parties, failing which the commission of arbitration shall be itself entitled to determine it beforehand.

Mexico

1. Mexico and Great Britain. Treaty of Friendship, Commerce, and Navigation of November 27, 1888. Article 15. (Reproduced under the heading, 'Great Britain'.)

2. Mexico and Italy. Treaty of Commerce of April 16, 1890. Article 27. (Reproduced under the heading, 'Italy'.)

Montenegro

Montenegro and Italy. Treaty of Commerce of March 28, 1883. Article 17. (Reproduced under the heading, 'Italy'.)

Norway

Norway is bound by clauses of arbitration with the following countries:

1. Sweden and Norway and Siam. Treaty of Friendship, Commerce, and Navigation of May 18, 1868. Article 28. (Text identical with Article 26 of the treaty between Austria-Hungary and Siam, reproduced under the heading, 'Austria-Hungary'.)

2. Sweden and Norway, and Mexico. Treaty of July 29, 1885. Articles 26 and 27.

> ARTICLE 26. The questions that may arise respecting the interpretation or the execution of the treaty of commerce between Sweden and Norway and Mexico or respecting the consequences of any violation of the said treaty shall be submitted, when all direct means of arrangement and friendly discussion between the two high Parties have been exhausted, to commissions of arbitration whose decisions shall be binding on the high contracting Parties. The members of these commissions shall be appointed by a common agreement by the two high Parties, and in case agreement can not be reached, each of them shall name an arbitrator or an equal number of arbitrators, and those who are thus named shall designate an umpire, who shall act in case of disagreement. The procedure for the arbitration shall be determined in each case by the high contracting Parties, and in default thereof the commission of arbitration shall determine it before entering upon its duties. In all cases the high contracting Parties shall define the questions or matters which are to be submitted to arbitration.
>
> ARTICLE 27. It is consequently stipulated that if one or more articles of the present treaty come to be violated or infringed, neither of the contracting Parties shall make or authorize reprisals of any kind, nor declare war upon the other by reason of an injury suffered by it until the Party which considers itself aggrieved has presented to the other a statement accompanied by evidence of its complaints, and, after having requested justice and satisfaction, its request has been rejected

and the offending Party has refused to submit the difference to the commission of arbitration.

3. Sweden and Norway and Spain. Declaration of June 23, 1887. Article 2. (Text reproduced under the heading, ' Spain '.)

4. Norway and Spain. Diplomatic notes of January 27, 1892, and August 9, 1893, concerning the application of the principle of arbitration, as it is regulated by the Declaration of June 13, 1887, to the Conventions of January 24, 1892, and June 27, 1892, respecting the commercial relations of the two countries.

5. Norway and Switzerland. Treaty of Commerce and Settlement of March 22, 1894. Article 7:

> In case a difference respecting the interpretation or the application of the present treaty arises between the two contracting Parties and can not be settled in a friendly way by means of diplomatic correspondence, they agree to submit it to the judgement of an arbitral tribunal, whose decision they engage to respect and execute loyally.
>
> The arbitral tribunal shall be composed of three members. Each of the contracting Parties shall designate one of them, who shall be chosen outside its nationals and the inhabitants of the country. These two arbitrators shall name the third. If they can not agree on the choice of the latter, the third arbitrator shall be named by a Government designated by the two arbitrators or, in default of agreement, by lot.

6. Norway and Belgium. Treaty of Commerce and Navigation of June 11, 1895. Article 20. (Text reproduced above under the heading, ' Belgium '.)

7. Sweden and Norway and Chile. Declaration of July 6, 1895, concerning the establishment of an arbitral tribunal for the claims for indemnity relating to the civil war in Chile in 1891.

8. Norway and Portugal. Treaty of Commerce of December 31, 1895. (Same text as that of the treaty with Switzerland reproduced above, No. 5.)

Netherlands

1. Netherlands and Italy. Convention for Gratuitous Patronage of January 9, 1884. Article 4. (Reproduced under the heading, ' Italy '.)

2. Netherlands and Portugal. These two States are reciprocally bound by a clause of arbitration, at first limited, then generalized under the following conditions:

A. *Clause of limited arbitration.* The Convention concluded at Lisbon June 10, 1893, between the Netherlands and Portugal to regulate in an exact way the relations between the two countries in the Archipelago of Timor and Solor contains in its Article 7 the following arbitration clause:

> In case any difference should arise in respect of their international relations in the Archipelago of Timor and Solor or on the subject of the interpretation of the present Convention, the high Parties engage to submit to the decision of a commission of arbitrators. This commission shall be composed of an equal number of arbitrators chosen by the high contracting Parties and an arbitrator designated by those arbitrators.

B. *Clause of general arbitration.* The Declaration exchanged at Lisbon, July 5 1894, between the two Governments on the subject of the provisional regulation of commercial relations contains the following clause:

> All questions and all differences respecting the interpretation or execution of the present Declaration and likewise any other question that may arise between the two countries, provided that it does not touch their independence or their

autonomy, if they can not be settled amicably shall be submitted to the judgement of two arbitrators, of which one shall be appointed by each of the two Governments. In case of difference of opinion between the two arbitrators the latter shall designate by common agreement a third who shall decide.

3. Netherlands and Roumania. Treaty of Commerce and Navigation of March 15, 1899. Article 6:

> Every question or difference regarding the interpretation, application, or execution of the present Convention, if it can not be settled amicably, shall be submitted to the decision of a commission of three arbitrators. Each of the two high contracting Parties shall designate one arbitrator, and these two arbitrators shall name the third. If they can not agree upon the choice, the third arbitrator shall be named by the Government of a third State designated by the two high contracting Parties.

Portugal

1. Portugal and Great Britain. Anglo-Portuguese *modus vivendi* of May 31, 1893. (Delimitation of possessions in East Africa.)

2. Portugal and Netherlands. Convention of June 10, 1893. Article 7 (clause of limited arbitration) and Declaration of July 5, 1894 (clause of general arbitration).

3. Portugal and Norway. Treaty of Commerce of December 31, 1895. (Reproduced under the heading, 'Norway'.)

Roumania

1. Roumania and Italy. Consular Convention of August 17, 1880. Article 32. (Reproduced under the heading, 'Italy'.)

2. Roumania and Switzerland. Treaty of Commerce of February 19/March 3, 1893. Article 7:

> The high contracting Parties agree to settle, should the case arise, by means of arbitration the questions concerning the application and interpretation of the present Convention which can not be settled to their mutual satisfaction by the direct means of diplomatic negotiation.

3. Roumania and Netherlands. Treaty of Commerce and Navigation of March 15, 1893. Article 6. (Reproduced under the heading, 'Netherlands'.)

Siam

Five treaties concluded by the Siamese Government contain a clause of arbitration.

1. Siam and Sweden and Norway. Treaty of Friendship, Commerce, and Navigation of May 18, 1868. Article 25. (Text identical with Article 26 of the treaty between Austria-Hungary and Siam. Reproduced under the heading, 'Austria-Hungary'.)

2. Siam and Belgium. Treaty of Friendship and Commerce of August 29, 1868. (Reproduced under the heading, 'Belgium'.)

3. Siam and Italy. Treaty of Friendship, Commerce, and Navigation of October 3, 1868. Article 27. (Reproduced under the heading, 'Italy'.)

4. Siam and Austria-Hungary. Treaty of Commerce of May 17, 1869. Article 26. (Reproduced under the heading, 'Austria-Hungary'.)

5. Siam and Japan. Treaty of Friendship, Commerce, and Navigation of February 25, 1898. Article 3 of the annexed protocol. (Reproduced under the heading, 'Japan'.)

Sweden

1. Sweden and Norway and Siam. Treaty of Friendship, Commerce, and Navigation of May 18, 1868. Article 24. (Text identical with Article 26 of the treaty with Austria-Hungary. Reproduced under the heading, ' Austria-Hungary '.)

2. Sweden and Norway and Mexico. Treaty of Commerce of July 29, 1885. Article 26. (Reproduced under the heading, ' Norway '.)

3. Sweden and Norway and Spain. Declaration of June 23, 1887. Article 2. (Reproduced under the heading, ' Spain '.)

4. Sweden and Spain. Diplomatic notes of January 27, 1892, and August 9, 1893, respecting the application of the principle of arbitration, as regulated by the Declaration of June 23, 1887, to the Conventions of January 24, 1892, and June 27, 1892, respecting the commercial relations of the two countries.

5. Sweden and Belgium. Treaty of Commerce and Navigation of June 11, 1895. Article 20. (Reproduced under the heading, ' Belgium '.)

6. Sweden and Norway and Chile. Declaration of July 6, 1895. (Reproduced under the heading, ' Norway '.)

Switzerland

1. Switzerland and Hawaii. Treaty of Friendship, Establishment, and Commerce of July 20, 1864. Article 12. (Text similar to that of the treaty between Belgium and Hawaii. Reproduced under the heading, ' Belgium '.)

2. Switzerland and Salvador. Treaty of Friendship, Establishment, and Commerce of October 30, 1883. Article 13:

> In case a difference should arise between the two contracting countries and can not be amicably arranged through diplomatic correspondence between the two Governments, the latter agree to submit it to the judgement of an arbitral tribunal, whose decision they engage to respect and execute loyally.
>
> The arbitral tribunal shall be composed of three members. Each of the two States shall designate one of them chosen outside of its nationals and the inhabitants of the country. The two arbitrators shall name the third. If they can not agree on this choice, the third arbitrator shall be named by a Government designated by the two arbitrators, or, in the absence of agreement, by lot.

3. Switzerland and the South African Republic. Treaty of Friendship, Establishment, and Commerce of November 6, 1885. Article 11. (Text identical with that of No. 2.)

4. Switzerland and Ecuador. Treaty of Friendship, Establishment, and Commerce of June 22, 1888. Article 4. (Text identical with that of No. 2.)

5. Switzerland and Independent State of the Kongo. Treaty of Friendship, Establishment, and Commerce of November 16, 1889. Article 13. (Text identical with that of No. 2.)

6. Switzerland and Italy. Treaty of Commerce of April 19, 1892. Article 14. (Reproduced under the heading, ' Italy '.)

7. Switzerland and Roumania. Treaty of Commerce of February 19 March 3, 1893. Article 7. (Reproduced under the heading, ' Roumania '.)

8. Switzerland and Norway. Treaty of Commerce and Establishment of March 22, 1894. Article 7. (Reproduced under the heading, ' Norway '.)

CONVENTION (II) RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND[1]

(*For the heading see the Convention for the pacific settlement of international disputes.*[2])

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events which their solicitude could not avert ;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization ;

Thinking it important, with this object, to revise the general laws and customs of war, either with the view of defining them with greater precision, or of confining them within such limits as would mitigate their severity as far as possible ;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous forethought ;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.

According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice ;

On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgement of military commanders.

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.

[1] *Procès-verbaux*, pt. i, appendix, p. 19. For the corresponding Convention (IV) of 1907, see *post*, p. 509.

[2] *Ante*, p. 32.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The high contracting Parties, wishing to conclude a Convention to this effect, have appointed as their plenipotentiaries, to wit :

[Here follow the names of plenipotentiaries.]

Who, after communication of their full powers, found in good and due form, have agreed upon the following :

ARTICLE 1

The high contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the ' Regulations respecting the laws and customs of war on land ' annexed to the present Convention.

ARTICLE 2

The provisions contained in the Regulations referred to in Article 1 are only binding on the contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between contracting Powers, a non-contracting Power joins one of the belligerents.

ARTICLE 3

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 4

Non-signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification, addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 5

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

ANNEX TO THE CONVENTION

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

SECTION I.—On Belligerents

Chapter I.—*The Qualifications of Belligerents*

Article 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions :

1. That they be commanded by a person responsible for his subordinates ;
2. That they have a fixed distinctive emblem recognizable at a distance ;
3. That they carry arms openly ; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination ' army '.

Article 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.

Article 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

Chapter II.—*Prisoners of War*

Article 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Article 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits ; but they can only be placed in confinement as an indispensable measure of safety.

ARTICLE 6

The State may utilize the labour of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connexion with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ARTICLE 11

A prisoner of war can not be compelled to accept his liberty on parole ; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ARTICLE 16

Information bureaus enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched

by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their Government.

ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The Sick and Wounded*

ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

SECTION II.—ON HOSTILITIES

CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments*

ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden :

(*a*) To employ poison or poisoned weapons ;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion ;

(*d*) To declare that no quarter will be given ;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering ;

(*f*) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention ;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings or buildings that are not defended.

ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

CHAPTER II.—*Spies*

ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies : Soldiers and civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended

either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*Parlementaires*

ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him.

ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices*

ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

ARTICLE 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the populations and between them.

ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

SECTION III.—ON MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 43

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

ARTICLE 46

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property can not be confiscated.

ARTICLE 47

Pillage is formally forbidden.

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible.

ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash ; if not, a receipt shall be given.

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of

transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

Article 54

The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.

Article 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

Article 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

Section IV.—On the Internment of Belligerents and the Care of the Wounded in Neutral Countries

Article 57

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

Article 58

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

Article 59

A neutral State may authorize the passage over its territory of wounded or

sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ARTICLE 60

The Geneva Convention applies to sick and wounded interned in neutral territory.

Report to the Conference from the Second Commission on the Laws and Customs of War on Land[1]

(REPORTER, MR. EDOUARD ROLIN)

To the second subcommission was assigned for study the subject, 'Revision of the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels but not ratified up to the present date'. This is the seventh of the subjects for discussion enumerated in the circular of his Excellency Count Mouravieff, dated December 30, 1898 (old style).[2]

It is proper at the outset to define more exactly this subject by recalling that it is very clearly seen from the entire record[3] of the Conference of Brussels that that Conference was concerned with the laws and customs of war *on land* only. Consequently, our subcommission has been constantly governed by the idea that its own competence was limited to a similar extent. It was for this reason that the subcommission in its meeting of June first merely placed on record the proposition of Captain Crozier, a delegate of the United States of America, looking to the extension of the rules with respect to immunity of private property on land over like property *at sea*.[4] For the same reason the subcommission also preferred to leave to the Commission the solution of the particular question whether the rules regarding *bombardments* are to be applied in cases where ships at sea direct their fire towards points on the coast.[5]

The first care of the subcommission was to determine the method of its deliberations. For the basis of its discussions the te[illegible] of the articles of the Declaration of the Brussels Conference of 1874 was taken, but in a somewhat different order. The order of the various questions was immediately settled as follows in the meeting of May 25:

[1] *Procès-verbaux*, pt. i, p. 34. This report is identical with the report (ibid., pt. iii, p. 24) presented by the second subcommission of the Second Commission, and adopted by the Commission on July 5, 1899 (ibid., p. 10).

[2] *Ante*, p. 2.

[3] *Actes de la Conférence de Bruxelles* (1874) Bruxelles, F. Hayez, Imprimeur de l'Académie Royale de Belgique, 1874, folio. An octavo edition bears the imprint: Bruxelles, Société Belge de Librairie, Oscar Schepens et C^ie^, Éditeurs, 1899.

[4] See *vœu* No. 5, *ante*, p. 21.

[5] See *vœu* No. 6, ibid.

1. 'Prisoners of war' (Articles 23 to 34).
2. 'Capitulations' and 'Armistices' (Articles 46 to 52).
3. 'Parlementaires' (Articles 43 to 44).
4. 'Military power with respect to private individuals' and 'Contributions and requisitions' (Articles 36 to 42).
5. Articles 35 and 56 relating to the Geneva Convention.
6. 'Spies' (Articles 19 to 22).
7. 'Means of injuring the enemy' and 'Sieges and bombardments' (Articles 12 to 18).
8. 'Internment of belligerents and care of the wounded in neutral countries' (Articles 53 to 55).
9. 'Military authority over hostile territory' (Articles 1 to 8).
10. Those who are to be recognized as belligerents; combatants and non-combatants' (Articles 9 to 11).

This order of discussion, intended to reserve the most delicate questions for the end, was adhered to by the subcommission on the first reading, except that after deliberating on the text of Articles 36 to 39 of the Brussels draft concerning the *military power with respect to private individuals*, the subcommission passed at once to the next numbered subject, the fifth, reserving Articles 40 to 42 on *contributions* and *requisitions* for examination at the same time with the chapter on *military authority over hostile territory* (No. 9 above and Articles 1 to 8).

Afterwards, however, on the advice of the drafting committee appointed in the meeting of June 12,[1] the subcommission adopted a draft in which the articles are arranged in four sections, the first two sections being divided into chapters and the whole arranged in a new order that seemed more methodical. This draft is the one submitted to the Second Commission, and here annexed under the title, 'Draft of a Declaration concerning the laws and customs of wars on land'.[2] In order to establish constant correlation between that text and the present report, the report is divided into sections and chapters corresponding to those of the draft declaration.

Before passing to the detailed examination of the draft now submitted, the Commission's attention should be called to several communications, more or less general in their bearing, that have been made to the subcommission in the course of its discussions.

At the beginning of the meeting held on June 10, General Sir John Ardagh, technical delegate of the British Government, read a statement to the effect that in his personal opinion, which could not commit his Government, it would be a mistake to ask 'that the revision of the Declaration of Brussels should result in an international Convention'.

> Without seeking [said Sir John Ardagh] to know the motives to which may be attributed the non-adoption of the Brussels Declaration, it is permissible to suppose that the same difficulties may arise at the conclusion of our labours at The Hague.
>
> In order to brush them aside and to escape the unfruitful results of the Brussels Conference . . . we would better accept the Declaration only as a general basis for instructions to our troops on the laws and customs of war, without any pledge to accept all the articles as voted by the majority.

[1] This drafting committee was formed of Messrs. Beldiman, Colonel à Court, Colonel Gilinsky, Colonel Gross von Schwarzhoff, Lammasch, Renault, General Zuccari, and Rolin, the latter in the capacity of reporter. Except on a special occasion the committee was presided over by Mr Martens, president of the commission and of the subcommission. As Mr Renault was not able to be present at the last meetings, his place was taken by General Mounier.

[2] Identical with the Regulations as adopted by the Conference, *ante*, p. 128, save for the addition of the words 'including shore ends of cables' in Article 53. See *post*, p. 153.

According to the opinion of Sir John Ardagh all Governments would thus, even though adhering to the Declaration, retain 'full liberty to accept or modify the articles' of the Declaration.

This communication of the technical delegate of Great Britain led Mr. Martens to add some information regarding the view which the Imperial Government of Russia takes on the question.

> The object of the Imperial Government [said Mr. Martens] has steadily been the same, namely, to see that the Declaration of Brussels, revised in so far as this Conference may deem it necessary, shall stand as a *solid basis* for the instructions in case of war which the Governments shall issue to their armies on land. Without doubt, to the end that this basis may be firmly established, *it is necessary to have a treaty engagement* similar to that of the Declaration of St. Petersburg in 1868. It would be necessary that the signatory and acceding Powers should declare in a solemn article that they have reached an understanding as to uniform rules, to be carried over into such instructions. This is the only way of obtaining an obligation binding on the signatory Powers. *It is well understood that the Declaration of Brussels will not have binding force except for the contracting or acceding States.*

From the above sentence it is seen that according to the views of the Russian Government the only proper course than to conclude a *convention* providing that the adopted [illegible] not obligatory *as such* except upon the adhering States. The rules would [illegible] applicable in a war between adhering States if one of them should accept [illegible] not adhered to the Convention.

The delegate of Russia enforced this view by comparing the work to be done with the [illegible] a 'mutual insurance association against the *abuse* of force in time of war', an association which States should be free to enter or not, but which must have its own [illegible] obligatory upon the members *among themselves*.

In replying to another objection that was made and to which we shall revert later, Mr. Martens added that by agreeing to establish a 'mutual insurance association against the abuse of force in time of war' for the purpose of protecting the interests of populations against the greatest of disasters, we by no means sanction these disasters, we merely recognize their existence; just as companies that insure against fire, hail, or other calamities, merely state existing dangers.

The last part of Mr. Martens' speech was in answer to a fundamental objection advanced by his Excellency Mr. Beernaert, the first delegate of Belgium, in an address delivered in the meeting of June 6.

It is correct to say that the address of Mr. Beernaert was especially devoted to a consideration of chapters i, ii, and ix of the Declaration of Brussels relative to the occupation of hostile territory, the definition of belligerents and the provisions regarding requisition in kind or of money. Mr. Beernaert, apropos of certain clauses in these chapters, put the question whether it is wise 'in advance of war and for the case of war, expressly to legalize rights of a victor over the vanquished, and thus organize a *régime* of defeat'. He thought it best to admit no provision except such as would admit the fact without recognizing a right in the victor, and would carry a pledge on the part of the latter to be moderate.

As a matter of fact, these remarks of the first delegate of Belgium had a very general bearing for they are more or less applicable to every part of the Declaration concerning the laws and customs of war. Mr. Martens in reply energetically insisted upon the

necessity of not abandoning the vital interests of peaceable and unarmed populations ' to the hazards of warfare and international law '.

The question thus raised was really whether the fear of appearing by an international regulation to legalize as a right the actual power exercised through force of arms should be a good reason for abandoning the invaluable advantage in a limitation of this power. Besides, no member of the subcommission had any idea that the legal authority in an invaded country should in advance give anything like sanction to force employed by an invading and occupying army. On the contrary, the adoption of precise rules tending to limit the exercise of this power appeared to be an obvious necessity in the real interests of all peoples whom the fortune of war might in turn betray.

The subcommission took into account the views of Mr. Beernaert by adopting as its own a declaration which Mr. Martens read in the meeting of June 20. The complete text of this declaration will be found below in the commentary upon Articles 1 and 2 (formerly 9 and 10) to which they particularly relate. It should be remembered that, as the subcommission desired, this document is to be given a place in the records of the Conference. As a consequence, the draft is not to be considered as intended to regulate all cases occurring in practice; the law of nations still has its field. Furthermore, it has been formally said that none of the articles of the draft can be considered as entailing on the part of adhering States the recognition of any right whatever in derogation of the sovereign rights of each of them, and that adhesion to the regulations will simply imply for each State the acceptance of a set of legal rules restricting the exercise of the power that it may through the fortune of war wield over foreign territory or subjects.

There still remains to be brought to the notice of the Commission a communication of a general nature. At the meeting of June 3 his Excellency Mr. Eyschen, the delegate of the Grand Duchy of Luxemburg, called the attention of the subcommission to the importance of a determination of the rights and duties of neutral States. The subcommission was of the opinion that it should confine itself to examining the questions falling within the terms of the Declaration of Brussels, but it recommended the passage of the resolution expressing the hope ' that the question of regulating the rights and duties of neutral States may be inserted in the programme of a Conference in the near future '.[1]

We now pass to an examination of the text of the draft Declaration, which is divided into four sections.

SECTION I.—BELLIGERENTS

CHAPTER I.—*The Qualifications of Belligerents*

(Articles 1 to 3)

The two first articles of this chapter (Articles 1 and 2) were voted unanimously and are word for word the same as Articles 9 and 10 of the Brussels Declaration, with the exception of a purely formal addition to the final paragraph of the first article made on the second reading, in order to include *volunteer corps* as well as *militia* within the term *army*.

When these articles were first submitted to discussion, Mr. Martens read the declaration

[1] Meeting of June 6, 1899. *Proces-verbaux*, pt. III, p. 80. See text No. 1, *ante*, p. 21.

already spoken of and the subcommission immediately adopted it for submission to the Conference. Its text follows :

> The Conference is unanimous in thinking that it is extremely desirable that the usages of war should be defined and regulated. In this spirit it has adopted a great number of provisions which have for their object the determination of the rights and of the duties of belligerents and populations and for their end a softening of the evils of war so far as military necessities permit. It has not, however, been possible to agree forthwith on provisions embracing all the cases which occur in practice.
>
> On the other hand, it could not be intended by the Conference that the cases not provided for should, for want of a written provision, be left to the arbitrary judgement of the military commanders.
>
> Until a perfectly complete code of the laws of war is issued, the Conference thinks it right to declare that in cases not included in the present arrangement, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.
>
> It is in this sense especially that Articles 9 and 10 adopted by the Conference must be understood.

The senior delegate from Belgium, Mr. Beernaert, who had previously objected to the adoption of Articles 9 and 10 (1 and 2 of the new draft), immediately announced that he could because of this declaration vote for them.

Unanimity was thus obtained on those very important and delicate provisions relating to the fixing of the qualifications of belligerents.

The third and last article of this chapter, which is identical except as to details of form with Article 11 of the Brussels draft, expressly says that non-combatants forming part of an army should also be deemed belligerents, and that both combatants and non-combatants, that is to say *all belligerents*, have a right in case of capture by the enemy to be treated as prisoners of war.

There was some thought of transferring this article, or at least its last sentence, to the chapter on prisoners of war. But in the end it appeared useful, after having defined the conditions of belligerency, to state at once this essential right that a belligerent possesses in case of capture by the enemy, to be treated as a prisoner of war. And besides, this gives us a very natural transition to Chapter II, which follows immediately and fixes the condition of prisoners of war.

Before the above declaration, adopted on the motion of Mr. Martens, was communicated to the subcommission General Sir John Ardagh, technical delegate of Great Britain, proposed to add at the end of the first chapter the following provision :

> Nothing in this chapter shall be considered as tending to diminish or suppress the right which belongs to the population of an invaded country to patriotically oppose the most energetic resistance to the invaders by every legitimate means.

From a reading of the minutes of the meeting of June 20, it would seem that most of the members of the subcommission were of opinion that the rule thus formulated added nothing to the declaration which Mr. Martens had read at the opening of that meeting. The delegation of Switzerland, nevertheless, appeared to attach great importance to this additional article and went so far as to suggest that its adhesion to Articles 1 and 2 (Brussels 9 and 10) might not be given if the proposal of Sir John Ardagh was not adopted. Mr. Künzli spoke to that effect. On the other hand, the technical delegate of Germany,

Colonel Gross von Schwarzhoff, emphatically asserted that Article 9 of Brussels (now the first article) makes recognition of belligerent status depend only on conditions that are very easy to fulfil; he said that there was consequently in his view no need of voting for Article 10 (now Article 2), which also recognizes as belligerents the population of territory that is not yet occupied under the sole condition that it respects the laws of war; but that he had nevertheless voted for that article in a spirit of conciliation. 'At this point, however,' said the German delegate most emphatically, 'my concessions cease; it is absolutely impossible for me to go one step further and follow those who declare for an absolutely unlimited right of defence'.

At the end of the debate and in consideration of the declaration adopted on motion of Mr. Martens, Sir John Ardagh withdrew his motion, for the sake of harmony.

Chapter II.—*Prisoners of War*

(Articles 4 to 20)

The chapter on prisoners of war in the Brussels Declaration of 1874 (Articles 23-34) began with a definition forming the first paragraph of Article 23 and couched in the following terms: 'Prisoners of war are lawful and disarmed enemies.' This definition was, so to speak, the resultum of another and much longer definition in Article 23 of the first draft submitted to the Brussels Conference by the Imperial Russian Government. Considering the rather vague character of these definitions and the difficulty of finding any other that is more complete and more precise, the subcommission agreed to leave out the definition and to confine itself in this chapter to saying what shall be the treatment of prisoners of war.

It is for these reasons that Article 4, which is the first one under this chapter and corresponds to Article 23 of the Brussels project, begins at once with these words: 'Prisoners of war are in the power of the hostile Government, etc.'

The paragraph relating to *acts of insubordination* has also been omitted in this article, but it is to be found farther on in Article 8, where it seems better placed.

Most of the other provisions adopted at Brussels concerning this subject of the treatment of prisoners of war have been retained by the subcommission with very slight changes, an explanation of which may be found in the minutes of the meetings of May 27 and 30.

Article 5, respecting internment of prisoners, is an exact copy of Article 24.

Article 6 combines the provisions of Articles 25 and 26 of Brussels in a slightly different wording proposed by Mr. Beernaert.

Article 7 is almost the same as the old Article 27, save that it regulates the treatment of prisoners as to *quarters* as well as to food and clothing.

Article 8, respecting the discipline of prisoners of war, corresponds to Article 28 of the Brussels project, but with a few changes other than of form, especially as regards *escapes by prisoners*. An analysis of these changes is given below.

Article 9 repeats literally Article 29 on the declaration of name and rank.

Article 30 of the Brussels project, respecting the *exchange of prisoners*, has been omitted as useless, for the reason that the question of exchange cannot be made the subject of a general rule, inasmuch as an exchange can of course always result from an agreement between the belligerents.

Articles 10, 11, and 12 concerning *liberation on parole* are, except as to a few details of wording, the same as Articles 31, 32, and 33 of the Declaration of Brussels.

But the new Article 13 respecting persons to be classed with prisoners of war differs considerably both in form and substance from Article 34 of the Brussels project.

Finally we come to Articles 14 to 20 which are all new and have been adopted on the motion of Mr. Beernaert.

On the whole then, it is proper to furnish special explanations with regard to Article 8 (old 28), Article 13 (old 34), and the new Articles 11 to 17.

As has just been said, a long discussion took place on Article 28, now Article 8, especially on the subject of the *escape* of prisoners of war. Finally it was agreed, as it had been at Brussels in 1874, that an *attempt at escape* should not go entirely unpunished, but that it is desirable to limit the degree of punishment which it may entail, especially to forestall the temptation with the enemy to regard the act as similar to desertion and therefore punishable with death. Consequently it was decided that 'escaped prisoners who are retaken before being able to rejoin their army or before having left the territory occupied by the army that captured them are liable *to disciplinary punishment*'. Nevertheless, it was agreed in the course of the debate that this restriction has no application to cases where the escape of prisoners of war is accompanied by special circumstances amounting, for example, to a *plot*, a *rebellion*, or a *riot*. In such cases, as General von Voigts-Rhetz remarked at Brussels in 1874,[1] the prisoners are punishable under the first part of the same article which says that they are 'subject to the laws, regulations, and orders in force in the army of the State in whose power they are'; and it is necessary further to supplement this provision with the one which has been taken from the old Article 23 and added to Article 8, laying down, on the subject of prisoners, that 'any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary'.

Article 28 of the Brussels project provided particularly that *arms may be used, after summoning, against a prisoner of war attempting to escape*. This provision was struck out by the subcommission. In doing so, the subcommission did not deny the right to fire on an escaping prisoner of war if military regulations so provide, but it seemed that no useful purpose would be served in formally countenancing this extreme measure in the body of these articles.

Finally the subcommission retained, with some hesitation, the last paragraph of the article, by the terms of which 'prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for their previous flight'. The subcommission was influenced by the consideration that when a prisoner of war has regained his liberty his situation in fact and in law is in all respects the same as if he had never been taken prisoner. No actual penalty should therefore apply to him on account of the anterior fact.

Article 34, now Article 13 of the draft of the subcommission, has also undergone considerable change. The old wording was especially wanting in clearness as it seemed to say that the persons meant who accompany the army without being a part of it (such as newspaper correspondents, sutlers, contractors, etc.) shall be made prisoners if they are provided with regular permits. Accordingly it would be literally sufficient in order to be left free not to have the regular permit. Such certainly is not the meaning

[1] Minutes of the meeting of August 6, 1874.

of this provision. The subcommission consequently adopted at the suggestion of the reporter a more precise wording which closely follows the text of Article 22 of the manual of the laws of war on land of the Institute of International Law. This text keeps in sight the fact that these persons cannot really be considered as prisoners of war at all. But it may be necessary to *detain* them either temporarily or until the end of the war and in this case it will certainly be advantageous for them to be treated like prisoners of war. Nevertheless, they can depend upon obtaining this advantage only if they are 'in possession of a certificate from the military authorities of the army they were accompanying'.

There remain to be said a few words about the last seven Articles (14–20) of this chapter, which were added to it on the motion of his Excellency Mr. Beernaert, the senior delegate of Belgium.

Mr. Beernaert called attention to the fact that these proposals are by no means new, having been first suggested by Mr. Romberg-Nisard, who was actively engaged in relieving the sufferings of the victims of the war of 1870, and never ceased to agitate for better treatment of the wounded and prisoners in wars of the future.

These additional provisions provide, in the first place, for making general the organization of *information bureaus* concerning prisoners, similar to the one instituted in Prussia in 1866 which rendered such great service during the war of 1870–1. This is the object of the first of these articles (Article 14). The second article (Article 15) provides that certain facilities shall be given to such *relief societies for prisoners of war* as are properly constituted. The third article (Article 16) grants *free postage* and other advantages to the information bureaus and in general for shipments made to prisoners. The fourth article (Article 17) has for its object to favour *payment of salary* to prisoners who are officers. The fifth and sixth articles (Articles 18 and 19) secure to prisoners *free exercise of their religion*, grant them facilities for making *wills*, and deal with *death certificates* and *burials*. Finally, the last of these new articles (Article 20) expressly stipulates that after the conclusion of peace 'the *repatriation* of prisoners of war shall be carried out as quickly as possible'. Immediate absolute liberation is indeed not possible, for it would be sure to lead to disorder.

This Article 20 was to have a second paragraph saying that no prisoner of war can be detained nor his liberation postponed on account of sentences passed upon him or of acts occurring since his capture, crimes or offences at common law excepted. At the suggestion of Colonel Gross von Schwarzhoff this provision was omitted by common accord in consideration of the requirements of discipline which must be maintained and enforced with sufficient penalties up to the very last day of the captivity of prisoners of war.

The only one of these additional provisions due to the initiative of the senior delegate of Belgium that has given rise to discussion is the third (Article 16), relative to *postal, customs and other privileges*. But through the hearty support of Mr. Lammasch, the technical delegate of Austria-Hungary, and General den Beer Poortugael, the second delegate of the Netherlands, this article was also adopted unanimously.

It should be observed that postal and other conventions will have to be modified to conform to this provision. As to the customs franking privilege, it obviously applies only to articles *for the personal use of the prisoners*.

It may be interesting to state here that these Articles 14 to 20 even more than attain

the end that the Belgian delegation had in view when, in 1874, at the Brussels Conference, it proposed through the medium of Baron Lambermont six articles relating to relief societies for prisoners of war.[1] These articles were then the subject of a favourable order of the day, but they were not embodied in the project of the Declaration of Brussels.[2]

CHAPTER III.—*The Sick and Wounded*

(Article 21)

The sole article in this chapter is a literal copy of Article 35 of the Brussels project. It was adopted unanimously and without debate. As the chairman of the subcommission remarked, we confine ourselves to stating that the rules of the Geneva Convention must be observed ***between belligerents***. Moreover, the last part of the article anticipates a future modification of that Convention.

As you know, it is stated elsewhere, in Article 60 (old Article 56), that the Geneva Convention likewise applies to the sick and wounded interned in neutral territory.

SECTION II.—HOSTILITIES

CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments*

(Articles 22 to 28)

This chapter combines under one heading two distinct chapters of the Declaration of Brussels, of which the first was entitled ' Means of Injuring the Enemy ' (Articles 12 to 14), and the second ' Sieges and Bombardments ' (Articles 15 to 18).

The union of these chapters in a single one, as proposed by the drafting committee and approved on second reading by the subcommission, had for its object to make it clearly appear that the articles respecting means of doing injury are also applicable to sieges and bombardments.

The new Articles 22, 23, and 24 correspond exactly, aside from some changes of wording, to Articles 12, 13, and 14 of the Declaration of Brussels.

Article 23 begins with the words : ' In addition to the prohibitions provided by special conventions, it is especially forbidden . . . .' These special conventions are first the Declaration of St. Petersburg of 1868, which continues in force, and then all those of like nature that may be concluded, especially subsequently to the Hague Conference. It seemed to the subcommission that the general formula was preferable to the old reading which mentioned only the Declaration of St. Petersburg.

Article 23 forbids, under letter *g*, any destruction or seizure of the enemy's property not demanded by the necessities of war. The drafting committee had proposed to omit this clause as it seemed to it useless in view of the provisions farther on prescribing respect for private property ; but the subcommission retained it, on the second reading, at the instance of Mr. Beernaert, for the reason that the chapter under consideration deals with limiting the effects of *hostilities*, properly so called, while the other provisions referred to treat more particularly of *occupation* of hostile territory.

[1] See annex xi to the Protocols of the Brussels Conference.
[2] Protocol No. 8, meeting of August 10, 1874.

The wording of Article 24 (old 14) has been criticized. Taken literally this article might indeed be taken to mean that *every ruse of war* and *every method necessary to obtain information about the enemy and the country* should *ipso facto* be considered 'permissible'. It is understood that such is by no means the import of this provision, which aims only to say that ruses of war and methods of obtaining information are not prohibited as such. They would cease to be 'permissible' in case of infraction of a recognized imperative rule to the contrary.

The Brussels Article 14 particularly cited one of these imperative rules—that which forbids compelling the population of an occupied territory to take part in military operation against their own country (Article 36 of Brussels). But there are many others, such, for example, as the prohibition against the improper use of a flag of truce (Article 23 *f*). There are even some that are not expressly sanctioned in any article of the Declaration. And, under these conditions, and not being able to recall all these rules with regard to Article 24, the subcommission thought it was better to mention none of them, believing that the explanation now made would be sufficient to indicate the true meaning of this article.

Articles 25, 26, 27, and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Respecting the prohibition of bombarding towns, villages, dwellings, or buildings which are not defended (Article 25), it is proper to refer to an observation made by Colonel Gross von Schwarzhoff, who said that this prohibition certainly ought not to be taken to prohibit the destruction of any buildings whatever and by any means when military operations rendered it necessary. This remark met with no objection in the subcommission.

As has been indicated at the beginning of this report, the question was asked whether the last articles of this chapter were to be considered as applicable to bombardment of a place on the coast *by naval forces*. General den Beer Poortugael, delegate of the Netherlands, and Mr. Beernaert maintained the affirmative. But, on motion of Colonel Gilinsky, technical delegate of the Russian Government, the examination of this question was by general agreement reserved for the Commission in plenary session.

Chapter II.—*Spies*

(Articles 29 to 31)

The three articles of this chapter reproduce almost literally the wording of Articles 19 to 22 of the Brussels project. Former Articles 19 and 22 have, on the motion of General Mounier, technical delegate of the French Government, merely been combined to form Article 29. These two provisions in reality deal with a single idea, which is to determine who can be considered and treated as a spy, and to specify at once, *merely by way of example*, some special cases in which a person cannot be considered as a spy.

With respect to Article 30 (Article 20 of Brussels) it has been remarked that in applying the penalty the requirement of a previous judgement is, in espionage as in all other cases, a guaranty that is always indispensable, and the new phrasing was adopted with the purpose of saying this more explicitly.

It results from Article 31 (Article 21 of Brussels) that a spy not taken in the act but falling subsequently into the hands of the enemy incurs no responsibility for his previous

acts *of espionage*. This special immunity is in harmony with the customs of warfare; but the words in italics have been added, on the second reading, to show clearly that this immunity has reference to acts of espionage only and does not extend to other offences.

CHAPTER III.—*Parlementaires*

(Articles 32 to 34)

The three articles composing this chapter correspond to Articles 43, 44, and 45 of the Brussels project.

The text of Article 32 differs slightly from that of Article 43. As a consequence the parlementaire may be accompanied not only by a trumpeter, bugler or drummer, and by a flag-bearer, but also by an interpreter. It is also a consequence of the new reading that he may do without one or more of these attendants and go alone carrying the white flag himself.

Article 33, with the exception of some changes in form adopted on the first and second readings, is the same as the first two paragraphs of the Brussels Article 44. It deals with the right that every belligerent has either to refuse to receive a parlementaire, or to take the measures necessary in order to prevent him from profiting by his mission to get information, or finally to detain him in case of abuse. All these rules conform to the necessities and customs of war.

The Brussels Article 44 contained a final paragraph permitting a belligerent to declare 'that he will not receive parlementaires during a certain period', and adding that 'parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability'. The loss of inviolability is certainly an extreme penalty; but this special point has no longer any interest, for this provision is omitted in the new draft. It appears from the discussion which took place at the meeting of May 30, and especially from the remarks made on this article by the first delegate of Italy, his Excellency Count Nigra, that according to the views of the subcommission, the principles of the law of nations do not permit a belligerent ever to declare, even for a limited time, that he will not receive flags of truce. At the Brussels Conference in 1874, moreover, this provision was debated at length and was only finally accepted to satisfy the German delegate, General von Voigts-Rhetz.[1] The technical delegates at the Hague Conference, and conspicuously the German delegate, Colonel Gross von Schwarzhoff, have on the contrary seemed to consider that the necessities of warfare are sufficiently regarded in the option that every military commander has of not receiving a flag of truce in all circumstances (first paragraph of Article 33). They accordingly voted with the entire subcommission for the abrogation of the last paragraph of former Article 44.

Article 34 is identical with Article 45 of Brussels. It provides that 'the parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason'. This provision elicited no remarks as to its substance. It was merely asked how a parlementaire could *commit* an act of treason *against the enemy*. The text was nevertheless retained in view of certain systems of penal legislation which regard the instigator of an offence as a principal.

[1] See Protocol No. 4, meeting of August 3, 1874.

CHAPTER IV.—*Capitulations*

(Article 35)

The sole article of this chapter is, with a few changes in wording, like Article 46 of the Brussels project.

The clause according to which 'capitulations can never include conditions contrary to honour or military duty', proposed at Brussels by the French delegate, General Arnaudeau,[1] and inserted almost literally in Article 46, has been retained in principle. The wording of the new Article 35, as adopted by the subcommission, gives even a more imperative form to this principle by saying that the capitulations 'must take into account the rules of military honour'.

CHAPTER V.—*Armistices*

(Articles 36 to 41)

This chapter contains six articles corresponding to Articles 47 to 52 of the Brussels project and almost reproduces their wording.

Article 36 determines the *effects and duration of an armistice*; Article 37 distinguishes between *general* and *local* armistices. These two articles are simply reproductions of Articles 47 and 48 of Brussels.

Article 38, dealing with *notification* of an armistice and with *suspension of hostilities*, differs from Brussels Article 49 in admitting that hostilities can be suspended not only from the very moment of notification but after a time agreed upon.

The wording of Article 39 follows that of Article 50 of Brussels, but expands it and renders it more exact. In effect, it permits an armistice to regulate not only the communications *between* the populations but also those *with* them; at the same time it says that this shall only be 'in the theatre of war'. In the absence of special clauses in the armistice these matters are necessarily governed by the ordinary rules of warfare, especially by those concerning occupation of hostile territory.

The subject of the violation of an armistice by one of the parties gave rise to a discussion in the meeting of May 30. Article 51 of the Brussels project confined itself on this subject to saying that a violation of an armistice by one of the parties gives the other the right to denounce it. At the suggestion of Colonel Gross von Schwarzhoff, the subcommission admitted that the right to denounce an armistice would not always be sufficient, and that it was necessary to recognize in the belligerent the right, *in cases of urgency*, 'of recommencing hostilities immediately'. On the other hand, the subcommission thought that in order to justify a denouncement of an armistice and, with greater reason, to authorize an immediate resumption of hostilities, there must be a *serious* violation of the armistice. It is for this reason that the new Article 40 differs to that extent from the article accepted at Brussels.

Article 52, respecting violation of an armistice *by individuals*, was not changed and has become the new Article 41. It only provides for 'the punishment of the offenders and, if necessary, compensation for the losses sustained'.

[1] See Protocol No. 4, meeting of August 3, 1874.

SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

(Articles 42 to 56)

The above title is that of the first chapter (Articles 1 to 8) of the Declaration of Brussels. As early as the meeting of June 1, the subcommission decided to place the articles concerning *contributions* and *requisitions* (Brussels Articles 40 to 42) also in this chapter and to examine them at the same time. Finally it instructed the drafting committee also to place in this chapter the new text that had already been adopted for Articles 36 to 39 inclusive of the Declaration of Brussels, where they form the chapter entitled 'Military authority over private individuals'. Thus the present chapter has been lengthened considerably. Moreover, the debate on it has been arduous; but the patient courtesy of Mr. Martens, chairman of the subcommission, together with the good feeling of all its members, has resulted in the unanimous agreement that every one ardently hoped for.

The first article of this chapter (Article 42), defining occupation, is identical with the first article of the Declaration of Brussels. It should be stated that it was adopted unanimously by the subcommission, as also were all or nearly all of the principal articles of this chapter.

Article 43 condenses into a single text Articles 2 and 3 of the Brussels Declaration. The new wording was proposed by Mr. Bihourd, the Minister of France at The Hague and one of the delegates of his Government. The last words of Article 43, where it is said that the occupant shall restore or ensure order 'while respecting, unless absolutely prevented, the laws in force in the country', really give all the guaranties that the old Article 3 could offer and do not offend the scruples of which Mr. Beernaert spoke in his address, referred to at the beginning of this report, which had led him to propose at first that Article 3 be omitted.

The omission of Article 4 of the Brussels Declaration was unanimously voted for at the instance of Mr. Beernaert, vigorously supported by Mr. van Karnebeek. The first delegate of the Netherlands stated that he opposed any provision that might seem directly or indirectly to give the public officers of an invaded country any authority to place themselves at the service of the invader. It was not denied, however, that certain officers, particularly municipal officers, might sometimes best perform their duty, in a moral sense at least, towards their people if they remained at their posts in the presence of the invader.

The four following articles, Articles 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honour and lives of individuals and their private property, whether individual or collective, as well as respect for religious convictions.

It appeared to the subcommission that these articles were well placed in this chapter before the provisions the purpose of which is to set legal limitations upon the actual power that the victor wields in the hostile country.

Besides, as Colonel Gross von Schwarzhoff remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defence.

The new Article 48, like Article 5 of the Brussels Declaration, provides that the occupant shall collect the *existing taxes*, and in this case prescribes that he must 'defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound'. It may be observed that the new article adopts a conditional form. This wording was proposed by the reporter with a view to obtaining the support of Mr. Beernaert and other members of the subcommission who had expressed the fears with which every wording seemingly recognizing rights in an occupant as such inspired in them.

The four next articles, 49 to 52 inclusive, deal with *extraordinary contributions*, with *fines*, and with *requisitions*, and take the place of Articles 40 to 42 inclusive of the Brussels Declaration. Quite a divergence of views on the subject of these articles was evidenced in the debate.

On motion of Mr. Bourgeois, seconded by Mr. Beldiman, the question was referred to the drafting committee with an instruction to set forth in a new text only the points on which an agreement seemed possible.

The committee, of which Mr. Bourgeois was chairman, made a thorough study of these questions with the active assistance of Messrs. Beernaert, van Karnebeek, and Odier, and it ascertained that agreement certainly existed on three important points concerning the levying of contributions of any kind in hostile territory. These three points are the following:

1. Every order to collect contributions should emanate from a responsible military chief, and should be given, as far as possible, in writing.
2. For all collections, especially those of sums of money, it is necessary to take into account as far as possible the distribution and assessment of the existing taxes.
3. Every collection should be evidenced by a receipt.

The committee next discussed the question whether it should confine itself to giving expression to these three purely formal conditions and to determining to what extent they are applicable to the requisitions in kind or money and the fines required by the occupant. It came to the conclusion that, relying on the general considerations indicated at the beginning of this report, as being of a nature to dispose of the objections stated by Mr. Beernaert, it would be not only possible but also highly desirable to state certain principles on the lines of Articles 40 to 42 of the Brussels Declaration, that is to say, concerning the limitations to be placed on the actual power which the invader exercises against the legal authorities and which in its tendency weakens the principle of respect for private property. The rules to be laid down relate to three categories of acts:

a. Requisitions for payments in kind (money being excepted), and for personal services, or in other words, 'requisitions in kind and services' (Article 51);
b. The levying and collection of contributions of money beyond the existing taxes (Article 49);
c. The imposition and collection of what are improperly called 'fines' (Article 50).

a. As to *requisitions in kind and services*, it has been admitted that the occupant cannot demand them from communes or inhabitants except 'for the needs of the army of occupation'. This is the rule of necessity; but this necessity is that of maintaining the army of occupation. It is no longer the rather vague criterion of 'necessities of war' mentioned in Article 40 of the Brussels project under which, strictly, the country might be systematically exhausted.

It has been fully agreed to retain the provision of Article 40 of the Brussels Declaration

which requires that the requisitions and services shall be ' in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the[1] war against their country '.

It was necessary to recognize that one of the three formal conditions mentioned above, that of collection ' following the local rules of distribution and assessment of taxes ', although applicable in a certain degree to contributions in personal services, is evidently not applicable to requisitions in kind properly so called, that is to say, the requisition of particular objects in the hands of their owners either to make temporary use of them or for consumption. The committee therefore thought, and the subcommission agreed thereto, that some limitation should be stated here so that the requisitions and services demanded will be ' in proportion to the resources of the country '.

There remain two other formal conditions that were agreed upon, one respecting the order for the collection and the other respecting the receipt. These two conditions already appeared in Article 42 of the Brussels project, and the committee had little to do beyond reproducing them. In conformity with the Brussels text it has been agreed that the requisition orders must emanate only from the commander on the spot, but that in this case the requirement of a written order would be excessive. Military necessities are opposed to demanding for ordinary daily requisitions a higher authority than that of the officer on the spot, and a written order would be superfluous in view of the obligation to give a receipt.

Lastly, the wording agreed upon in the matter of requisitions recommends the rule of payment therefor in money, although such payment is not made a hard-and-fast obligation. Such payments will ordinarily take place under the form of real purchases instead of requisitions. And it is to be noted that this will often be not only a method of strict humanity but also commonly one of shrewd policy, if only to deter the people from hiding their provisions and produce. Besides, the army of occupation will obtain in the same country the money necessary for payments on account of requisitions or purchases by means of contributions whose weight will be distributed over all, whilst requisitions without indemnity strike at random upon isolated individuals.

b. As to the ***money contributions*** that the occupant may wish to collect beyond the regular taxes, the subcommission at the instance of the drafting committee agreed upon the very interesting and valuable rule for occupied territory, that except in the special cases of fines, which are the subject of a separate article, these contributions can, like requisitions, be levied ' for the needs of the army ' alone. The only other legitimate motive for collecting these contributions would lie in the administrative needs of the occupied territory, and the population thereof evidently cannot make a just complaint on that score.

On the whole what is forbidden is levying contributions for the purpose of enriching oneself.

It is important to state that this formula is more stringent than that of Article 41 of the Brussels Declaration ; and right here is a point that received the especial attention of those members of the subcommission who, being properly interested by the situation of their countries, showed themselves above all solicitous to restrain as far as possible by legal rules the absolute liberty of action that success in arms actually gives to an invader.

The three formal conditions indicated above (the order for collection, the collection, and the receipt) have unlimited application to these contributions, but it seemed best to insert them in a special article applicable to every collection of money.

[1] This word ' the ' does not appear in the Declaration of Brussels.

c. As to *fines*, a separate article seemed necessary in order that it might be determined as exactly as possible in what cases it is proper to impose fines.

In the view of the committee the word *fines* itself is not quite apt because it lends itself to confusion in thought with penal law. Certain members of the committee have even urged that the use of the word ' repression ' be avoided.

According to the point of view at first taken by the subcommission, this article ought to deal only with what is given the special designation ' fines ' in the law of war, that is a particular form of extraordinary contribution consisting in the collection of sums of money by the occupant for the purpose of checking acts of hostility. On this subject the subcommission was unanimously of opinion that this means of restraint which strikes the mass of the population ought only to be applied as a consequence of reprehensible or hostile acts committed by it as a whole or at least permitted by it to be committed. Consequently, acts that are strictly those of individuals could never give rise to collective punishment by the collection of extraordinary contributions, and it is necessary that in order to inflict a penalty on the whole community there must exist as a basis therefor *at the very least a passive responsibility therefor* on the part of the community. Having proceeded thus far upon this course, the drafting committee first, and then the subcommission, thought they could go still further and, without prejudging the question of reprisals, declare that this rule is true, not only for fines, but for every penalty, whether pecuniary or not, that is sought to be inflicted upon the whole of a population.

Finally, the subcommission approved the special Article 52 proposed by the committee, concerning the three formal rules applicable to every collection whatever of sums of money by the occupant.

It is on the strength of the foregoing considerations that the subcommission has adopted with only a few slight modifications in form Articles 49 to 52 of the text proposed to it by the drafting committee.

It is also proper to say that these provisions have been voted unanimously with the exception of the vote of the delegate of Switzerland on Articles 51 and 52. That delegate had proposed in behalf of his Government that the right to claim payment or reimbursement *on the evidence of the receipts* be expressly stipulated in these articles. The subcommission thought that such a stipulation would be out of place in the proposed Declaration as it relates rather to internal public law and will naturally be the subject of one of the clauses of the treaty of peace.

The next article, bearing the number 53, corresponds to Article 6 of the Brussels Declaration. It deals with seizure by the occupant of the personal property of the hostile State and, by extension, of all material serviceable for carrying on war and especially of *railway plant*.

The subcommission unanimously adopted the first paragraph of this article at once without making any change therein. Such was not the case with the second paragraph, which derogates, especially in the matter of railway plant, from the principle of respect for private property. Mr. Beernaert proposed to indicate that seizure of this material can only be in the nature of a *sequestration*, aside from the option of *requisitioning* it for the needs of the war. This proposal was discussed at length, with the result that this paragraph and its amendments were returned to the drafting committee. That committee expressed the opinion that if greater exactness were given to the wording of this provision, it would probably be impossible to reach an agreement, and that it therefore seemed best

to preserve as far as possible the text of the Brussels draft. Nevertheless the draft was condensed into a single sentence for the sake of precision, and, on the proposal of the drafting committee, the subcommission also decided to omit an ambiguous clause which said that the means in question of carrying on war ' cannot be left by the army of occupation at the disposal of the enemy '. Moreover this clause seemed to contain an allusion to the idea of sequestration which the subcommission wished to avoid.

On the other hand, the drafting committee and later the subcommission accepted the principle of the amendment proposed by Mr. Bille, the senior delegate of Denmark, concerning ' shore ends of cables '. It was therefore decided to say : ' Land telegraphs *including shore ends of cables* '.[1] The author of the amendment further specified the shore ends of cables which are ' established within the maritime territorial limits of the State '.

As it was necessary to refrain from dealing here, even incidentally, with the very delicate questions of the nature of the rights of a State over the adjacent territorial sea and of the extent of such marginal waters, the last words of Mr. Bille's amendment were not adopted.

Furthermore, on motion of Mr. Lammasch, it was decided that the article should mention *telephones*.

It did not seem opportune to make any special stipulation with regard to the application of this article that the belligerent who makes a seizure is obliged to give a receipt as in the case of requisitions ; but the committee was nevertheless of opinion that the fact of seizure should be clearly stated one way or another if only to furnish the owner of the articles seized with an opportunity to claim the indemnity expressly provided in the text.

The proposal by Mr. Odier that ' railway plant even when belonging to the enemy State shall be restored at the conclusion of peace ' was not accepted, as the committee believed that this question was among those that should be settled by the treaty of peace.

Article 54, which is wholly new and due to the initiative of Messrs. Beernaert and Eyschen, prescribes that : ' the plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible '. Mr. Beernaert had suggested ordering *immediate restitution of this material with a prohibition of using it for the needs of the war* ; but the subcommission agreed with the drafting committee in thinking that it was sufficient to lay down the principle of restitution within a short time for the sole purpose of pointing out that the material belonging to neutrals, unlike that of belligerents, cannot be the object of seizure.

Article 55, relative to the administration of State property in occupied territory, is a verbatim reproduction of Article 7 of the Brussels draft.

Article 56, too, which relates to respect for property belonging to communes and charitable and other institutions, is identical with the Brussels Article 8, save for a very slight change in wording of the second paragraph. There can be no doubt that the expression ' institutions dedicated to religion ' found in this Article 56, applies to all institutions of that kind, as churches, temples, mosques, synagogues, etc., without any discrimination between the divers forms of worship. This was already affirmed at Brussels in 1874,[2] and it is likewise the answer given for the committee to General Mirza Riza Khan, the senior delegate of Persia, in response to a request for explanation.

[1] In the seventh plenary meeting of the Conference, July 25, 1899, the words ' including shore ends of cables ' were struck out from the draft regulations. *Procès-verbaux*, pt. I, p. 71.

[2] Protocol No. 18.

A general observation should be made on the subject of all the articles comprised in Section III. This is that the restrictions imposed on the liberty of action of an occupant apply *a fortiori* to an invader when an occupation has not yet been established in the sense of Article 42.

Thus Articles 44 and 45 apply to the invader as well as to the occupant, and either of them will necessarily be forbidden to force the population of a territory to take part in military operations against its own country or to swear allegiance to the hostile Power.

As to the collection of contributions and requisitions or to the seizure of *matériel*, it is understood that an invader shall stand in these matters in the same position as an occupant.

SECTION IV.—THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL STATES

(Articles 57 to 60)

The four articles comprised in this final chapter of the draft voted by the subcommission are a verbatim copy of Articles 53 to 56 inclusive of the Brussels project, with the exception of the addition of a supplementary paragraph to Article 59.

At the opening of the discussion on these articles, and particularly with reference to the first one, which treats of the *internment* of belligerents on neutral territory, his Excellency Mr. Eyschen, the senior delegate of Luxemburg, in the meeting of June 6 spoke of the special situation of the Grand Duchy under the Treaty of London of 1867 with regard to this obligation to intern belligerents. That treaty disarmed the Luxemburg Government, and does not permit it to maintain more troops than are necessary to preserve public order. The result is that Luxemburg could not assume the same obligation as the other States. On the request of Mr. Eyschen record was made of his declaration that he intends to reserve to his country all rights under the Treaty of London of May 11, 1867, and especially Articles 2, 3, and 5 thereof.

Articles 53 and 54 of the Brussels project respecting the internment of belligerents on neutral territory were then adopted without modification and have become Articles 57 and 58 of the subcommission's draft.

Article 59 relating to passage over[1] neutral territory, that is to say across neutral territory, of the wounded or sick belonging to belligerent armies, is like the Brussels Article 55 except for the addition of the third paragraph. This supplementary paragraph was adopted on the first reading on motion of Mr. Beernaert and General Mounier, as follows: 'When once admitted into neutral territory, the sick or wounded can be returned only to their country of origin.'

But doubts immediately arose as to the exact meaning of this stipulation. Several members of the committee believed that it gave authority to the neutral State to restore the wounded and sick forthwith to their country of origin, whereas evidently the only question should be that of forbidding the use of neutral territory for the purpose of conveying sick or wounded to a hostile country where they would become prisoners of war. The

[1] The Declaration of Brussels has 'passage *par* son territoire'. In 1899 the *par* was replaced by *sur*, which appeared in the subcommission's draft and persisted although the subcommission decided (*Procès-verbaux*, pt. iii, p. 93) that 'the first two paragraphs of Article 55 [of the Brussels Declaration] should be preserved in their existing wording'. Amid the variety of translations we follow Professor Holland in rendering *sur* by *over* in this phrase.

new draft precludes all doubt, by saying that 'wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the operations of the war'. General Zuccari, the technical delegate of the Italian Government, declared that having in view respect for absolute impartiality on the part of neutrals, he regretted that he could not give his approval to this last wording any more than to the preceding one.

There remained the case of wounded or sick belonging to the army of the belligerent which is conveying them, but which for one reason or another, instead of simply *passing* through the neutral territory, stops there. It surely would be extraordinary if they could, when they recover, take part again in the operations of the war, and that is why the subcommission adopted on second reading, on the motion of Mr. Beernaert, an additional provision stipulating that these wounded or sick must likewise be guarded by the neutral State.

Mr. Crozier had drawn the attention of the subcommission to a contradiction existing in his opinion between the paragraph in question and Article 10 of the draft for the adaptation of the principles of the Geneva Convention to maritime warfare. It seems that this contradiction was only apparent; but in any case it disappears in the new wording.

With respect to the whole principle of Article 59, General Mounier had appeared rather inclined to ask that the sick and wounded be denied any passage, in view of the indirect service that the neutral State could render to one of the belligerents by making it easy for him to relieve himself of his wounded and sick. The whole subcommission was agreed that the neutral State should be guided by rules of absolute impartiality in lending its humane aid under such circumstances, and in the meeting of June 8 a sort of authentic commentary on the meaning of this Article was proposed by Mr. Beernaert, accepted by General Mounier, and unanimously adopted. This official explanation is in the following terms:

> This article has no other bearing than to establish that considerations of humanity and hygiene may determine a neutral State to allow wounded or sick soldiers to pass across its territory without failing in its duties of neutrality.

Finally Article 60 reproduces verbatim the final Article 56 of the Declaration of Brussels. It prescribes that the Geneva Convention applies to sick and wounded interned in neutral territory.

After the Commission shall have decided on the text of the project of 'the Declaration concerning the laws and customs of war on land', its first care might be to consider under what form it would be preferable to sanction the obligatory character of the articles of this Declaration.

CONVENTION (III) FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST 22, 1864[1]

(*For the heading see the Convention for the pacific settlement of international disputes.*[2])

Animated alike by the desire to diminish as far as depends on them the inevitable evils of war, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of August 22, 1864, have resolved to conclude a convention for this purpose.

They have in consequence appointed the following as their plenipotentiaries :

[Here follow the names of plenipotentiaries.]

Who, after having communicated their full powers, found in good and due form, have agreed upon the following provisions :

ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with the view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.[3]

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt

[1] *Procès-verbaux*, pt. 1, appendix, p. 16. For the corresponding Convention (X) of 1907, see *post*, p. 709.
[2] *Ante*, p. 32.
[3] See *post*, p. 834, Article 14.

from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 4

The ships mentioned in Articles 1, 2 and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact.

ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 10[1]

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 11

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

ARTICLE 12

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 13

Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 14

In the event of one of the high contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

[1] Germany, the United States, Great Britain, and Turkey signed this Convention under reservation of Article 10. On an understanding subsequently reached by the Government of the Netherlands and the signatory Powers it was agreed to exclude this article from the ratifications of the Convention. The Article was, however, adopted in the above form at the Second Hague Conference and appears as Article 15 in Convention No. 10, *post*, p. 712.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

Report to the Conference from the Second Commission on the Adaptation to Maritime Warfare of the Principles of the Geneva Convention[1]

(Reporter, Mr. Louis Renault)

The Second Commission has adopted, on the report of a drafting committee,[2] a series of provisions having for its aim the adaptation of the principles of the Convention of Geneva to maritime warfare. It now submits these provisions to the vote of the Conference and accompanies them with this report, which is designed to explain the reasons for the articles proposed.

To the Second Commission was assigned the duty of examining points 5 and 6 of Count Mouravieff's circular. It has been assumed that it is desirable to adapt the principles of the Geneva Convention of 1864 to maritime wars, and also that it is proper to take the additional articles of 1868 as a basis. The latter articles gave rise to criticism very soon after their signature, and have been for thirty years the subject of a great deal of study. It now becomes necessary to take those criticisms into account, to profit by the discussions, and to decide on some project which will reconcile the interests involved and will also satisfy the hope that has been expressed for so long a time by individuals and societies of the highest eminence that maritime warfare should no longer be deprived of the humanitarian and charitable element which the Geneva Convention has added to war on land. We think that the preparatory work on this project, so earnestly desired by public opinion, is now sufficiently done and that it is now time to obtain results. We hope that our work will permit the Conference to do this and, with a complete knowledge of the matter, to take action by adopting a text which may be easily transformed into an international convention.

We have been guided by the following general ideas. In the first place, we confined ourselves to general principles only, and did not enter into details of organization and regulation which are for each State to settle according to its own interests or customs. We determine what the legal status of hospital ships should be in international law; but we do not determine what shall constitute such ships, nor do we distinguish Government

[1] *Procès-verbaux*, pt. i, p. 22. The Articles (1–10) quoted in this report were approved by the Conference without change. Ibid., pt. i, p. 20. Several variations in their wording in the report are seen, by a reference to the proceedings of the Second Commission and the first subcommission thereof (ibid., pt. iii, pp. 4–6, 38 *et seq.*), to be typographical or clerical errors; and the proper corrections therein have been presumed in this translation.

[2] This committee consisted of Vice-Admiral Fisher, Captain Scheine, Captain Siegel, and Professor Renault as reporter. Lieutenant-Colonel Charles à Court and Lieutenant Ovtchinnikow also participated in the work of this committee as associate members.

vessels from vessels of relief societies, nor do we say whether boats belonging to private individuals may be attached to the hospital service during a war. These are questions that must be handled by the several Governments, because circumstances are so different that a uniform solution cannot be applied. The assistance rendered by private charity will be greater or less, according to the country. Then again, we must not be so preoccupied with the demands of humanity that we are oblivious of the necessities of warfare; we must avoid laying down rules which, even though inspired by sentiments of humanity, are likely to be disregarded often by the combatants as unduly impeding their freedom of action. Humanity gains little by the adoption of a rule that remains a dead letter; and the feeling of respect for engagements is but weakened. It is accordingly indispensable to impose only such obligations as can be fulfilled in all circumstances and to leave to the combatants all the latitude they require. This, it is to be hoped will not be so used as needlessly to hinder relief work.

The provisions to be decided on fall into three classes: we have to make rules regarding the status, first, of the vessels engaged in relief work (Articles 1 to 6); secondly, of the persons so engaged (Article 7); and thirdly, of the wounded, sick or shipwrecked (Articles 8 and 9).

VESSELS

There may be, as a matter of fact, vessels of very different kinds engaged in either permanent or casual hospital service.

Military Hospital Ships

At the Geneva Conference of 1868, a variety of opinions existed as to the status that such ships should be given. After allowing them the benefit of neutrality under certain conditions, the ninth additional article was finally adopted, as follows:

> The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

In 1869 the French Government asked that the following provision be added to Article 9:

> The vessels not equipped for fighting, which, during peace, the Government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed.

That the British Government supported this view may be seen in the note addressed to Prince de la Tour d'Auvergne by Count Clarendon, January 21, 1869.

The Commission has expressed itself as in favour of the plan proposed in 1869, although it is of the opinion that a single general rule can be formulated to take the place of Article 9 with the additional provision just quoted. It has seemed indispensable to remove the ships under consideration from exposure to the vicissitudes of warfare, and at the same time to take precaution against the commission of abuses.

The Commission accordingly proposes to exempt from capture ships *constructed or assigned by States specially and solely with a view to assist* the wounded, sick and

shipwrecked. Each State will construct or assign as it sees fit the ships intended for hospital service; no particular type of vessel should be required of it. The essential point is that the ships shall have no other character than that of hospital ships, and consequently cannot carry anything that is not intended for the sick or wounded and those caring for them, and that might be used for acts of hostility.

As each belligerent ought to know what ships of his adversary are accorded particular immunities, the names of these must be communicated officially. When should this communication be made? Naturally at the very beginning of hostilities. But it would be too stringent a rule to accept only notifications made at that time. A belligerent may have been taken unawares by war and not have hospital ships already constructed or assigned; or the war might take on such great proportions that the existing hospital ships would be deemed insufficient. Would it not be cruel to refuse belligerents the privilege of augmenting their hospital service to meet the needs of the war, and consequently of fitting up new ships? This is admitted. Notification may then be made even during the course of hostilities, but it is to precede the employment of the ship in its new service.

This notification of the names of military hospital ships interests primarily the belligerents; it may also be of interest to neutrals since, as will be explained, a special status is enjoyed by such ships in neutral ports. It is accordingly desirable that the belligerents acquaint neutral States with the names of these vessels, even if only by publication in their official journals.

The assignment of a vessel to hospital service cannot of course, after such notification to the adversary, be changed while the war lasts. Otherwise, abuses would be possible; as, for instance, a hospital ship might thus be enabled to reach a given destination and then might be transformed into a vessel designed to take part in hostilities.

In defining the immunity granted military hospital ships we have avoided the words 'neutrals' and 'neutrality', which are in themselves inexact and have long given rise to just criticism, as was seen in the subcommission. We propose saying simply that these vessels 'shall be respected and cannot be captured'. In this way we state concretely and precisely the two principal consequences understood to flow from the abstract idea of neutrality. These ships must not be attacked. Their character as hospital ships is to protect them from being made the object of measures employed against ships of war, just as ambulances and military hospitals are respected by belligerents under Article 1 of the Convention of 1864. The respect thus assured hospital ships does not preclude, as we shall show later in speaking of Article 4, such precautionary measures as may be necessary.

Again, military hospital ships are not to be subjected to the law of prize that naturally applies to all ships of the enemy. Here we have in the higher interests of humanity concession to the belligerents a renunciation of an incontestable right.

What has been said has to do only with the relations between belligerents. In their relations a special status is created for military hospital ships, and they are not treated as hostile ships of war. But it has seemed necessary to extend the same principle to the relations between these vessels and neutral ports, for otherwise the authorities of those ports might class the hospital ships with the naval vessels of the belligerent to which they belong, and so place their stay, revictualling, and departure under the same strict rules as are imposed upon men-of-war. This would not be reasonable. We must have a precise

rule both to avoid any difficulty between hospital ships and neutral port authorities as well as any complaint on the part of belligerents. Apart from this, these military hospital ships will naturally be treated like men-of-war, notably with respect to the advantage of exterritoriality. The status of military hospital ships might therefore be regulated as follows:

> Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.
>
> These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port. (Article 1.)

Hospital Ships of Belligerents, other than Government Vessels

The thirteenth additional article of 1868 deals with hospital ships that are equipped at the expense of relief societies. We preserve the provision as regards them with a few modifications. The societies meant are those officially recognized by each belligerent; the expression used in Article 13 is too vague and at the same time ambiguous. The word 'neutral', used therein to define the status of these vessels, is avoided for the reasons given in connexion with the preceding article.

Finally, the same notification from belligerent to belligerent is prescribed as for military hospital ships, and for the same reason.

The provision of Article 13 has been supplemented in a useful way by granting to boats which individuals may wish to devote to the hospital service the same immunity from the moment they present the same guaranties. This may be a valuable resource, for in several countries owners of pleasure yachts have expressed their intention of devoting them to the hospital service in time of war.

> Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.
>
> These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure. (Article 2.)

Neutral Hospital Ships

The future will tell whether neutral relief work will take place in naval wars and if so to what extent. We confine ourselves to saying that it is proper under conditions that appear to carry satisfactory guaranties. Such relief vessels must be furnished by their Government with an official commission which shall only be granted upon knowledge of the exclusively hospital character of the vessels, and their names must be made known to the belligerent Powers.

There was some thought of requiring neutral hospital ships to place themselves under the direct authority of one or other of the belligerents, but careful study has convinced us that this would lead to serious difficulties. What flag would these ships fly? Would it not be somewhat inconsistent with the concept of neutrality for a ship with an official

commission to be incorporated in the navy of one of the belligerents? It seemed to us sufficient to have these vessels, which are primarily under the control of the Government from which they have received their commissions, subjected to the authority of the belligerents to the extent provided in Article 4 below.

> Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to which they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed. (Article 3.)

Rules common to Hospital Ships

The immunity granted to the ships just spoken of is not based on their own interests but on the interests of the victims of war to whom they purpose carrying relief; and these interests, however worthy of respect, must not cause us to lose sight of the purpose of warfare. This twofold idea explains two series of provisions.

In the first place the humanitarian purpose must not be entirely selfish. The ships in question should offer their assistance to the victims of war without distinction as to nationality. This does not apply alone to neutral ships which, for example, give charitable aid to both parties; it applies with equal force to the vessels of the belligerents. In this way the immunity which is granted them finds its justification. Each belligerent yields up the right of capturing vessels of this description belonging to its adversary, and this renunciation is prompted both by a charitable motive and by a well-understood self-interest, since when an opportunity arises these vessels will render service to their own sailors as well as to those of the enemy.

It must be perfectly understood that these vessels are not to serve any other purpose, that they cannot under any pretext be directly or indirectly employed to further any military operation: as gathering information, carrying dispatches, or transporting troops, arms, or munitions. The contracting Governments in signing the proposed convention engage their honour in this sense. It would be perfidy to disregard it.

While holding scrupulously to their charitable rôle, hospital ships must in no way hamper the movements of the belligerents. The latter can demand, accept, or refuse their help. They may order them to move off and in so doing they may determine in what direction they shall go. In the latter case it may sometimes seem necessary to put a commissioner on board to ensure complete execution of the orders given. Finally, in particularly serious circumstances the rights of the belligerents may go to the length of detaining hospital ships; as for instance when necessary to preserve absolute secrecy of operations.

In order to obviate disputes respecting the existence or the meaning of an order it is desirable that the belligerent should record the order on the log of the hospital ship. This, however, may not always be possible; the condition of the sea or extreme urgency may preclude this formality; and so its performance ought not to be absolutely requisite. The hospital ship would not be permitted to invoke the absence of such a record from its log in order to justify it in disregarding the orders received, if these orders could be proved in another way.

It has sometimes been proposed to fix upon special signals for ships asking for relief and for hospital ships offering it. The Commission believes that no special provision

is necessary on this point, that the 'international signal code' as adopted by all navies is sufficient for the end in view.

Finally, it goes without saying that the belligerents should have the right to control and search all hospital ships without exception. They must be able to convince themselves that no abuse is committed and that these ships are in no way diverted from their charitable commission. The right of search is here the necessary counterpart of their immunity and it should not be surprising to see it applied even to Government vessels. These vessels would be searched and captured if left under the *régime* of the common law; search therefore does not injure their situation; it is merely a condition of the more favourable status granted them.

It is proper to observe that searching hospital ships is important not only to see that these vessels do not depart from their rôle, but also to ascertain the condition of the wounded, sick, or shipwrecked who may be on board, as will be hereafter explained in connexion with Article 9.

The provisions here reproduced are almost textually borrowed from paragraphs 4, 5, 6, and 7 of the thirteenth additional article; we have merely extended them to all hospital ships without distinction inasmuch as we grant immunities to all ships.

> The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.
>
> The Governments undertake not to use these ships for any military purpose.
>
> These ships must in nowise hamper the movements of the combatants.
>
> During and after an engagement they will act at their own risk and peril.
>
> The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.
>
> As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them. (Article 4.)

Distinctive Signs of Hospital Ships

Hospital ships ought to make their character known in an unmistakable manner; they have the greatest interest in so doing. We have taken the provisions of paragraph 3 of the 12th additional article and paragraph 3 of Article 13, slightly modifying the wording which is no longer suitable for vessels of the present day.

All vessels devoted exclusively to hospital service are to have a band of green or red of the breadth indicated. As this might be impossible for their boats as well as for yachts or small craft which may be used for hospital work, these shall be similarly banded in such proportions as their dimensions permit.

These vessels shall make themselves known by hoisting their own flag together with the white flag with the red cross provided by the Geneva Convention. The rule which is laid down for us by that Convention applies to all hospital ships whether enemy or neutral. The difficulty raised in the case of the latter is done away, as is explained above in connexion with Article 3.

> Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.
>
> The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above-mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention. (Article 5.)

Neutral Merchant Vessels

We have to do here with neutral vessels that happen for the time being to be transporting shipwrecked, wounded, or sick, whether they have been specially chartered to do so or have chanced to be in a position to receive these victims of warfare. Strictly under the law, such vessels carrying the wounded, sick, or shipwrecked of one belligerent could, on meeting a war-ship of the other belligerent, be considered fair prize for helping the Power whose nationals they were carrying. But every one is agreed that this harsh consequence should be prevented, and that these vessels should not suffer punishment for their charitable aid, but should be left their freedom. Here we see emphasized the advantage of avoiding the term 'neutrality' in describing the immunity from capture granted to certain ships; for otherwise we should have to use a very strange form of speech in declaring that the 'neutral' ships of which we are speaking are 'neutralized'.

On the other hand, these vessels cannot rely on the charitable co-operation they extend to escape the consequences of unneutral service. Such a case would be presented if they carried contraband of war, or if they violated a blockade. They would be liable to the usual consequence of such acts.

In brief, a neutral ship does not alter its status as a neutral one way or another by carrying wounded, sick, or shipwrecked. Probably this is what was meant by the second paragraph of Additional Article 10, but the phraseology employed was not clear, and, as we know, the British Government sought an explanation. The provision which we now submit is in harmony with juridical principles and with the interpretation agreed upon between the British and French Governments in 1869.[1]

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed. (Article 6.)

It will be noticed that we are not proposing any article covering the case where a merchant vessel of one of the belligerents is carrying sick or wounded. In the absence of such a provision the common law prevails and the vessel is, consequently, exposed to capture. This seems logical and correct in principle. Paragraph one of the tenth additional article allows the ship, if charged *exclusively* with removal of sick and wounded, to be 'protected by neutrality'; it would not be so where there were passengers and goods besides the sick or wounded. We have not deemed this a proper distinction.

Similarly, the Commission does not propose for adoption any text corresponding to the 6th additional article, as the case provided for therein seemed included in those already dealt with and accordingly to require no special mention. That article deals with boats which at their own risk and peril, during and after an engagement, pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship. If these boats belong to the neutral or hospital ship, they have the same character as their ship; they cannot be captured under the rules already laid

[1] Letter of the Earl of Clarendon of January 21, 1869, and reply of Prince de la Tour d'Auvergne of the following February 20th.

down. If, on the other hand, they belong to a war-ship or merchantman of one of the belligerents, they may be captured by the other belligerent. No special circumstance appears to exist in their case to remove them from the application of the principles already stated, which appear to us to cover all probable cases. We have thus dealt with the sixth point of Count Mouravieff's circular.

THE MEDICAL PERSONNEL

There is no need, theoretically, to concern ourselves with the medical personnel on board a hospital ship; as the ship itself is respected, the personnel it carries will not be disturbed in the discharge of duty. But the case will be different with a war-vessel that falls into the power of the enemy and has on board a medical staff; we may also imagine an enemy merchantman carrying sick and wounded with physicians and nurses to care for them. It would be well to decide, by analogy with land warfare, that whenever a ship is captured, the medical personnel thereon shall be *inviolable*, or in other words, shall not be made prisoners of war. The terms 'neutral' and 'neutrality' should be eschewed in speaking of persons as well as of ships.

The personnel should continue to perform their functions so far as necessary. Possibly the victor may not have at his disposal a sufficient number of physicians and nurses to take care of the sick who have fallen into his power.

It is well to lay down the principle that the medical personnel in the hands of the enemy are not prisoners of war, but not to say just when they will have the right to leave. This point must be left to the discretion of the commander-in-chief, as circumstances vary and do not well lend themselves to precise regulation. The commander, of course, must be imbued with the knowledge that he has no right to detain them arbitrarily, since they are not prisoners of war.

Lastly, we must ensure that this personnel be paid for the time during which they are detained with the enemy.

We may have some hesitation as to the amount of this pay. Shall it be what the physicians who are detained had in their own army, or what physicians of the same grade in the enemy's army receive? The stricter view is that it should be only the lower figure. It has, however, seemed simpler and fairer to allow the physicians the enjoyment of their salaries intact, without entering into details about salaries prevailing with the belligerent in whose hands the physicians are.

The text proposed below is taken from the seventh and eighth additional articles, which have been changed in but a few points.

> The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.
>
> This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.
>
> The belligerents must guarantee to the said staff when it has fallen into their hands the enjoyment of their salaries intact. (Article 7.)

WOUNDED, SICK, OR SHIPWRECKED

The general fundamental principle of the Geneva Convention, which is that there exists an obligation to give succour to the victims of military operations, is one that should be applied alike to war on land and war on sea. This idea has been given application

in connexion with hospital ships (see Article 4, paragraph 1). It also finds expression in the first paragraph of Additional Article 11 (our Article 8).

> Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors. (Article 8.)

In the provisions submitted to the Conference by the Commission, we have spoken of wounded, sick, and shipwrecked, not of victims of maritime warfare. The latter expression, although generally accurate, would not always be so, and therefore should not appear. The rules set forth are to be applied from the moment that there are wounded and sick on board sea-going vessels, it being immaterial where the wound was given or the sickness contracted, whether on land or at sea. Consequently, if a vessel's duty is to carry by sea the wounded or sick of land forces, this vessel and these sick and wounded come under the provisions of our project. On the other hand, it is clear that if sick or wounded sailors are disembarked and placed in an ambulance or a hospital, the Geneva Convention then applies to them in all respects.

As this observation seems to us to respond fully to the remarks made in the subcommission on this point, we think it unnecessary to insert any provision dealing especially with it.

The status to be given the wounded, sick, and shipwrecked has given rise to considerable controversy and even to the somewhat confused rules of the additional articles. See Article 6, paragraph 3; Article 10, paragraph 1; Article 11, paragraph 2; and Article 13, paragraph 8. It seemed to the Commission that the difficulty arose mainly out of the fact that the very simple general principle to be applied to the different cases had been lost sight of. This principle is as follows: a belligerent has in his power hostile combatants, and these combatants are his prisoners. It matters little that they are wounded, sick, or shipwrecked, or that they have been taken on board a vessel of any particular kind. These circumstances do not affect their legal status. This is the governing principle, and its application is not always consistent with the articles of 1868. A belligerent's hospital ship takes on board the sick, wounded, or shipwrecked of its own nationality and carries them to a port of its own country; why should not these be as unrestrained as those who are picked up by an ambulance? The last paragraph of the 13th additional article says, however, that the wounded and shipwrecked taken on board hospital ships cannot serve again during the war.

If we suppose that the same hospital ship, with sick, wounded, or shipwrecked of its own nationality on board, meets a cruiser of the enemy, why would not the latter be justified in considering as prisoners of war the combatants thus coming into its power? There are some among the combatants, such as the sick and wounded, who have a right to special treatment, and towards whom the captor has certain duties; they are none the less all prisoners of war. The additional articles admit this to the extent of making such combatants incapable of further service in the war (Article 10, paragraph 1, and Article 13, towards the end). But this provision does not offer a sufficient guaranty.

The cruiser therefore remains free to act according to circumstances; it may keep the prisoners, or send them to a port of its own country, or to a neutral port, or, in case of need, when there is no other port near, to one of the enemy's ports. It will also take the last-mentioned course when there are only sick or wounded whose condition is serious. It will not be interested in burdening itself or its own country with the sick and wounded

of the enemy. It will therefore generally be the case that hospital ships or others having sick and wounded will not be diverted from their destination. Both humanity and the interest of the belligerent will enjoin this course. But the right of the belligerent cannot be ignored. The wounded or sick who are thus returned to their country cannot serve during the continuance of the war. It is unnecessary to add that if they should be exchanged their status as prisoners of war at liberty on parole would cease, and they would resume their freedom of action.

> The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts. (Article 9.)

The last provision remaining to be spoken of has no corresponding one in the additional articles. It deals with the case of the shipwrecked, wounded, or sick who are landed in a neutral port. This case must be provided for, both because it will naturally happen quite frequently and may, in the absence of a precise rule, give rise to difficulties. Of course a neutral Government is not bound to receive within its territory the sick, wounded, or shipwrecked. Can it do so even, without failing in the duties of neutrality? The doubt arises from the fact that in certain cases a belligerent will often court danger in getting rid of the sick and wounded who encumber him and hamper him in his operations; the neutral territory will thus help him to execute his hostile enterprise better. Nevertheless, it has seemed that considerations of humanity ought to prevail here. In most cases the disembarkment of the sick and wounded picked up, for instance, by hospital ships or merchantmen would be purely an act of charity, and if this were not done the suffering of the sick and wounded would be needlessly aggravated by prolonging the passage so as to reach a port of their own nation. It may happen too that the wounded and the sick thus landed will belong to both belligerents. The neutral State which has consented to the disembarkment is obliged to take the necessary measures to the end that his territory may serve the victims of the war only as an asylum and that the individuals thus harboured shall not be able to take part in the hostilities again. This is an important point, especially in the case of the shipwrecked.

Lastly, it is clear that the expenses occasioned by the presence of these sick, wounded, or shipwrecked ought not to be borne eventually by the neutral State. They should be refunded by the State to which the individuals belong.

> The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.
>
> The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong. (Article 10.)

The Commission does not offer any provision corresponding to Additional Article 14. It was agreed without debate that this article should be dropped. Doubtless it may unfortunately happen that the rules laid down, if made obligatory, will not always be obeyed, and that more or less serious abuses will be committed. Such regrettable acts will entail the ordinary penalties of the law of nations; they cannot be prevented by a special provision which would be of a nature to weaken the legal and moral force of the preceding rules.

DECLARATION (IV, 1) FORBIDDING THE LAUNCHING OF PROJECTILES AND EXPLOSIVES FROM BALLOONS[1]

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 (December 11), 1868,

Declare that :

The contracting Powers agree, for a term of five years, to forbid the throwing of projectiles and explosives from balloons or by other new methods of similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

[1] *Procès-verbaux*, pt. i, appendix, p. 29. For the report on this Declaration, see *post*, p. 172, and for the corresponding Declaration of 1907, see *post*, p. 888.

DECLARATION (IV, 2) CONCERNING ASPHYXIATING GASES [1]

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments,

Inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 (December 11), 1868,

Declare that :

The contracting Powers agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents shall be joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

[1] *Procès-verbaux*, pt. 1, appendix, p. 31. For the report on this Declaration, see *post*, p. 172.

DECLARATION (IV, 3) CONCERNING EXPANDING BULLETS[1]

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments,

Inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 (December 11), 1868,

Declare that :

The contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

The present Declaration is only binding on the contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

[1] *Procès-verbaux*, pt. 1, appendix, p. 28.

Report to the Conference from the First Commission on the Declarations and on Limitation of Armed Forces and War Budgets [1]

(Reporter, Mr. van Karnebeek)

It has been the work of the First Commission to examine the first four topics of the circular of his Excellency Count Mouravieff. For the purpose of studying the second, third, and fourth questions, which relate to engines of warfare, two subcommissions were formed, one for military matters, the other for naval; while the first topic of Count Mouravieff, limitation of armaments, was reserved for the full Commission.

I. The labours of these two subcommissions have resulted in bringing out only three points which could secure an affirmative vote by the Commission in favour of international engagements:

1. A prohibition against launching projectiles and explosives from balloons, or by other new methods of similar nature.

This agreement, which is only for a term of five years, was adopted by a unanimous vote.

2. A prohibition of the use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases.

This lacked one vote of unanimity; but six of the affirmative votes were thus cast only on condition of unanimity.

3. A prohibition of the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

The Commission, consequently, proposes to the Conference a Declaration or an agreement carrying an engagement on each of the three points mentioned. It is unanimous in favouring the first. As to the second, the vote taken in the Commission stood seventeen votes in favour [Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan (upon condition of unanimity), Montenegro, Netherlands, Portugal, Roumania, Russia, Serbia, Siam, Switzerland, Turkey, Bulgaria], against two [United States of America and Great Britain]. It supports the third by a vote of sixteen [Germany, Austria-Hungary, Denmark, Spain, France, Italy, Japan, Montenegro, Netherlands, Roumania, Russia, Serbia, Siam, Switzerland, Turkey, Bulgaria], against two [United States of America and Great Britain]. Portugal did not vote.

II. In view of the important bearing of these three topics on budgets, the two subcommissions spent a long time trying to reach some agreement to prevent, if only for a limited time, the introduction of new types and calibres of rifles and cannon; but the more or less detailed propositions discussed all encountered objections, partly based on the impossibility of obtaining before this Conference adjourns instructions sufficiently precise for decisions which would have practical value. Examination of the various proposals advanced has without exception shown that a determination of these questions cannot be had without a previous technical study in most of the countries, made with minuteness and based on tests.

Confronted by this difficulty, the Commission has had to confine itself to proposing to the Conference that it recommend to the Governments represented that they undertake,

[1] *Procès-verbaux*, pt. i, p. 61.

each in its own way, a study of this problem, especially with reference to rifles and naval guns, in order to find, if possible, a solution that would receive unanimous acceptance, and might be the subject of an engagement in a future Conference. Perhaps the debates recorded in the minutes of the two subcommissions [1] may be of use in these studies.

This proposal received the unanimous vote of the Commission.[2]

III. An examination no less conscientious has been given to the possibility of fixing the effective military and naval forces and also the military budgets pertaining to them.

Propositions to that end were submitted by Russia. The first proposed to fix for a term of five years the present number of troops maintained in each mother country, that is to say, colonial troops not being included, and to limit for the same period the military budgets to their totals at the present time.

This proposition was referred to the first subcommission, where it was first examined and discussed in a special technical committee composed of Colonel Gross von Schwarzhoff, Captain Crozier, Lieutenant-Colonel von Khuepach, General Mounier, General Sir John Ardagh, General Zuccari, Colonel Coanda, Colonel Gilinsky, and Colonel Brändström. This committee after a thorough discussion reported that, with the exception of Colonel Gilinsky, they were unanimously of the opinion :

> First, that it would be very difficult to fix, even for a term of five years, the number of effectives without regulating at the same time other factors of national defence ;
>
> Secondly, that it would be quite as difficult to regulate by an international agreement the factors of this defence, as it is organized in every country upon a different principle.

Hence, the committee expressed its regret that it could not advise acceptance of the proposition ; but the majority of its members thought that a more thorough study of the question by the Governments themselves would be desirable.

In view of this report, the Commission, to its great regret, is able only to give explanation of the impossibility of arriving, in this Conference, at a positive and immediate agreement upon the subject of effective forces and military budgets, but it adds that it hopes that the Governments themselves will resume the study of the questions raised in the first topic of the circular of Count Mouravieff.

The belief that from a general point of view it is nevertheless important to place a check upon military armaments and to urge that the solution of this question be given the most serious attention, was manifest in the Commission. Consequently, after it unanimously adopted the proposals of the technical committee, the Commission further adopted, also unanimously, to express this belief, a resolution proposed by the first delegate of France in the following terms :

> The Commission is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Commission accordingly proposes that the Conference, too, adopt this resolution.[3]

IV. The other Russian proposition had reference to naval armaments and suggested acceptance of the principle of fixing the total expenditures for a term of three years, leaving to each Government the liberty of fixing its budget at the point which seems to

[1] Ibid., pt. ii, pp. 42 *et seq.* and 60 *et seq.*

[2] See *ante* No. 3, *ante*, p. 21.

[3] The resolution appears in the Final Act, ibid.

it desirable, but with an engagement that when this budget is fixed and communicated, it cannot be increased during the three-year period.

This proposition, too, met with difficulties in the subcommission charged with its examination. Besides such as would eventually present themselves in connexion with the manner of putting such a project into execution, a serious obstacle was said to exist in countries with parliaments where the legislative assemblies have the right of voting the budgets.

However desirous the Commission may have been to proceed in the way pointed out by the Russian proposition, it was constrained to recognize the fact that it found itself unable to arrive at a solution of this problem, which is one that would require a thorough inquiry on the part of the various Governments if called upon to declare their positions through instructions; and for this the necessary time would be lacking during this Conference.

The Commission has therefore agreed to relegate this question, together with that concerning land forces, to the Governments, in order that the latter, if they deem it advisable, may in their study of these questions take into consideration the proposals which have here been made.

The Commission submits this idea for the approval of the Conference.[1]

[1] See *vœu* No. 4, *ante*, p. 21.

TABLE OF SIGNATURES, RATIFICATIONS, ADHESIONS AND RESERVATIONS TO THE CONVENTIONS AND DECLARATIONS OF THE FIRST PEACE CONFERENCE[1]

Abbreviations
S = signed
Rat. = ratified
Adh = adhered
Res = reservation

	I *Convention for the pacific settlement of international disputes*	II *Convention respecting the laws and customs of war on land*	III *Convention for the adaptation to maritime warfare of the principles of the Geneva Convention*	IV (1) *Declaration forbidding the launching of projectiles and explosives from balloons*	IV (2) *Declaration concerning asphyxiating gases*	IV (3) *Declaration concerning expanding bullets*	*Final Act*
Argentine Republic	....	....	....	....	....	....	....
Adh. June 17, 1907. June 15, 1907, as to Convention I	Adh.	Adh.	Adh.	....	....	....	....
Austria-Hungary	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Belgium	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Bolivia	....	....	....	....	....	....	....
Adh. Feb. 7, 1907; June 15, 1907, as to Convention I.	Adh.	Adh.	Adh.	....	....	....	....
Brazil	....	....	....	....	....	....	....
Adh. Feb. 25, 1907; June 15, 1907, as to Convention I	Adh.	Adh.	Adh.	....	....	....	....
Bulgaria	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Chile	....	....	....	....	....	....	....
Adh. June 19, 1907; June 15, 1907, as to Convention I	Adh.	Adh.	Adh.	....	....	....	....
China	S	....	S	S	S	S	S
Rat. Nov. 21, 1904; Adh. June 12, 1907.		Adh.	Rat.	Rat.	Rat.	Rat.	....
Colombia	..	....	....	....	....	....	....
Adh. Jan. 30, 1907; June 15, 1907, as to Convention I.	Adh.	Adh.	Adh.	....		....	....
Cuba	....	....	....	....		....	....
Adh. June 15, 1907, April 17, 1907, and June 20, 1907, as to Conventions I, II, and III respectively.	Adh.	Adh.	Adh.	....	..	....	....
Denmark	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Dominican Republic	....	....	....	....	....	....	....
Adh. June 15, 1907, April 13, 1907, and June 29, 1907, as to Conventions I, II, and III respectively.	Adh.	Adh.	Adh.	....	....	....	....
Ecuador	....	....	....	....	....	....	....
Adh. July 3, 1907, July 31, 1907, and Aug. 5, 1907, as to Conventions I, II, and III respectively.	Adh.	Adh.	Adh.	....	....	....	....
France	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Germany	S	S	S res.	S	S	S	S
Rat. Sept. 4, 1900	Rat	Rat.	Rat.	Rat.	Rat.	Rat.	....

[1] The above table, taken from *The Hague Conventions and Declarations of 1899 and 1907* (2nd ed., New York, 1915), a publication of the Carnegie Endowment for International Peace, was pronounced correct by the Netherland Government as of October 1, 1915. The table of signatures appearing in the *Procès-verbaux*, pt. i, appendix, pp. 33–34, was necessarily limited to those placed prior to December 31, 1899.

TABLE OF SIGNATURES, ETC. (*continued*)

ABBREVIATIONS S = signed Rat = ratified Adh = adhered Res = reservation	I *Convention for the pacific settlement of international disputes*	II *Convention respecting the laws and customs of war on land*	III *Convention for the adaptation to maritime warfare of the principles of the Geneva Convention*	IV (1) *Declaration forbidding the launching of projectiles and explosives from balloons*	IV (2) *Declaration concerning asphyxiating gases*	IV (3) *Declaration concerning expanding bullets*	*Final Act*
Great Britain	S	S	S res	....	....	....	S
Rat. Sept 4, 1900; Adh. Aug. 30, 1907	Rat	Rat.	Rat	....	Adh.	Adh.	....
Greece	S	S	S	S	S	S	S
Rat. Apr 4, 1901	Rat	Rat	Rat.	Rat	Rat	Rat	....
Guatemala	....	....	....	....	....	....	....
Adh. June 15, 1907, May 2, 1906, and Apr. 6, 1903, as to Conventions I, II, and III respectively.	Adh	Adh.	Adh	....	....	....	....
Haiti	....	....	....	....	....	....	....
Adh. June 15, 1907, May 24, 1907, and June 20, 1907, as to Conventions I, II, and III respectively	Adh.	Adh.	Adh.	....	....	....	....
Honduras	....	....	....	....	....	....	....
Adh. Aug. 21, 1906	....	Adh.	Adh.	....	....	....	....
Italy	S	S	S	S	S	S	S
Rat Sept 4, 1900	Rat	Rat.	Rat.	Rat.	Rat.	Rat.	....
Japan	S	S	S	S	S	S	S
Rat. Oct 6, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Korea	....	....	....	....	....	....	....
Adh. Mar. 17, 1903; Feb 7, 1903, as to Convention III	....	Adh	Adh.	....	....	....	....
Luxemburg	S	S	S	S	S	S	S
Rat. July 12, 1901	Rat.	Rat.	Rat.	Rat.	Rat	Rat	....
Mexico	S	S	S	S	S	S	S
Rat. Apr 17, 1901	Rat.	Rat	Rat.	Rat	Rat.	Rat.	....
Montenegro	S	S	S	S	S	S	S
Rat. Oct 10, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Netherlands	S	S	S	S	S	S	S
Rat. Sept 4, 1900	Rat.	Rat.	Rat.	Rat	Rat.	Rat	....
Nicaragua	....	....	....	....	....	....	....
Adh. June 15, 1907, as to Convention I; May 17, 1907 as to Conventions II and III. Oct 11, 1907, as to Declarations 2 and 3	Adh.	Adh.	Adh	....	Adh.	Adh	..
Norway[1]	S	S	S	S	S	S	S
Rat. Sept. 4, 1900; July 5, 1907, as to Convention II	Rat.	Rat.	Rat	Rat.	Rat	Rat	....
Panama	....	....	....	....	....	....	....
Adh. June 15, 1907 July 20, 1907, and July 22, 1907, as to Conventions I, II, and III respectively.	Adh.	Adh.	Adh	....	....	....	....
Paraguay	....	....	....	....	....	....	....
Adh. June 15, 1907; April 12, 1907, and June 20, 1907, as to Conventions I, II, and III respectively.	Adh.	Adh.	Adh.	....	....	....	....

[1] See footnote on p. 177.

TABLE OF SIGNATURES, ETC. (*continued*)

ABBREVIATIONS S = signed Rat = ratified Adh = adhered Res = reservation	I *Convention for the pacific settlement of international disputes*	II *Convention respecting the laws and customs of war on land*	III *Convention for the adaptation to maritime warfare of the principles of the Geneva Convention*	IV (1) *Declaration forbidding the launching of projectiles and explosives from balloons*	IV (2) *Declaration concerning asphyxiating gases*	IV (3) *Declaration concerning expanding bullets*	*Final Act*
Persia	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Peru	....	....	....	....	....	....	....
Adh. Nov. 24, 1903; June 15, 1907, as to Convention I	Adh.	Adh.	Adh.	....	....	....	....
Portugal	S	S	S	S	S	....	S
Rat. Sept. 4, 1900; Adh. Aug. 20, 1907	Rat.	Rat.	Rat.	Rat.	Rat.	Adh.	....
Roumania	S res.	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat. res.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Russia	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Salvador	....	....	....	....	....	....	....
Adh. June 20, 1902; June 20, 1907, as to Convention I	Adh.	Adh.	Adh.	....	....	....	....
Serbia	S res.	S	S	S	S	S	S
Rat. May 11, 1901	Rat. res.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Siam	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat	....
Spain	S	S	S	S	S	S	S
Rat. Sept. 4, 1900	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Sweden[1]	S	S	S	S	S	S	S
Rat. Sept. 4, 1900; July 5, 1907, as to Convention II	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	....
Switzerland	S	....	S	S	S	S	S
Rat. Dec. 29, 1900, Adh. June 20, 1907.	Rat.	Adh.	Rat.	Rat.	Rat.	Rat.	....
Turkey	S res.	S	S res.	S	S	S	S
Rat. June 12, 1907	Rat.	Rat.	Rat.	....	Rat.	Rat.	....
United States	S res.	S	S res.	S	....	....	S
Rat. Sept. 4, 1900; Apr. 9, 1902, as to Convention II	Rat. res.	Rat.	Rat.	Rat.	....	....	....
Uruguay	....	....	....	....	....	....	....
Adh. June 21, 1900; June 17, 1907, as to Convention I	Adh.	Adh.	Adh.	....	....	....	....
Venezuela	....	....	....	....	....	....	....
Adh. Mar. 1, 1907; June 15, 1907, as to Convention I.	Adh.	Adh.	Adh.	....	....	....	....

[1] Sweden and Norway constituted a Union until 1905. Action taken by them prior to that date was taken as a single Power.

RESERVATIONS AT SIGNATURE [1]

CONVENTION I

Roumania. Under the reservations formulated with respect to Articles 16, 17, and 19 of the present Convention (15, 16, and 18 of the project presented by the committee on examination), and recorded in the *procès-verbal* of the sitting of the Third Commission of July 20, 1899.

Extract from the procès-verbal :

The Royal Government of Roumania being completely in favour of the principle of *facultative* arbitration, of which it appreciates the great importance in international relations, nevertheless does not intend to undertake, by Article 15, an engagement to accept arbitration in every case there provided for, and it believes it ought to form express reservations in that respect.

It can not therefore vote for this article, except under that reservation.

The Royal Government of Roumania declares that it can not adhere to Article 16 except with the express reservation, entered in the *procès-verbal*, that it has decided not to accept, in any case, an international arbitration for disagreements or disputes previous to the conclusion of the present Convention.

The Royal Government of Roumania declares that in adhering to Article 18 of the Convention, it makes no engagement in regard in obligatory arbitration.[2]

Serbia. Under the reservations recorded in the *procès-verbal* of the Third Commission of July 20, 1899.

Extract from the procès-verbal :

In the name of the Royal Government of Serbia, we have the honour to declare that our adoption of the principle of good offices and mediation does not imply a recognition of the right of third States to use these means except with the extreme reserve which proceedings of this delicate nature require.

We do not admit good offices and mediation except on condition that their character of purely friendly counsel is maintained fully and completely, and we never could accept them in forms and circumstances such as to impress upon them the character of intervention.[3]

Turkey. Under reservation of the declaration made in the plenary sitting of the Conference of July 25, 1899.

Extract from the procès-verbal :

The Ottoman delegation, considering that the work of this Conference has been a work of high loyalty and humanity, destined solely to assure general peace by safeguarding the interests and the rights of each one, declares, in the name of its Government, that it adheres to the project just adopted, on the following conditions :

1. It is formally understood that recourse to good offices and mediation, to commissions of inquiry and arbitration is purely facultative and could not in any case assume an obligatory character or degenerate into intervention ;

2. The Imperial Government itself will be the judge of the cases where its interests would permit it to admit these methods without its abstention or refusal to have recourse to them being considered by the signatory States as an unfriendly act.

It goes without saying that in no case could the means in question be applied to questions concerning interior regulation.[4]

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[1] *Procès-verbaux*, pt. i, appendix, pp. 33, 34. All these reservations, except that of Turkey, were maintained at ratification.

[2] Declaration of Mr. Beldiman. Ibid., pt. iv, pp. 48, 49.

[3] Declaration of Mr. Miyatovitch. Ibid., p. 47.

[4] Declaration of Turkhan Pasha. Ibid., pt. i, p. 70. This reservation does not appear in the instrument of ratification.

United States. Under reservation of the declaration made at the plenary sitting of the Conference on July 25, 1899.

Extract from the procès-verbal :

The delegation of the United States of America on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration :

Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State ; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.[1]

CONVENTION III

Germany, Great Britain, Turkey and United States signed with reservation of Article 10.[2]

[1] Ibid., p. 69. Compare the reservation of the United States to the 1907 Convention I, *post*, p. 903.

[2] It was subsequently agreed, on an understanding reached by the Government of the Netherlands with the signatory Powers, to exclude Article 10 from all ratifications of the Convention. *U.S. Statutes at Large*, vol. 32, p. 1837.

OFFICIAL CORRESPONDENCE LEADING UP TO THE SECOND PEACE CONFERENCE

The Secretary of State to the representatives of the United States accredited to the Governments signatories to the Acts of the Hague Conference, 1899[1]

Department of State,
Washington, *October* 21, 1904.

SIR: The Peace Conference which assembled at The Hague on May 18, 1899, marked an epoch in the history of nations. Called by His Majesty the Emperor of Russia to discuss the problems of the maintenance of general peace, the regulation of the operations of war, and the lessening of the burdens which preparedness for eventual war entails upon modern peoples, its labours resulted in the acceptance by the signatory Powers of Conventions for the peaceful adjustment of international difficulties by arbitration, and for certain humane amendments to the laws and customs of war by land and sea. A great work was thus accomplished by the Conference, while other phases of the general subject were left to discussion by another conference in the near future, such as questions affecting the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bombardment of ports, towns, and villages by a naval force.

Among the movements which prepared the minds of Governments for an accord in the direction of assured peace among men, a high place may fittingly be given to that set on foot by the Interparliamentary Union. From its origin in the suggestions of a member of the British House of Commons, in 1888, it developed until its membership included large numbers of delegates from the parliaments of the principal nations, pledged to exert their influence toward the conclusion of treaties of arbitration between nations and toward the accomplishment of peace. Its annual conferences have notably advanced the high purposes it sought to realize. Not only have many international treaties of arbitration been concluded, but, in the conference held in Holland in 1894, the memorable declaration in favour of a Permanent Court of Arbitration was a forerunner of the most important achievement of the Peace Conference of The Hague in 1899.

The annual conference of the Interparliamentary Union was held this year at St. Louis, in appropriate connexion with the world's fair. Its deliberations were marked by the same noble devotion to the cause of peace and to the welfare of humanity which had inspired its former meetings. By unanimous vote of delegates, active or retired members of the American Congress, and of every parliament in Europe with two exceptions, the following resolution was adopted:

> Whereas, enlightened public opinion and modern civilization alike demand that differences between nations should be adjudicated and settled in the same manner as disputes between individuals are adjudicated, namely, by the arbitrament of

[1] *Foreign Relations of the United States*, 1904, p. 10.

courts in accordance with recognized principles of law, this conference requests the several Governments of the world to send delegates to an international conference to be held at a time and place to be agreed upon by them for the purpose of considering:

1. The questions for the consideration of which the Conference at The Hague expressed a wish that a future Conference be called.

2. The negotiation of arbitration treaties between the nations represented at the Conference to be convened.

3. The advisability of establishing an international congress to convene periodically for the discussion of international questions.

And this Conference respectfully and cordially requests the President of the United States to invite all the nations to send representatives to such a Conference.

On September 24, ultimo, these resolutions were presented to the President by a numerous deputation of the Interparliamentary Union. The President accepted the charge offered to him, feeling it to be most appropriate that the Executive of the nation which had welcomed the conference to its hospitality should give voice to its impressive utterances in a cause which the American Government and people hold dear. He announced that he would at an early day invite the other nations, parties to the Hague Conventions, to reassemble with a view to pushing forward toward completion the work already begun at The Hague by considering the questions which the first Conference had left unsettled with the express provision that there should be a second conference.

In accepting this trust the President was not unmindful of the fact, so vividly brought home to all the world, that a great war is now in progress. He recalled the circumstance that at the time when, on August 24, 1898, His Majesty the Emperor of Russia sent forth his invitation to the nations to meet in the interests of peace the United States and Spain had merely halted in their struggle to devise terms of peace. While at the present moment no armistice between the parties now contending is in sight, the fact of an existing war is no reason why the nations should relax the efforts they have so successfully made hitherto toward the adoption of rules of conduct which may make more remote the chances of future wars between them. In 1899 the Conference of The Hague dealt solely with the larger general problems which confront all nations, and assumed no function of intervention or suggestion in the settlement of the terms of peace between the United States and Spain. It might be the same with a reassembled Conference at the present time. Its efforts would naturally lie in the direction of further codification of the universal ideas of right and justice which we call international law; its mission would be to give them future effect.

The President directs that you will bring the foregoing considerations to the attention of the Minister for Foreign Affairs of the Government to which you are accredited and, in discreet conference with him, ascertain to what extent that Government is disposed to act in the matter.

Should his Excellency invite suggestions as to the character of the questions to be brought before the proposed Second Peace Conference, you may say to him that, at this time, it would seem premature to couple the tentative invitation thus extended with a categorical programme of subjects of discussion. It is only by comparison of views that a general accord can be reached as to the matters to be considered by the new conference. It is desirable that in the formulation of a programme the distinction should be kept clear between the matters which belong to the province of international law and those which are conventional as between individual Governments. The Final Act of

the Hague Conference, dated July 29, 1899, kept this distinction clearly in sight. Among the broader general questions affecting the right and justice of the relation of sovereign States which were then relegated to a future conference were the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bombardment of ports, towns, and villages by a naval force. The other matters mentioned in the Final Act take the form of suggestions for consideration by interested Governments.

The three points mentioned cover a large field. The first, especially, touching the rights and duties of neutrals, is of universal importance. Its rightful disposition affects the interests and well-being of all the world. The neutral is something more than an onlooker. His acts of omission or commission may have an influence—indirect, but tangible—on a war actually in progress; whilst on the other hand he may suffer from the exigencies of the belligerents. It is this phase of warfare which deeply concerns the world at large. Efforts have been made, time and again, to formulate rules of action applicable to its more material aspects, as in the declarations of Paris. As recently as April 28 of this year the Congress of the United States adopted a resolution reading thus:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That it is the sense of the Congress of the United States that it is desirable, in the interest of uniformity of action by the maritime States of the world in time of war, that the President endeavour to bring about an understanding among the principal maritime Powers with a view of incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents.
>
> Approved, April 28, 1904.

Other matters closely affecting the rights of neutrals are the distinction to be made between absolute and conditional contraband of war, and the inviolability of the official and private correspondence of neutrals.

As for the duties of neutrals toward the belligerent, the field is scarcely less broad. One aspect deserves mention, from the prominence it has acquired during recent times, namely, the treatment due to refugee belligerent ships in neutral ports.

It may also be desirable to consider and adopt a procedure by which States non-signatory to the original acts of the Hague Conference may become adhering parties.

You will explain to his Excellency the Minister of Foreign Affairs that the present overture for a second conference to complete the postponed work of the First Conference is not designed to supersede other calls for the consideration of special topics, such as the proposition of the Government of the Netherlands, recently issued, to assemble for the purpose of amending the provisions of the existing Hague Convention with respect to hospital ships. Like all tentative conventions, that one is open to change in the light of practical experience, and the fullest deliberation is desirable to that end.

Finally, you will state the President's desire and hope that the undying memories which cling around The Hague as the cradle of the beneficent work which had its beginning in 1899 may be strengthened by holding the Second Peace Conference in that historic city.

I am, sir, &c.,
JOHN HAY.

The Secretary of State to the representatives of the United States accredited to the Governments signatories to the Acts of the Hague Conference, 1899[1]

Department of State,
Washington, *Decem.ber* 16, 1904.

Sir: By the circular instruction dated October 21, 1904, the representatives of the United States accredited to the several Governments which took part in the Peace Conference held at The Hague in 1899, and which joined in signing the acts thereof, were instructed to bring to the notice of those governments certain resolutions adopted by the Interparliamentary Union at its annual conference held at St. Louis in September last, advocating the assembling of a Second Peace Conference to continue the work of the First, and were directed to ascertain to what extent those Governments were disposed to act in the matter.

The replies so far received indicate that the proposition has been received with general favour. No dissent has found expression. The Governments of Austria-Hungary, Denmark, France, Germany, Great Britain, Italy, Luxemburg, Mexico, the Netherlands, Portugal, Roumania, Spain, Sweden and Norway, and Switzerland exhibit sympathy with the purposes of the proposal, and generally accept it in principle, with a reservation in most cases of future consideration of the date of the Conference and the programme of subjects for discussion. The replies of Japan and Russia conveyed in like terms a friendly recognition of the spirit and purposes of the invitation, but on the part of Russia the reply was accompanied by the statement that in the existing condition of things in the Far East it would not be practicable for the Imperial Government, at this moment, to take part in such a Conference. While this reply, tending as it does to cause some postponement of the proposed Second Conference, is deeply regretted, the weight of the motive which induces it is recognized by this Government and, probably, by others. Japan made the reservation only that no action should be taken by the Conference relative to the present war.

Although the prospect of an early convocation of an august assembly of representatives of the nations in the interest of peace and harmony among them is deferred for the time being, it may be regarded as assured so soon as the interested Powers are in a position to agree upon a date and place of meeting and to join in the formulation of a general plan for discussion. The President is much gratified at the cordial reception of his overtures. He feels that in eliciting the common sentiment of the various Governments in favour of the principle involved and of the objects sought to be attained, a notable step has been taken toward eventual success.

Pending a definite agreement for meeting when circumstances shall permit, it seems desirable that a comparison of views should be had among the participants as to the scope and matter of the subjects to be brought before the Second Conference. The invitation put forth by the Government of the United States did not attempt to do more than indicate the general topics which the Final Act of the First Conference of The Hague relegated, as unfinished matters, to consideration by a future conference—adverting, in connexion with the important subject of the inviolability of private property in naval warfare, to the like views expressed by the Congress of the United States in its resolution

[1] *Foreign Relations of the United States*, 1904, p. 13.

adopted April 28, 1904, with the added suggestion that it may be desirable to consider and adopt a procedure by which States non-signatory to the original acts of the Hague Conference may become adhering parties. In the present state of the project, this Government is still indisposed to formulate a programme. In view of the virtual certainty that the President's suggestion of The Hague as the place of meeting of a Second Peace Conference will be accepted by all the interested Powers, and in view also of the fact that an organized representation of the signatories of the Acts of 1899 now exists at that capital, this Government feels that it should not assume the initiative in drawing up a programme, nor preside over the deliberations of the signatories in that regard. It seems to the President that the high task he undertook in seeking to bring about an agreement of the Powers to meet in a Second Peace Conference is virtually accomplished so far as it is appropriate for him to act, and that, with the general acceptance of his invitation in principle, the future conduct of the affair may fitly follow its normal channels. To this end it is suggested that the further and necessary interchange of views between the signatories of the Acts of 1899 be effected through the International Bureau under the control of the Permanent Administrative Council of The Hague. It is believed that in this way, by utilizing the central representative agency established and maintained by the Powers themselves, an orderly treatment of the preliminary consultations may be ensured and the way left clear for the eventual action of the Government of the Netherlands in calling a renewed Conference to assemble at The Hague, should that course be adopted.

You will bring this communication to the knowledge of the Minister for Foreign Affairs and invite consideration of the suggestions herein made.

I am, &c.
JOHN HAY.

Memorandum from the Russian Embassy handed to the President of the United States, September 13, 1905[1]

In view of the termination, with the cordial co-operation of the President of the United States, of the war and of the conclusion of peace between Russia and Japan, His Majesty the Emperor, as initiator of the International Peace Conference of 1899, holds that a favourable moment has now come for the further development and for the systematizing of the labours of that international Conference. With this end in view and being assured in advance of the sympathy of President Roosevelt, who has already, last year, pronounced himself in favour of such a project, His Majesty desires to approach him with a proposal to the effect that the Government of the United States take part in a new international conference which could be called together at The Hague as soon as favourable replies could be secured from all the other States to which a similar proposal will be made. As the course of the late war has given rise to a number of questions which are of the greatest importance and closely related to the Acts of the First Conference, the plenipotentiaries of Russia at the future meeting will lay before the conference a detailed programme which could serve as a starting-point for its deliberations.

[1] *Foreign Relations of the United States*, 1905, p. 828.

The Secretary of State to the Russian Ambassador[1]

Department of State,
Washington, *October* 12, 1905.

DEAR MR. AMBASSADOR: Responding to the wish expressed in your personal note of the 5th instant, I have the pleasure to send you herewith a memorandum communicating the reply of the President to the message of His Imperial Majesty the Tsar, which you delivered to the President on the 13th ultimo, relative to the convocation of a Second International Peace Conference at The Hague.

I have taken note of the preliminary inquiry addressed to all the other governments looking to their acquiescence in the calling of such a conference by the formal invitation of His Majesty.

I am, &c.,
ELIHU ROOT.

[INCLOSURE]

MEMORANDUM

Department of State,
Washington, *October* 12, 1905.

On the 13th of last month, at Sagamore Hill, his Excellency the Ambassador of Russia presented to the President a memorandum, being a message from His Majesty the Tsar to the President, to the effect that in view of the termination, with the cordial co-operation of the President, of the war, and of the conclusion of peace between Russia and Japan, His Imperial Majesty, as initiator of the International Peace Conference of 1899, deems the present a favourable moment for further developing and systematizing the labours of that Conference, and that to this end, upon being assured in advance of the sympathy of the President, who last year pronounced himself in favour of such a project, His Majesty desires to approach the President with a proposal to the effect that the Government of the United States take part in a new International Conference, which could be called together at The Hague as soon as favourable replies may be obtained from all the other States to which a similar proposal is to be made.

The Secretary of State, by direction of the President, has the honour to confirm to his Excellency the Ambassador of Russia the assurances which the President had the sincere pleasure to give to his Excellency at the time of the presentation of the memorandum of September 13. The President's circulars to the Powers, parties to the Acts of The Hague Conference, which the late Secretary of State communicated to the several signatory States through the American envoys accredited thereto, dated, respectively, October 21 and December 16 of last year, have demonstrated the President's keen desire that upon a favourable occasion the labours of the First International Peace Conference might be supplemented and completed by an accord to be reached by a Second Conference of the Powers. The suggestion so put forth having been accepted in principle by the signatories, it only remained for the opportune moment to come for the Powers to agree upon the place and time for their renewed assemblage in order to perfect the beneficial agreements of the First Conference.

The President most gladly welcomes the offer of His Imperial Majesty to again take upon himself the initiation of the steps requisite to convene a Second International Peace Conference, as the necessary sequence to the First Conference, brought about through His Majesty's efforts, and in view of the cordial responses to the President's suggestion of October, 1904, he doubts not that the project will meet with complete acceptation and

[1] Ibid., p. 820.

that the result will be to bring the nations of the earth still more closely together in their common endeavour to advance the ends of peace.

As respects the further statement of his Excellency's memorandum of September 13, that, as the late war has given rise to a number of questions which are of the greatest importance and closely related to the acts of the First Conference, the plenipotentiaries of Russia, at the future meeting, will lay before the Conference a detailed programme which could serve as a starting-point for its deliberations, the President finds it in consonance with the indications of his circular of October 21, 1904, touching the questions to come before a Second Conference for discussion, and the importance of completing the work of the First Conference by ample exchange of views and, it is to be hoped, full concord upon the broad questions specifically relegated by the Final Act of The Hague to the consideration of a future Conference.

The Russian Ambassador to the Secretary of State[1]

Imperial Russian Embassy,
Washington, D.C., *April* 3, 1906.

MR. SECRETARY OF STATE: I have just received from my Government order by telegraph to bring the following to the knowledge of the United States Government.

The Imperial [Russian] Government, in agreement with the Dutch Government, proposes to call the Hague Conference during the first half of the month of July of the present year.

Russia at the same time invites the nations which did not sign the Convention relative to the laws of war on land, nor that relative to the adaptation of the Geneva Convention to war at sea, to inform the Royal Government of the Netherlands of their adhesion to these Conventions. With regard to further adhesions to the Convention concerning international arbitration, the Imperial Government is conferring on this subject with the Governments which signed the acts of 1899.

I deem it proper at the same time to enclose herewith a summary of the programme which the Imperial Government proposes to submit to the Conference of The Hague, and I should thank your Excellency to inform me of the response of your Government to this proposition, in order that I may transmit it to St. Petersburg by telegraph.

Please accept, &c.,

ROSEN.

[INCLOSURE]

PROGRAMME

1. Improvements to be made in the provisions of the Convention for the pacific settlement of international disputes as regards the Court of Arbitration and international commissions of inquiry.

2. Additions to the Convention of the laws and usages of land warfare—among others, opening of hostilities, rights of neutrals on land, etc.; Declarations of 1899—renewal of one of them.

3. Preparation of a convention regarding the laws and usages of naval warfare, concerning the special operations of naval warfare, such as the bombardment of ports, cities, and villages by a naval force; placing of torpedoes, etc.; transformation of merchant vessels into war vessels; private property of belligerents at sea; period granted merchant vessels in order to leave neutral or hostile ports after the beginning of hostilities; rights

[1] *Foreign Relations of the United States*, 1906, pt. ii, p. 1626.

and duties of neutrals at sea, among others the question of contraband; rules to which belligerent vessels shall be subjected in neutral ports; destruction by *vis major* of merchant vessels captured as prizes. Into this convention would be inserted provisions relative to land warfare which would be applicable also to naval warfare.

4. Supplements to the Convention for the adaptation to naval warfare of the principles of the Geneva Convention of 1864.

All political questions will be excluded.

The Secretary of State to the Russian Ambassador[1]

Department of State,
Washington, *April* 6, 1906.

EXCELLENCY: I have great pleasure in acknowledging the receipt of your note of the 3rd instant, whereby you acquaint me with the instructions telegraphed to you by your Government to inform the Government of the United States that, in concert with the Dutch Government, it is proposed to convoke the Conference of The Hague during the first half of the month of July of the present year.

The President, to whom I hastened to communicate this information, charges me to express his deep sympathy with the contemplated purpose thus announced by His Imperial Majesty and his gratification at the prospect of the realization of a project in which he has heretofore expressed great interest, and which he trusts will redound to the welfare of all nations by promoting peace among them. It is the President's purpose to appoint plenipotentiaries to represent the United States at the forthcoming Conference.

It behoves me, however, to say that, in the judgement of the President, the date suggested by the Imperial and the Dutch Governments for the assembling of the Conference would be in a high degree embarrassing and inconvenient, not only to the United States, but doubtless also to many other nations of the American hemisphere, owing to the fact that the 21st of July next has long been fixed for the meeting of the Conference of all the American nations at Rio de Janeiro. Furthermore, so early a date as the first half of July does not appear to be conformable to the understanding arrived at in respect to the Red Cross Congress to be held at Geneva in mid-June, which would manifestly not have an opportunity to complete its work in season for consideration and action by the participating Governments before the time proposed for the meeting at The Hague. For these reasons, as well as for other practical considerations in regard to the difficulty that would beset the several Governments taking part in these three important conferences at the same season, both as to their representation thereat and as to the need of preserving a consistent harmony in the discussion of the allied topics which would necessarily come before the three conferences, the President is constrained to say, in all frankness, that so early a date as is proposed for the meeting of the Conference of The Hague appears to be extremely inexpedient; and that he would be obliged to say so in response to the formal joint invitation of the Imperial and Dutch Governments which is foreshadowed in your announcement of their intended proposal. As your note merely intimates the proposal of those two Governments to act in concert in the indicated sense, it is assumed that the present purpose of the Imperial Government is to invite the general acquiescence of the interested Powers in the contemplated proposal in advance of the later communication of the formal

[1] Ibid., p. 1027.

invitation; hence it is proper to acquaint the Imperial Government with the views of the United States in the matter of the date to be agreed upon.

I take note of the further statement that 'Russia at the same time invites the nations which did not sign the Convention relative to the laws of war on land, nor that relative to the adaptation of the Geneva Convention to war at sea, to inform the Royal Government of the Netherlands of their adhesion to these Conventions. With regard to further adhesions to the Convention concerning international arbitration, the Imperial Government is conferring on this subject with the Governments which signed the acts of 1899'.

As respects the latter proposition, the President has already, in the circulars of the Secretary of State dated October 21 and December 16, 1904, advocated the extension of the option of adherence to Powers not represented at the Conference of 1899, and he will welcome the suggested comparison of views looking to the conclusion of an agreement among the contracting Powers in that sense, as contemplated by Article 60 of the First Hague Convention of July 29, 1899.

The United States, being already an adhering party to the Conventions mentioned, would gladly see other nations, not heretofore signatories or adherents, become in like manner parties to the beneficent engagements which were framed by the First Conference of The Hague and to which the approaching Second Conference may rightly be expected to give wider scope and more effective application in the light of recent military developments and in view of the practical needs suggested by experience.

Due note is also taken of the programme of subjects for examination and discussion which the Imperial Government proposes to submit to the Conference, and the Government of the United States reserves consideration thereof, with liberty to advance other proposals of an allied character should its own needs and experience counsel such a course.

Be pleased to accept, &c.,

ELIHU ROOT.

The Russian Ambassador to the Secretary of State[1]

Imperial Embassy of Russia,
Washington, *April* 12, 1906.

MR SECRETARY OF STATE: When it assumed the initiative of calling a Second Peace Conference, the Imperial Government had in view the necessity of further developing the humanitarian principles on which was based the work accomplished by the great international assemblage of 1899.

At the same time, it deemed it expedient to enlarge as much as possible the number of States participating in the labours of the contemplated Conference, and the alacrity with which the call was answered bears witness to the depth and breadth of the present sentiment of solidarity for the application of ideas aiming at the good of all mankind.

The First Conference separated in the firm belief that its labours would subsequently be perfected from the effect of the regular progress of enlightenment among the nations and abreast of the results acquired from experience. Its most important creation, the International Court of Arbitration, is an institution that has already proved its worth and brought together, for the good of all, an areopagus of jurists who command the respect

[1] *Foreign Relations of the United States*, 1906, pt. ii, p. 1629.

of the world. How much good could be accomplished by international commissions of inquiry toward the settlement of disputes between States has also been shown.

There are, however, certain improvements to be made in the Convention relative to the peaceful settlement of international disputes. Following recent arbitrations, the jurists assembled in court have raised certain questions of details which should be acted upon by adding to the said Convention the necessary amplifications. It would seem especially desirable to lay down fixed principles in regard to the use of languages in the proceedings in view of the difficulties that may arise in the future as the cases referred to arbitral jurisdiction multiply. The *modus operandi* of international commissions of inquiry would likewise be open to improvement.

As regards the regulating of the laws and customs of war on land, the provisions established by the First Conference ought also to be completed and defined, so as to remove all misapprehensions.

As for maritime warfare, in regard to which the laws and customs of the several countries differ on certain points, it is necessary to establish fixed rules in keeping with the exigencies of the rights of belligerents and the interests of neutrals.

A convention bearing on these subjects should be framed and would constitute one of the most prominent parts of the tasks devolved upon the forthcoming Conference.

Holding, therefore, that there is at present occasion only to examine questions that demand special attention as being the outcome of the experience of recent years, without touching upon those that might have reference to the limitation of military or naval forces, the Imperial Government proposes for the programme of the contemplated meeting the following main points:

1. Improvements to be made in the provisions of the Convention relative to the peaceful settlement of international disputes as regards the Court of Arbitration and the international commissions of inquiry.

2. Additions to be made to the provisions of the Convention of 1899 relative to the laws and customs of war on land—among others, those concerning the opening of hostilities, the rights of neutrals on land, &c. Declarations of 1899: one of these having expired, question of its being revived.

3. Framing of a convention relative to the laws and customs of maritime warfare, concerning—

The special operations of maritime warfare, such as the bombardment of ports, cities, and villages by a naval force; the laying of torpedoes, &c.;

The transformation of merchant vessels into war-ships;

The private property of belligerents at sea;

The length of time to be granted to merchant ships for their departure from ports of neutrals or of the enemy after the opening of hostilities;

The rights and duties of neutrals at sea, among others, the questions of contraband, the rules applicable to belligerent vessels in neutral ports; destruction, in cases of *vis major*, of neutral merchant vessels captured as prizes;

In the said convention to be drafted, there would be introduced the provisions relative to war on land that would be also applicable to maritime warfare.

4. Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864.

As was the case at the Conference of 1899, it would be well understood that the deliberations of the contemplated meeting should not deal with the political relations of the several States, or the condition of things established by treaties, or in general with questions that did not directly come within the programme adopted by the several cabinets.

The Imperial Government desires distinctly to state that the data of this programme and the eventual acceptance of the several States clearly do not prejudge the opinion that may be delivered in the Conference in regard to the solving of the questions brought up for discussion. It would likewise be for the contemplated meeting to decide as to the order of the questions to be examined and the form to be given to the decisions reached as to whether it should be deemed preferable to include some of them in new conventions or to append them, as additions, to conventions already existing.

In formulating the above-mentioned programme, the Imperial Government bore in mind, as far as possible, the recommendations made by the First Peace Conference, with special regard to the rights and duties of neutrals, the private property of belligerents at sea, the bombardment of ports, cities, &c. It entertains the hope that the Government of the United States will take the whole of the points proposed as the expression of a wish to come nearer that lofty ideal of international justice that is the permanent goal of the whole civilized world.

By order of my Government, I have the honour to acquaint you with the foregoing, and awaiting the reply of the Government of the United States with as little delay as possible, I embrace this opportunity to beg you, Mr. Secretary of State, to accept the assurance of my very high consideration.

ROSEN.

The Russian Ambassador to the Secretary of State[1]

Imperial Embassy of Russia,
Washington, *April* 12, 1906.

MR. SECRETARY OF STATE: Supplementing the note dated April 12, relative to the programme of the Second Peace Conference, I am charged by the Imperial Government to submit to the favourable attention of the Government of the United States the following considerations:

The enclosed list shows that among the States invited to participate in the labours of the contemplated meeting there are several that have not taken part in the First Conference of 1899. It can but subserve the lofty purpose pursued by these great humanitarian gatherings to increase the number of the Powers which join in agreements so beneficial to universal peace. But, on the other hand, a difficulty, of form only, that stands in the way of the admission, pure and simple, of new States must be taken into account. If, as supposed by the Imperial Government, the forthcoming Conference is to be called upon to perfect the provisions of 1899, a formal adhesion to the three Conventions of The Hague should be formulated by the States which have newly convoked and would thereafter take part in the general deliberations over the additions or amendments to the said provisions.

As to the Convention relative to the peaceful settlement of international disputes, it contains in Article 60 the following stipulation concerning eventual accessions:

> The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent agreement among the contracting Powers.

[1] *Foreign Relations of the United States*, 1906, pt. ii, p. 1631.

As the agreement thus referred to has not been effected, it seems necessary to find a practical means of adjusting this formality, and the Imperial Government suggests that, on the opening of the Second Conference, the representatives of the States parties to the First Conference sign the following protocol:

> The representatives at the Second Peace Conference of the States signatories of the Convention of 1899 relative to the peaceful settlement of international disputes, duly authorized to that effect, have agreed that in case the States that were not represented at the First Peace Conference, but have been convoked to the present Conference, should notify the Government of the Netherlands of their adhesion to the above-mentioned Convention they shall be forthwith considered as having acceded thereto.

If the Government of the United States, as well as the Governments of other States parties to the First Peace Conference to which the foregoing has likewise been made known, should express its assent to this course being adopted, the Imperial Government would lose no time in advising the States newly convoked to the Second Conference.

As there is no clause similar to that of Article 60 in the Convention relative to the peaceful settlement of international disputes applicable to the other two Conventions of 1899, the Imperial Government has addressed to the newly convoked States a request that they immediately forward to the Government of the Netherlands their adhesion to the last two Conventions mentioned.

Awaiting a favourable answer of the Government of the United States in regard to the suggestion herein above formulated as to the mode of accession of the new States to the Convention concerning the peaceful settlement of international disputes, I embrace the opportunity to renew to you the assurance of my high consideration.

ROSEN.

[INCLOSURE]

List of States[1] *invited to participate in the labours of the Second Conference of The Hague*

1. Argentine Republic.
2. Austria-Hungary.
3. Belgium.
4. Bolivia.
5. Brazil (U. S. of).
6. Bulgaria.
7. Chile.
8. China.
9. Colombia.
10. Costa Rica.
11. Cuba.
12. Denmark.
13. Dominican Republic.
14. Ecuador.
15. Ethiopia.
16. France.
17. Germany.
18. Great Britain.
19. Greece.
20. Guatemala.
21. Haiti.
22. Honduras.
23. Italy.
24. Japan.
25. Korea.
26. Luxemburg.
27. Mexico.
28. Montenegro.
29. Netherlands.
30. Nicaragua.
31. Norway.
32. Panama.
33. Paraguay.
34. Persia.
35. Peru.
36. Portugal.
37. Roumania.
38. Salvador.
39. Serbia.
40. Siam.
41. Spain.
42. Sweden.
43. Switzerland.
44. Turkey.
45. United States.
46. Uruguay.
47. Venezuela.

State that has declined the invitation: Panama.
States that have not yet returned an answer: Ecuador, Korea, Nicaragua, Uruguay and Venezuela.

[1] Rearranged in the English alphabetical order.

The Russian Ambassador to the Secretary of State[1]

Imperial Embassy of Russia,
Washington, D.C., *March 22/April* 4, 1907.

The undersigned, Ambassador of Russia, by order of his Government, has the honour to make the following communication to his Excellency the Secretary of State of the United States:

Before the Second Peace Conference is called, the Imperial Government deems it an obligation to submit to the Powers which have accepted its invitation a statement of the present situation.

All the Powers to which the Imperial Government communicated, in April 1906, its tentative programme of the labours of the new Conference have declared their adhesion thereto.

However, the following remarks have been made with respect to that programme:

> The Government of the United States has reserved to itself the liberty of submitting to the Second Conference two additional questions, viz. the reduction or limitation of armaments and the attainment of an agreement to observe some limitations upon the use of force for the collection of ordinary public debts arising out of contracts.
>
> The Spanish Government has expressed a desire to discuss the limitation of armaments, reserving to itself the right to deal with this question at the next meeting at The Hague.
>
> The British Government has given notice that it attaches great importance to having the question of expenditures for armament discussed at the Conference, and has reserved to itself the right of raising it. It has also reserved to itself the right of taking no part in the discussion of any question mentioned in the Russian programme which would appear to it unlikely to produce any useful result.
>
> Japan is of opinion that certain questions that are not especially enumerated in the programme might be conveniently included among the subjects for consideration, and reserves to itself the right to take no part in or withdraw from any discussion taking or tending to take a trend which, in its judgement, would not be conducive to any useful result.
>
> The Governments of Bolivia, Denmark, Greece, and the Netherlands have also reserved to themselves, in a general way, the right to submit to the consideration of the Conference other subjects similar to those that are explicitly mentioned in the Russian programme.
>
> The Imperial Government deems it its duty to declare, for its part, that it maintains its programme of the month of April, 1906, as the basis for the deliberations of the Conference, and that if the Conference should broach a discussion that would appear to it unlikely to end in any practical issue it reserves to itself, in its turn, the right to take no part in such a discussion.

Remarks similar to this last have been made by the German and Austro-Hungarian Governments, which have likewise reserved to themselves the right to take no part in the discussion by the Conference of any question which would appear unlikely to end in any practical issue.

In bringing these reservations to the knowledge of the Powers and with the hope that the labours of the Second Peace Conference will create new guaranties for the good

[1] *Foreign Relations of the United States*, 1907, pt II, p. 1107.

understanding of the nations of the civilized world, the Imperial Government has addressed to the Government of the Netherlands a request that it may be pleased to call the Conference for the first days of June.

The undersigned embraces this opportunity to renew, &c.

ROSEN.

The Netherland Minister to the Secretary of State[1]

Royal Legation of the Netherlands,
Washington, D.C., *May* 7, 1907.

MR. SECRETARY OF STATE: By order of my Government, I have the honour to advise your Excellency that the Cabinet of St. Petersburg has notified the Government of the Queen that all the Governments which took part in the First Peace Conference have accepted the proposition, addressed to them by the Imperial Government, that they sign, before the opening of the forthcoming Peace Conference, a special protocol concerning the mode of adhesion to the Convention for the peaceful settlement of international disputes on the part of the Powers which did not take part in the First Conference but have been invited to the Second Conference.

The protocol, of which the text is appended hereto, shall be signed at The Hague, at 2 p.m. on June 14 next, in the Hall of Trnce.

I am instructed by my Government to ask that the American Government will supply its representatives at The Hague with the requisite full powers to sign the protocol on the above-indicated date.

Hereby complying with my orders, I beg that your Excellency will kindly let me know what reception is to be given to this request, and embrace the opportunity to renew to your Excellency the assurance of my highest consideration.

VAN SWINDEREN.

[INCLOSURE]

The Representatives, at the Second Peace Conference, of the States signatory to the Convention of 1899 relative to the pacific settlement of international disputes, duly authorized to that effect, have agreed that in case the States which were not represented at the First Peace Conference but have been invited to the present Conference should notify the Netherland Government of their adhesion to the above-meationed Convention they would forthwith be considered as having acceded thereto.

PROTOCOL[2]

The Powers which have ratified the Convention for the pacific settlement of international disputes, signed at The Hague, on July 29, 1899, desiring to enable the States that were not represented at the First Peace Conference and were invited to the Second to adhere to the aforesaid Convention, the undersigned delegates or diplomatic representatives of the above-mentioned Powers, viz.:

Germany, Austria-Hungary, Belgium, Bulgaria, China, Denmark, Spain, the

[1] Ibid., p. 1123.
[2] Martens, *Nouveau Recueil Général de Traités*, 3rd series, vol. II, p. 4. See Article 60, *ante*, p. 42.

United States of America, the United States of Mexico, France, Great Britain, Greece, Italy, Japan, Luxemburg, Montenegro, Norway, the Netherlands, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden, Switzerland, and Turkey, duly authorized to that effect, have agreed that there shall be opened by the Minister of Foreign Affairs of the Netherlands, a *procès-verbal* of adhesions, that shall serve to receive and record the said adhesions, which shall immediately go into effect. In witness whereof the present protocol was drawn up, in a single original, which shall remain in deposit in the archives of the Ministry of Foreign Affairs of the Netherlands and of which an authenticated copy shall be transmitted to each one of the signatory Powers.

Done at The Hague, June 14, 1907.

[Here follow signatures.]

PROCÈS-VERBAL OF ADHESION [1]

There was signed in this city on June 14, 1907, a protocol establishing, in respect to the Powers unrepresented at the First Peace Conference which have been invited to the Second, the mode of adhesion to the Convention for the peaceful settlement of international disputes, signed at The Hague, July 29, 1899.

Pursuant to the said protocol, the undersigned, Minister of Foreign Affairs for Her Majesty the Queen of the Netherlands, on this day opened the present *procès-verbal* intended to receive and furthermore to record, as they may be presented, the adhesions of the aforesaid Convention.

Done at The Hague, on June 15, 1907, in a single original, which shall remain in deposit in the archives of the Ministry of Foreign Affairs of the Netherlands, and of which a duly certified copy shall be transmitted to each of the signatory Powers.

VAN TETS VAN GOUDRIAAN.

Successively adhered: Argentine Republic, Brazil, Bolivia, Chile, Colombia, Cuba, Guatemala, Haiti, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Venezuela, Uruguay, Salvador, and Ecuador.

[1] Martens, *Nouveau Recueil Général de Traités*, 3rd series, vol. II, p.

THE PEACE CONFERENCE OF 1907

Opening Address of his Excellency Jonkheer Van Tets van Goudriaan, Minister of Foreign Affairs of the Netherlands, June 15, 1907[1]

GENTLEMEN:

In the name of Her Majesty the Queen, my august sovereign, I have the honour to bid you welcome.

Joining in the idea which inspired His Majesty the Emperor of All the Russias, when that monarch addressed the Powers with a proposal to send delegates to a Second Peace Conference, Her Majesty the Queen was happy to allow her capital again to offer hospitality to your illustrious assembly.

The Government of the Netherlands has charged me to express in this chamber its sentiments of profound respect and sincere gratitude towards the august sovereign who took the initiative in the matter of the Conference.

The work begun in 1899 has made progress in the eight years which have elapsed since the First Conference. It will be for history to record the dates which mark out this development. At any rate they are known to you. I need not therefore call them back to your minds, but I think it fitting not to neglect to offer at this time the tribute of our gratitude to the eminent statesman who presides over the destinies of the United States of America. President Roosevelt powerfully contributed to making the seed grow which was sown by the august initiator of formal international assemblies convoked to discuss the rules of international law and to give them precision, which rules, as the States themselves are the first to perceive, should govern their relations with each other.

The results of the work of the First Conference have been severely criticized.

These criticisms and the events which have taken place and which, according to some pessimistic minds, have proved how fruitless the efforts of that Conference were, have not seriously weakened the current of public opinion, which had arisen in favour of the work of the assembly of 1899.

The eagerness with which the Powers have responded to the call addressed to them seems to be the best proof that the people and their Governments, far from losing interest in this current of public opinion, feel its influence. This welcome, which was unanimously favourable so to speak, seems to me a good omen. I see in it an indication which would seem to justify the hope that the Conference, which begins its labours to-day, will mark a stage on the road leading to the goal before us, and that it will not be the last conference to meet at The Hague for the same purpose.

The increased number of States represented—their number has nearly doubled—is another favourable symptom. In my opinion, we cannot easily fail to perceive the far-reaching effect of this, for the greater the number of the States participating in the

[1] *Actes et documents*, vol. I p. 45.

Conference, the more certain will be the general and undisputed observance of the provisions upon which they agree.

The House in the Wood[1] where in 1899 the delegates of the Powers held their meetings, was not large enough to receive a world conference of vast numbers. It was therefore necessary to prepare another place of meeting.

The venerable chamber which you have just entered was built in the thirteenth century by William II, Count of Holland, King of the Romans. Far-reaching decrees which later issued from this chamber, brought him a certain fame in history. At present the States General meet here in joint session. We have thought it a place worthy to receive the Second Peace Conference, and it will acquire a new title to historical celebrity, which will henceforth cross the boundaries of national history, now that its walls are about to hear the deliberations of an assembly, the most completely representative of the States of the world which has met up to our own day.

I have, gentlemen, two propositions to make to you: first, that we telegraph our respectful homage to His Majesty the Emperor of All the Russias in the following words:

> At the beginning of its labours, the Second Peace Conference lays at the feet of Your Majesty its respectful homage and expresses its profound gratitude to you for having taken the initiative in continuing the work begun in 1899. The Conference begs Your Majesty to be assured of its great desire to labour with all its power for the accomplishment of the task, as delicate as it is arduous, which has been entrusted to it.

I gather from your applause that your assent is unanimous.

I do not doubt but my second proposition will likewise receive your approval.

I therefore venture, gentlemen, to express the wish that the presidency of your assembly be conferred upon the Ambassador of His Majesty the Emperor of All the Russias, his Excellency Mr. Nelidow, whose eminent qualities and vast experience in affairs of State will greatly facilitate your labours.

In view of the unanimous acceptance of my proposition, I beg his Excellency Mr. Nelidow, Ambassador of Russia at Paris and first delegate, to be good enough to accept the presidency and to take the presidential chair.

Address of his Excellency Mr. Nelidow, President of the Conference, June 15, 1907[1]

GENTLEMEN:

Permit me first of all to perform an agreeable duty—to express to you my profound gratitude for the honour which you do me by entrusting me with the direction of your labours.

I well know that in graciously endorsing the kindly and flattering proposal of the Minister of Foreign Affairs of the Netherlands, it is your desire to render homage to a sovereign whom I have the honour to represent, who was the initiator of the Peace Conferences, and concerning whom his Excellency van Tets van Goudriaan has just expressed himself in terms which deeply touch me.

[1] *Actes et documents*, vol. I, p. 49.

It was likewise your desire no doubt to express by your concurrence your deference to the distinguished statesman who directs the foreign affairs of the Netherlands, and whom I have the honour to count among my oldest colleagues and friends. Therefore I believe I shall express the sentiments of all in requesting his Excellency Van Tets van Goudriaan to retain his connexion with the Conference by deigning to accept the title of its honorary president.

I shall likewise propose that you offer the vice-presidency of the Conference to the first delegate of the Netherlands, Mr. de Beaufort, under whose auspices the First Peace Conference held its sessions.

As for me, I do not need to assure you that I shall put forth every effort to direct our work in such a way as to make it as fruitful as possible. To this end I shall endeavour to keep peace among us by seeking points of contact and by avoiding everything that might bring out differences of opinion that are too violent. I hope that I can count upon your sympathetic co-operation and your kind indulgence to help along the good-will with which I shall undertake my duties.

But, first of all, gentlemen, we must perform a respectful duty to the most gracious sovereign of the country which offers us such extensive hospitality. I therefore propose that you authorize me to send, in the name of the Conference, the following telegram to Her Majesty the Queen of the Netherlands:

> The representatives of forty-five States assembled at The Hague for the Second Peace Conference, have the honour to lay at the feet of Your Royal Majesty the expression of their gratitude for the gracious welcome which has been given them in your capital, as well as the homage of their very respectful devotion.

In assuming the duties with which you have entrusted me, I do not deem it necessary, after the eloquent words which you have just heard from the lips of the Minister of Foreign Affairs of the Netherlands, to remind you of what led up to this Second Peace Conference and the part played in calling it by the eminent head of the great North American Confederation, whose generous impulses are always prompted by the noblest sentiments of justice and humanity.

In seeing the representatives of nearly all constituted States gathered together here in one assembly, I cannot help feeling a great and deep emotion. This is the first time that such a thing has happened, and it was the idea of peace which brought the Governments to delegate from every quarter of the globe the most eminent men of their countries to discuss together the most cherished interests of mankind—conciliation and justice. May I venture to consider this a good omen for the progress of our labours and to express the hope that the same sentiments of concord which have animated the Governments, will likewise prevail among their representatives, and thus contribute to the success of the task which is imposed upon us?

This task, gentlemen, which has been accepted by all the Governments, consists of two parts: on the one hand, we must endeavour to discover a method of settling amicably differences which may arise between States, and thus prevent ruptures and armed conflict. On the other hand, we must endeavour to lighten the burdens of war—in case it breaks out—both as regards the combatants and those who may be indirectly affected by it. These two problems have sometimes appeared to be incompatible. When, during the war of secession in the United States, a professor—Dr. Lieber, I believe—drew up a plan of instructions to commanders of troops occupying enemy territory and to the local

authorities of the occupied territory, with a view to lessening the difficulties of both and the burdens of this abnormal condition of affairs, I heard the opinion expressed that it was absolutely wrong to endeavour to alleviate the horrors of war. 'To make war short and infrequent,' I was told, 'the inhabitants of the countries engaged in it must be made to feel its full burden, so that they will seek to end it as soon as possible and be loth to begin again.' It seems to me, gentlemen, that this notion is absolutely specious. The horrors of the conflicts in ancient times and the wars of the Middle Ages lessened neither their length nor their frequency, whilst the alleviating regulations, which were adopted in the second half of the last century, for the carrying on of war, for the treatment of prisoners and wounded, and, in short, the whole series of humanitarian measures—which were the honour of the First Peace Conference, and which are to be completed by the labours we are beginning—have in nowise contributed to the development of a taste for war. On the contrary, they have spread throughout the whole civilized world a sentiment of international amenity and have created a peaceable current which reveals itself in the manifestations of sympathy with which public opinion welcomes and will, I hope, accompany our labours. We shall therefore have to persevere in this respect along the road opened by our predecessors of 1899.

As for the other part of our task—the means of preventing and avoiding conflicts between States—it seems to me unnecessary to dwell upon the services which the institutions and provisions established by the First Conference have already rendered to the cause of peace and law. The opinion has been expressed that the differences adjusted as a result of the First Hague Conference were no more important than what might be called international 'justice of the peace' cases. Well! gentlemen, justices of the peace render important services to public order and tranquillity. They settle private quarrels amicably and help to keep the atmosphere calm by removing petty causes of irritation between individuals, which by accumulating sometimes produce serious hostility. It is the same with nations. It is by preventing trifling dissensions in their relations that the way is prepared for good understanding when greater interests are at stake. The official recognition of arbitration has already created a disposition on the part of the various States to have recourse to it for settling disputes in a field whose boundaries are constantly growing wider. Thus, since 1899 thirty-three arbitration conventions have been concluded between different States. But, more than that, four serious and complicated cases, capable of creating irritation between the Powers, have been brought before the Hague Court of Arbitration. Likewise the commission of inquiry created by the act of 1899 was, as everybody remembers, called upon to take up a most serious case, which without this fortunate Convention might have had the most dangerous consequences.

Therefore, gentlemen, we can look with respect upon the results of our predecessors' activity at The Hague. They should encourage us to persevere in the work already accomplished and to give it a broader development. All the friends of civilization follow with sympathetic interest the progress of international institutions emanating from the First Hague Conference, and a generous citizen of the United States has even made gift of a fortune to erect here a sumptuous palace, where the Peace Conference may have a permanent home. It is our duty to make them worthy of this act of munificence. We can in this way show our gratitude to Mr. Carnegie.

However, let us not be too ambitious, gentlemen. Let us not forget that our means of action are limited; that nations are living beings, just like the individuals of which

they are composed; that they have the same impulses; that, if in daily life the judicial organs, in spite of the stern authority with which they are invested, do not succeed in preventing quarrels, altercations, and violence between individuals, it will be the same between nations, although the progress of conciliation and the increasing humanization of manners and customs will certainly diminish the number of such cases. Above all, gentlemen, let us not forget that there is a whole series of cases, where honour, dignity, and essential interests are involved, where individuals are concerned as well as where nations are concerned, and in which neither, whatever may be the consequences, will recognize any other authority than that of their own judgement and personal feelings.

But let that not discourage us from dreaming of the ideal of universal peace and the brotherhood of nations, which are after all only the higher aspirations of the human soul. Is not the pursuit of an ideal, toward which we continually strive without ever being able to reach it, essential to all progress? A tangible goal once reached kills the impulse, while progress in any undertaking requires the constant stimulation of an aspiration toward something higher. *Excelsior* is the device of progress. Let us set bravely to work, our way lighted by the bright star of universal peace and justice, which we shall never reach, but which will always guide us for the good of mankind. For whatever we can do within the modest limit of our means in the interest of individuals by lightening the burdens of war and on behalf of States by avoiding conflicts, will constitute so many titles to the gratitude of humanity, which we shall have won for the Governments that we represent.

Address of his Excellency Mr. Nelidow, President of the Conference, October 18, 1907 [1]

GENTLEMEN:

We have at last reached the end of our labours. Despite the good-will with which we undertook them, they have lasted much longer than we expected. We were obliged to exhaust the programme which served as the basis of our deliberations, and, if we have not succeeded in coming to an understanding upon all of its points, a general agreement has been reached upon the majority of them, giving rise to numerous arrangements, the nomenclature of which is recorded in the Final Act, which we have just signed. It therefore seems to me proper and advisable to summarize, before we separate, the extent of the work which we have accomplished.

In the first address, gentlemen, which I had the honour to deliver at the opening session of the Conference, I thought it my duty to point out that the task which was imposed upon us had two objects in view: (1) to endeavour to prevent armed conflicts between nations, and (2) in case war breaks out, to render its effects less burdensome to those who may be affected by it directly or indirectly.

The political events which have happened since the First Conference would furnish us with plenty of material for deliberation, in so far as concerns the latter part of the problem that we had before us. The inadequacy of the arrangements relating to the rules of war on land, which were elaborated in 1899, has been seen in the course of the military operations

[1] *Actes et documents*, vol. i, p. 586.

which have taken place during the past eight years. It has also been possible to perceive how advisable it would be to regulate naval warfare and the status of neutrals, as well as certain circumstances closely connected with conditions that arise as a result of war. Such was the work, technical in nature and often most delicate, which the Second, Third, and Fourth Commissions took up. The latter two had a particularly complicated task in this respect, the difficulties of which I had more than once occasion to point out. And now that we have before us the results accomplished, I do not know whether we owe them more to the lofty spirit of conciliation displayed by all interested, or to the able guidance of the eminent presidents of these Commissions, who endeavoured to avoid reefs and to discover solutions which were acceptable to all.

What is particularly remarkable in this regard are the stipulations relating to naval warfare and the status of neutrals in such warfare. This is the first time that an attempt at codification has been made in this matter, and, although we have made only a beginning, the foundations have been laid, and those who are called to continue our undertaking will no doubt do justice to the workers of the first hour.

I shall dwell only a moment upon the spirit of concord and good understanding which has characterized every member of these Commissions. When strangers to our labours pass judgement on the activity of the Conference, they too often lose sight of the fact that we are not called upon to elaborate abstract theories, to seek, by means of mental speculation, ideal solutions for the problems submitted to us. We are the agents of our Governments and act by virtue of special instructions, based before all other considerations upon the interests of our respective countries. The higher considerations of the good of mankind in general should no doubt guide us, but in applying them we must have uppermost in our minds the intentions of those who direct our Governments. But the direct interests of different States are often diametrically opposed. It was in endeavouring to bring them into agreement with the theoretical requirements of absolute law and justice that the spirit of good understanding, which I have just mentioned, came into play. Considered from this point of view, it has acquired a double value.

In the preventive field—means of preventing and avoiding international conflicts—the progress of the Conference has been less noticeable. It is because there has not been sufficient experience in this field to make new solutions seem urgent, and to indicate practical and universally recognized conditions to which they can be applied. The important projects presented to the First Commission for the establishment of a Court of Arbitral Justice and Compulsory Arbitration sprang from theoretical plans, which met with insurmountable obstacles to their execution. In the matter of the Prize Court, on the contrary, the creation of which appeared to be highly desirable, a satisfactory solution, which will remain one of the monuments of this Conference, was reached. We may be assured that it will not fail to render a useful service which will help indirectly to prevent a further extension of wars.

Nevertheless the work accomplished by the First Commission, under the clever and learned guidance of its illustrious president, for the establishment of both a permanent tribunal and compulsory arbitration, will not be lost. When the time comes to continue the work which we have undertaken, the *procès-verbaux* of the sessions of this Commission and of the committees of examination will be eagerly consulted, and they will be found to contain a study of these questions, from every standpoint, both conscientious and profound, the valuable elements of which will be drawn upon for future action.

But, gentlemen, in my opinion it is not in this that lies the principal significance of the Second Peace Conference. We cannot fail to recognize the fact that one of the principal guarantees of the maintenance of peaceful relations between nations is a more intimate knowledge of mutual interests and needs; the establishment of many and varied relations, forming an ever-spreading network, which finally creates a moral and material solidarity that, more and more, resists every warlike undertaking. The progress of the present Conference is the greatest that mankind has ever made in this direction. This is the first time that the representatives of all constituted States have been gathered together to discuss interests which they have in common and which contemplate the good of all mankind. Furthermore, by the collaboration of the representatives of Latin America, new and very precious elements have unquestionably been paid into the common treasury of international political science, the value of which we have but imperfectly known hitherto. On their part, the representatives of Central and South America have had an opportunity to acquire a more intimate knowledge of the internal situations and reciprocal relations of European States, which, with their various institutions, their historical development, their traditions and their individual peculiarities, present political conditions that are perceptibly different from those under which the younger nations of the New World live and progress. This more intimate knowledge has thus been of advantage to both, and has facilitated collaboration in the Conference, which is a genuine step forward for mankind.

We may therefore refute the accusation which some people are already trying to hurl at us, alleging that we have done nothing for the maintenance of peace, nothing for the progress of human solidarity. There is doubtless a great deal still to be done in this direction. Nations must be educated in order that they may learn to esteem and love each other, still keeping their own individuality and the traditions that are dear to them. We should also recognize the fact that the voices which have been raised around us and in the press connected with the Conference, making a recommendation to this effect to the Governments, were indeed proclaiming a principle by which the directors of the affairs of the world may profit. Besides, it is too soon to estimate at its true value the significance of the work of the Second Peace Conference. The press that showed an interest in the Conference has been kept regularly and fully in touch with its labours by the secretary general. The press has thus been able to keep the whole world informed of the progress of the work; but all conclusions must be left for a just estimate of the work as a whole, from a more distant and consequently more objective view-point. The true friends of peace and of the development of humanity in the direction of moral solidarity, right, and justice will not fail to undertake this work in sincerity and good faith. May their efforts serve to arrest the outbursts of a certain kind of publicity, which, from interested motives, seeks only to incite nations against one another, breathing hatred, purposely poisoning the most trivial political incidents, and in this way creating or aggravating the dangers which may threaten the peace of the world, for the maintenance of which we are called to labour.

That is our work. We all feel that we have collaborated conscientiously and have done our best. It has not been possible for us to do everything. Let us leave it for those who come after us to develop what we have been able only to sketch, and to prepare in their turn for future Conferences the outlines of such work as they may not succeed in accomplishing themselves. As for us, the present Conference has at any rate made its

mark in the history of mankind, for it has been the first to assume a universal character by making the delegates of the whole world march hand in hand along the road of progress.

Need I add that, so far as I am personally concerned, I consider as the finest climax of a long diplomatic career the honour which has befallen me of presiding over the work of this illustrious assembly. I have devoted all my powers to it; I have given it all my good-will. I have been proud and happy to see the concord which has constantly prevailed among us during the past four months, and I shall carry away with me, as a result of our long collaboration, the most glorious memory of my life. You have made my task easy, gentlemen, by your kindness and your indulgence, and I desire to extend to you my most cordial thanks. I should mention more particularly my most intimate collaborators—the vice president of the Conference; the presidents and vice-presidents, the reporters and secretaries of the Commissions and subcommissions, and, above all, the indefatigable secretariat with its chief, the secretary general. Their arduous work, which has been performed with such eagerness, with the aid of an admirable printing establishment, has been a model of order, system, and accuracy.

Before separating, gentlemen, there remains a final duty to perform, a duty of the heart, with which you will certainly permit me to conclude my presidency. I ask your permission to address the following telegram to Her Majesty the Queen of the Netherlands:

> Before separating, upon the completion of their labours, the delegates of the Powers gathered together for the Second Peace Conference, beg Your Royal Majesty graciously to accept the respectful expression of their gratitude for the august interest which you have continued to take in their activities, as well as for the gracious hospitality which has been accorded them by the Netherland Government and which Your Majesty has deigned to promise likewise for future Conferences. They express their most cordial good wishes to Your Royal Majesty for the prosperity of your reign.

In one of the last sessions there were expressions of thanks to the august initiator of the Peace Conferences, His Majesty the Emperor of Russia. The Conference will now be willing, I trust, to pay its respects to the President of the United States of North America, the first to propose the meeting of the Second Conference, and to authorize me to address the following telegram to him:

> Having completed their labours, the delegates of the Second Peace Conference gratefully remember the initial proposal for its call, which was made by the President of the United States, and present to him their respectful compliments.

Finally, gentlemen, permit me to offer the expression of our gratitude to the honorary president of the Conference, his Excellency the Minister of Foreign Affairs of the Netherlands, as well as to all the branches of the Royal Government, whose workings, I fear, we have too long hindered and thus abused the hospitality which was extended to us.

As the present Conference is about to enter the domain of the past, let me glance at the future. Many of us will probably assemble here again in a few years at the next world meeting. Others—and I shall no doubt be among them—will appear no more; but let us hope that in continuing our common work you will recall with sympathy our collaboration and will now and then give a kind thought to him who has had the honour to preside here and who wishes most sincerely for the success of future Peace Conferences and the ever-increasing development of human solidarity in international relations, based on justice and law.

Closing Address of his Excellency Jonkheer Van Tets van Goudriaan, October 18, 1907[1]

GENTLEMEN:

I desire before we separate to repeat the assurance of the great and sincere satisfaction that the meeting of the Second Peace Conference at The Hague has given to Her Majesty the Queen, my august sovereign, and to her Government, and I beg to assure you that the Queen will be deeply touched by the gracious telegraphic message which you have decided to address to Her Majesty.

Your deliberations have been followed with keen interest in the Netherlands, and we rejoice that, thanks to your profound knowledge of the questions which you had under discussion, your devoted and persistent application has not failed to bear fruit.

You were called together to continue the work of the First Peace Conference. Your task, less brilliant perhaps in a certain sense, was not less arduous than that of the assembly which met in 1899, and there is reason to predict that the solutions you have found for a certain number of questions submitted for your consideration will not entirely satisfy the aspirations of ardent promoters of pacifistic doctrines. After a while, however, an examination of the *procès-verbaux* and other documents relating to your labours will show that you were obliged to face problems, the solution of which required conciliation of divergent interests in the field of international relations. But as the compromises which are indispensable in such cases affect the free exercise of their rights, agreement between the Powers could be brought about only with great difficulty.

The Conventions, which await your signature, prove that, in spite of all, you have succeeded in bringing about such an agreement upon several matters which formed part of the programme of the Conference.

In regard to other questions your efforts were not crowned with the same success. Not without some regret, you have decided to leave their solution to a Third Peace Conference. You have believed, and rightly, that it is better to give public opinion time to grow stronger with respect to these points. Such public opinion is indispensable in smoothing the road for good understanding, and it had not attained the necessary development and strength.

But all this has already been said at greater length and with greater eloquence by the orators who have spoken before me. I refrain therefore from dwelling further upon your labours.

When the next assembly meets at The Hague, in pursuance of the *vœu* which you have seen fit to formulate, and for which I sincerely thank you in the name of the Queen and of the Netherland Government, it will be sure to meet with the same welcome which we have happily been able to extend to the two preceding assemblies. We shall be very happy to be able to offer our hospitality to this new assembly as well, and to those which may be called after it. We shall be proud to see them deliberate in our midst like their predecessors. For, from the repeated choice of the royal capital of the Netherlands as the meeting-place of these gatherings of the representatives of the States of the world, we may venture to conclude that we have succeeded in surrounding them with a serene, tranquil, and sympathetic atmosphere, such as befits their deliberations. We highly

[1] *Actes et documents*, vol. i, p. 599.

appreciate the fact that The Hague may thus become the regular and permanent seat of the Peace Conferences.

I cannot close, gentlemen, without expressing the respectful gratitude which we all feel toward the august initiator of the work for the advancement of which you have been labouring with the great confidence that distinguishes you, and our sincere thanks for the powerful aid given to this work by the President of the United States of America.

In expressing these sentiments, I am sure that I am the faithful interpreter of your thought. Indeed, upon the proposal of your honourable president, you have already shown your desire to address your thanks by telegraph to Mr. Roosevelt. Permit me therefore to propose that you address the following telegram to His Majesty the Emperor of Russia.

> The Second Peace Conference, at its closing session, most respectfully addresses the expression of its profound gratitude to the august initiator and promoter of the humanitarian work of peace, in which it has laboured under the presidency of Your Majesty's representative.

FINAL ACT OF THE SECOND INTERNATIONAL PEACE CONFERENCE[1]

The Second International Peace Conference, proposed in the first instance by the President of the United States of America, having been convoked, on the invitation of His Majesty the Emperor of All the Russias, by Her Majesty the Queen of the Netherlands, assembled on June 15, 1907, at The Hague, in the Hall of the Knights, for the purpose of giving a fresh development to the humanitarian principles which served as a basis for the work of the First Conference of 1899.

The following Powers took part in the Conference, and appointed the delegates named below :

Germany :

His Excellency Baron Marschall von Bieberstein, Minister of State, Imperial Ambassador at Constantinople, first delegate plenipotentiary ;

Dr. Kriege, Imperial Envoy on Extraordinary Mission at the present Conference, Privy Councillor of Legation and Legal Adviser to the Ministry for Foreign Affairs, member of the Permanent Court of Arbitration, second delegate plenipotentiary ;

Rear-Admiral Siegel, Naval Attaché to the Imperial Embassy at Paris, naval delegate ;

Major-General von Gündell, Quarter-Master General of the General Staff of the Royal Prussian Army, military delegate ;

Dr. Zorn, professor of the Faculty of Law at the University of Bonn, Judicial Privy Councillor, member of the Prussian Upper Chamber, and Crown Syndic, scientific delegate ;

Mr. Göppert, Counsellor of Legation and Counsellor attached to the Department for Foreign Affairs, assistant delegate ;

Mr. Retzmann, Lieutenant-Commander on the Naval General Staff, assistant naval delegate.

The United States of America :

His Excellency Mr. Joseph H. Choate, ex-Ambassador at London, Ambassador Extraordinary, delegate plenipotentiary ;

His Excellency Mr. Horace Porter, ex-Ambassador at Paris, Ambassador Extraordinary, delegate plenipotentiary ;

His Excellency Mr. Uriah M. Rose, Ambassador Extraordinary, delegate plenipotentiary ;

His Excellency Mr. David Jayne Hill, ex-Assistant Secretary of State, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

[1] *Lois et documents*, vol. 1, p. 680.

Rear-Admiral Charles S. Sperry, ex-president of the Naval War College, Minister Plenipotentiary, delegate plenipotentiary ;

Brigadier-General George B. Davis, Judge Advocate-General of the United States' Army, Minister Plenipotentiary, delegate plenipotentiary ;

Mr. William I. Buchanan, ex-Minister at Buenos Aires, ex-Minister at Panama, Minister Plenipotentiary, delegate plenipotentiary ;

Mr. James Brown Scott, Solicitor for the Department of State, technical delegate ;

Mr. Charles Henry Butler, Reporter of the Supreme Court, technical delegate.

The Argentine Republic :

His Excellency Mr. Roque Sáenz Peña, ex-Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary at Rome, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. Luis M. Drago, ex-Minister for Foreign Affairs, Deputy, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. Carlos Rodríguez Larreta, ex-Minister for Foreign Affairs, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

General Francisco Reynolds, Military Attaché at Berlin, technical delegate ;

Captain Juan A. Martín, ex-Minister of Marine, Naval Attaché at London, technical delegate.

Austria-Hungary :

His Excellency Mr. Cajetan Mérey von Kapos-Mére, Privy Councillor of His Imperial and Royal Apostolic Majesty, Ambassador Extraordinary and Plenipotentiary, first delegate plenipotentiary ;

His Excellency Baron Carl von Macchio, Envoy Extraordinary and Minister Plenipotentiary at Athens, second delegate plenipotentiary ;

Mr. Heinrich Lammasch, professor at the University of Vienna, Aulic Councillor, member of the Austrian Upper Chamber of the Reichsrath, member of the Permanent Court of Arbitration, scientific delegate ;

Mr. Anton Haus, Rear-Admiral, naval delegate ;

Baron Wladimir Giesl von Gieslingen, Major-General, Military Plenipotentiary at the Imperial and Royal Embassy at Constantinople and at the Imperial and Royal Legation at Athens, military delegate ;

The Chevalier Otto von Weil, Aulic and Ministerial Councillor at the Ministry of the Imperial and Royal Household and of Foreign Affairs, delegate ;

Mr. Julius Szilássy von Szilás und Pilis, Counsellor of Legation, delegate ;

Mr. Emil Konek de Norwall, Naval Lieutenant of the First Class, delegate attached.

Belgium :

His Excellency Mr. A. Beernaert, Minister of State, member of the Chamber of Representatives, member of the Institute of France and of the Royal Academies of Belgium and Roumania, honorary member of the Institute of International Law, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. J. van den Heuvel, Minister of State, ex-Minister of Justice, delegate plenipotentiary ;

His Excellency Baron Guillaume, Envoy Extraordinary and Minister Plenipotentiary at The Hague, member of the Royal Academy of Roumania, delegate plenipotentiary.

Bolivia :

His Excellency Mr. Claudio Pinilla, Minister for Foreign Affairs, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. Fernando E. Guachalla, Minister Plenipotentiary at London, delegate plenipotentiary ;

Brazil :

His Excellency Mr. Ruy Barbosa, Ambassador Extraordinary and Plenipotentiary, Vice-President of the Senate, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. Eduardo F. S. dos Santos Lisbôa, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

Colonel Roberto Trompowsky Leitão d'Almeida, Military Attaché at The Hague, technical delegate ;

Commander Tancredo Burlamaqui de Moura, technical delegate.

Bulgaria :

Major-General on the Staff Vrban Vinaroff, General *à la suite*, first delegate plenipotentiary ;

Mr. Ivan Karandjouloff, *Procureur-Général* of the Court of Cassation, second delegate plenipotentiary ;

Commander S. Dimitrieff, Chief of the Staff of the Bulgarian Flotilla, delegate.

Chile :

His Excellency Mr. Domingo Gana, Envoy Extraordinary and Minister Plenipotentiary at London, delegate plenipotentiary ;

His Excellency Mr. Augusto Matte, Envoy Extraordinary and Minister Plenipotentiary at Berlin, delegate plenipotentiary ;

His Excellency Mr. Cárlos Concha, ex-Minister of War, ex-President of the Chamber of Deputies, ex-Envoy Extraordinary and Minister Plenipotentiary at Buenos Aires, delegate plenipotentiary.

China :

His Excellency Mr. Lou Tseng-tsiang, Ambassador Extraordinary, delegate plenipotentiary ;

His Excellency the Honourable John W. Foster, ex-Secretary of State at the United States' Department for Foreign Affairs, delegate plenipotentiary ;

His Excellency Mr. Tsien Sun, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

Colonel W. S. Y. Ting, Judge Advocate-General at the War Office, military delegate ;

Mr. Chang Ching-tong, Secretary of Legation, assistant delegate ;

Mr. Chao Hi-chiu, ex-Secretary of the Imperial Chinese Mission and Legation at Paris and Rome, assistant delegate.

Colombia :

General Jorge Holguín, delegate plenipotentiary ;

Mr. Santiago Pérez Triana, delegate plenipotentiary ;

His Excellency General M. Vargas, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

The Republic of Cuba :

Mr. Antonio Sánchez de Bustamante, professor of international law at the University of Havana, Senator of the Republic, delegate plenipotentiary ;

His Excellency Mr. Gonzalo de Quesada y Aróstegui, Envoy Extraordinary and Minister Plenipotentiary at Washington, delegate plenipotentiary ;

Mr. Manuel Sanguily, ex-director of the Institute of Secondary Education at Havana, Senator of the Republic, delegate plenipotentiary.

Denmark :

His Excellency Mr. C. Brun, Envoy Extraordinary and Minister Plenipotentiary at Washington, first delegate plenipotentiary ;

Rear-Admiral C. F. Scheller, second delegate plenipotentiary ;

Mr. A. Vedel, Chamberlain, Head of Department at the Royal Ministry for Foreign Affairs, third delegate plenipotentiary.

The Dominican Republic :

Mr. Francisco Henriquez i Carvajal, ex-Minister for Foreign Affairs, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

Mr. Apolinar Tejera, Rector of the Professional Institute of Santo Domingo, member of the Permanent Court of Arbitration, delegate plenipotentiary.

The Republic of Ecuador :

His Excellency Mr. Victor Rendón, Envoy Extraordinary and Minister Plenipotentiary at Paris and Madrid, delegate plenipotentiary ;

Mr. Enrique Dorn y de Alsúa, Chargé d'Affaires, delegate plenipotentiary.

Spain :

His Excellency Mr. W. R de Villa Urrutia, Senator, ex-Minister for Foreign Affairs, Ambassador Extraordinary and Plenipotentiary at London, first delegate plenipotentiary ;

His Excellency Mr. José de la Rica y Calvo, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

Mr. Gabriel Maura y Gamazo, Count de la Mortera, Deputy to the Cortes, delegate plenipotentiary ;

Mr. J. Jofre Montojo, Colonel on the Staff, Aide-de-camp to the Minister of War, assistant military delegate ;

Captain Francisco Chacón, assistant naval delegate.

France :

His Excellency Mr. Léon Bourgeois, Ambassador Extraordinary, Senator, ex-President of the Council, ex-Minister for Foreign Affairs, member of the Permanent Court of Arbitration, delegate, first plenipotentiary ;

Baron d'Estournelles de Constant, Senator, Minister Plenipotentiary of the First Class, member of the Permanent Court of Arbitration, delegate, second plenipotentiary ;

Mr. Louis Renault, professor of the Faculty of Law at Paris, Honorary Minister Plenipotentiary, Legal Adviser to the Ministry for Foreign Affairs, member of the Institute, member of the Permanent Court of Arbitration, delegate, third plenipotentiary ;

His Excellency Mr. Marcellin Pellet, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate, fourth plenipotentiary ;

General of Division Amourel, military delegate ;

Rea Admiral Arago, naval delegate ;

Mr. Fromageot, advocate at the Court of Appeal at Paris, technical delegate ;

Captain Lacaze, second naval delegate ;

Lieutenant-Colonel Siben, Military Attaché at Brussels and The Hague, second military delegate.

Great Britain :

His Excellency the Right Honourable Sir Edward Fry, G.C.B., member of the Privy Council, Ambassador Extraordinary, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency the Right Honourable Sir Ernest Mason Satow, G.C.M.G., member of the Privy Council, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency the Right Honourable Lord Reay, G.C.S.I., G.C.I.E., member of the Privy Council, ex-president of the Institute of International Law, delegate plenipotentiary ;

His Excellency Sir Henry Howard, K.C.M.G., C.B., Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

Lieutenant-General Sir Edmond R. Elles, G.C.I.E., K.C.B., military delegate ;

Captain C. L. Ottley, M.V.O., R.N., A.D.C., naval delegate ;

Mr. Eyre Crowe, Counsellor of Embassy, technical delegate, first secretary to the delegation ;

Mr. Cecil Hurst, Counsellor of Embassy, technical delegate, legal adviser to the delegation ;

Lieutenant-Colonel the Honourable Henry Yarde-Buller, D.S.O., Military Attaché at The Hague, technical delegate ;

Commander J. R. Segrave, R.N., technical delegate ;

Major George K. Cockerill, General Staff, technical delegate.

Greece :

His Excellency Mr. Cléon Rizo Rangabé, Envoy Extraordinary and Minister Plenipotentiary at Berlin, first delegate plenipotentiary ;

Mr. Georgios Streit, professor of international law at the University of Athens, member of the Permanent Court of Arbitration, second delegate plenipotentiary ;

Colonel of Artillery C. Sapountzakis, Chief of the General Staff, technical delegate.

Guatemala :

Mr. José Tible Machado, Chargé d'Affaires at The Hague and London, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

Mr. Enrique Gomez Carillo, Chargé d'Affaires at Berlin, delegate plenipotentiary.

The Republic of Haiti :

His Excellency Mr. Jean Joseph Dalbémar, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary ;

His Excellency Mr. J. N. Léger, Envoy Extraordinary and Minister Plenipotentiary at Washington, delegate plenipotentiary ;

Mr. Pierre Hudicourt, ex-professor of international public law, advocate at the bar of Port au Prince, delegate plenipotentiary.

Italy :

His Excellency Count Giuseppe Tornielli P[illegible]i di Vergano, Senator of the Kingdom, Ambassador of His Majesty the King [illegible]aris, member of the Permanent Court of Arbitration, president of the Italian delegation, delegate plenipotentiary ;

His Excellency Mr. Guido Pompilj, Parliamentary Deputy, Under-Secretary of State at the Royal Ministry for Foreign Affairs, delegate plenipotentiary ;

Mr. Guido Fusinato, Councillor of State, Parliamentary Deputy, ex-Minister of Education, delegate plenipotentiary ;

Mr. Marius Nicolis de Robilant, General of Brigade, technical delegate ;

Mr. François Castiglia, Captain in the Navy, technical delegate.

Japan :

His Excellency Mr. Keiroku Tsudzuki, Ambassador Extraordinary and Plenipotentiary, first delegate plenipotentiary ;

His Excellency Mr. Aimaro Sato, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate plenipotentiary ;

Mr. Henry Willard Denison, Legal Adviser to the Imperial Ministry for Foreign Affairs, member of the Permanent Court of Arbitration, technical delegate ;

Major-General Yoshifuru Akiyama, Inspector of Cavalry, technical delegate ;

Rear-Admiral Hayao Shimamura, president of the Naval College at Etajima, technical delegate.

Luxemburg :

His Excellency Mr. Eyschen, Minister of State, President of the Grand-Ducal Government, delegate plenipotentiary ;

Count de Villers, Chargé d'Affaires at Berlin, delegate plenipotentiary.

Mexico :

His Excellency Mr. Gonzalo A. Esteva, Envoy Extraordinary and Minister Plenipotentiary at Rome, first delegate plenipotentiary ;

His Excellency Mr. Sebastián B. de Mier, Envoy Extraordinary and Minister Plenipotentiary at Paris, second delegate plenipotentiary ;

His Excellency Mr. Francisco L. de la Barra, Envoy Extraordinary and Minister Plenipotentiary at Brussels and at The Hague, third delegate plenipotentiary.

Montenegro :

His Excellency Mr. Nelidow, Privy Councillor, Russian Ambassador at Paris, delegate plenipotentiary ;

His Excellency Mr. Martens, Privy Councillor, permanent member of the Council of the Imperial Russian Ministry for Foreign Affairs, delegate plenipotentiary ;

His Excellency Mr. Tcharykow, Councillor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary of Russia at The Hague, delegate plenipotentiary.

Nicaragua :

His Excellency Mr. Crisanto Medina, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

Norway :

His Excellency Mr. Francis Hagerup, ex-President of the Council, ex-professor of law, member of the Permanent Court of Arbitration, Envoy Extraordinary and Minister Plenipotentiary at The Hague and Copenhagen, delegate plenipotentiary ;

Mr. Joachim Grieg, ship-owner and Deputy, technical delegate ;

Mr. Christian Lous Lange, Secretary to the Nobel Committee of the Norwegian Storthing, technical delegate.

Panama :

Mr. Belisario Porras, delegate plenipotentiary.

Paraguay :

His Excellency Mr. Eusebio Machain, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

The Netherlands :

Mr. W. H. de Beaufort, ex-Minister for Foreign Affairs, member of the Second Chamber of the States-General, delegate plenipotentiary ;

His Excellency Mr. T. M. C. Asser, Minister of State, member of the Council of State, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Jonkheer J. C. C. den Beer Poortugael, Lieutenant-General on the retired list, ex-Minister of War, member of the Council of State, delegate plenipotentiary ;

His Excellency Jonkheer J. A. Röell, Aide-de-camp to Her Majesty the Queen in Extraordinary Service, Vice-Admiral on the retired list, ex-Minister of Marine, delegate plenipotentiary ;

Mr. J. A. Loeff, ex-Minister of Justice, member of the Second Chamber of the States-General, delegate plenipotentiary ;

Mr. H. L. van Oordt, Lieutenant-Colonel on the Staff, professor at the Higher Military College, technical delegate ;

Jonkheer W. J. M. van Eysinga, Head of the Political Section at the Ministry for Foreign Affairs, assistant delegate ;

Jonkheer H. A. van Karnebeek, Gentleman of the Chamber, Assistant Head of Department at the Colonial Office, assistant delegate ;

Mr. H. G. Surie, Naval Lieutenant of the First Class, technical delegate.

Peru :

His Excellency Mr. Carlos G. Candamo, Envoy Extraordinary and Minister Plenipotentiary at Paris and London, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

Mr. Gustavo de la Fuente, First Secretary of Legation at Paris, assistant delegate.

Persia :

His Excellency Samad Khan, Momtas-es-Saltaneh, Envoy Extraordinary and Minister Plenipotentiary at Paris, member of the Permanent Court of Arbitration, delegate, first plenipotentiary ;

His Excellency Mirza Ahmed Khan, Sadigh ul Mulk, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

Mr. Hennebicq, Legal Adviser to the Minister for Foreign Affairs at Teheran, technical delegate.

Portugal :

His Excellency the Marquis de Soveral, Councillor of State, Peer of the Realm, ex-Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary at London, Ambassador Extraordinary and Plenipotentiary, delegate plenipotentiary ;

His Excellency Count de Selir, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

His Excellency Mr. Alberto d'Oliveira, Envoy Extraordinary and Minister Plenipotentiary at Berne, delegate plenipotentiary ;

Lieutenant-Colonel Tomaz Antonio Garcia Rosado, General Staff, technical delegate ;

Mr. Guilherme Ivens Ferraz, Lieutenant-Commander in the Navy, technical delegate.

Roumania :

His Excellency Mr. Alexandre Beldiman, Envoy Extraordinary and Minister Plenipotentiary at Berlin, first delegate plenipotentiary ;

His Excellency Mr. Edgard Mavrocordato, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate plenipotentiary ;

Captain Alexandre Sturdza, General Staff, technical delegate.

Russia :

His Excellency Mr. Nelidow, Privy Councillor, Russian Ambassador at Paris, delegate plenipotentiary ;

His Excellency Mr. Martens, Privy Councillor, permanent member of the Council of the Imperial Ministry for Foreign Affairs, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. Tcharykow, Councillor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary ;

Mr. Prozor, Councillor of State, Chamberlain, Russian Minister at Rio de Janeiro, technical delegate ;

Major-General Yermolow, Military Attaché at London, technical delegate ;

Colonel Michelson, Military Attaché at Berlin, technical delegate ;

Captain Behr, Naval Attaché at London, technical delegate ;

Colonel Ovtchinnikow, of the Admiralty, professor of international law at the Naval Academy, technical delegate.

Salvador :

Mr. Pedro J. Matheu, Chargé d'Affaires at Paris, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

Mr. Santiago Pérez Triana, Chargé d'Affaires at London, member of the Permanent Court of Arbitration, delegate plenipotentiary.

Serbia :

His Excellency General Sava Grouïtch, President of the Council of State, delegate plenipotentiary ;

His Excellency Mr. Milovan Milovanovitch, Envoy Extraordinary and Minister Plenipotentiary at Rome, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

His Excellency Mr. Michel Militchevitch, Envoy Extraordinary and Minister Plenipotentiary at London and The Hague, delegate plenipotentiary.

Siam :

Major-General Mom Chatidej Udom, delegate plenipotentiary ;
Mr. Corragioni d'Orelli, Counsellor of Legation at Paris, delegate plenipotentiary ;
Captain Luang Bhüvanarth Narübal, delegate plenipotentiary.

Sweden :

His Excellency Mr. Knut Hjalmar Leonard Hammarskjöld, Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, ex-Minister of Justice, member of the Permanent Court of Arbitration, first delegate plenipotentiary ;

Mr. Johannes Hellner, ex-Minister without Portfolio, ex-member of the Supreme Court of Sweden, member of the Permanent Court of Arbitration, second delegate plenipotentiary ;

Colonel David Hedengren, Commanding a Regiment of Artillery, technical delegate ;

Commander Gustaf af Klint, Head of a Section on the Staff of the Royal Navy, technical delegate.

Switzerland :

His Excellency Mr. Gaston Carlin, Envoy Extraordinary and Minister Plenipotentiary at London and The Hague, delegate plenipotentiary ;

Mr. Eugène Borel, Colonel on the General Staff, professor at the University of Geneva, delegate plenipotentiary ;

Mr. Max Huber, professor of law at the University of Zürich, delegate plenipotentiary.

Turkey :

His Excellency Turkhan Pasha, Ambassador Extraordinary, Minister of the Evkaf, first delegate plenipotentiary ;

His Excellency Réchid Bey, Turkish Ambassador at Rome, delegate plenipotentiary ;

His Excellency Vice-Admiral Mehemed Pasha, delegate plenipotentiary ;
Raif Bey, Legal Adviser on the Civil List, assistant delegate ;
Colonel on the Staff Mehemmed Saïd Bey, assistant delegate.

Uruguay :

Mr. José Batlle y Ordoñez, ex-President of the Republic, member of the Permanent Court of Arbitration, first delegate plenipotentiary ;

His Excellency Mr. Juan P. Castro, ex-President of the Senate, Envoy Extraordinary and Minister Plenipotentiary at Paris, member of the Permanent Court of Arbitration, delegate plenipotentiary ;

Colonel Sebastian Buquet, Commanding a Regiment of Field Artillery, technical delegate.

The United States of Venezuela :

Mr. José Gil Fortoul, Chargé d'Affaires at Berlin, delegate plenipotentiary.

At a series of meetings, held from June 15th to October 18th, 1907, in which the above delegates were throughout animated by the desire to realize, in the fullest possible measure, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference drew up, for submission for signature by the plenipotentiaries, the text of the Conventions and of the Declaration enumerated below and annexed to the present Act :

I. Convention for the pacific settlement of international disputes.

II. Convention respecting the limitation of the employment of force for the recovery of contract debts.

III. Convention relative to the opening of hostilities.

IV. Convention respecting the laws and customs of war on land.

V. Convention respecting the rights and duties of neutral Powers and persons in case of war on land.

VI. Convention relating to the status of enemy merchant ships at the outbreak of hostilities.

VII. Convention relative to the conversion of merchant ships into war-ships.

VIII. Convention relative to the laying of automatic submarine contact mines.

IX. Convention concerning bombardment by naval forces in time of war.

X. Convention for the adaptation to maritime war of the principles of the Geneva Convention.

XI. Convention relative to certain restrictions with regard to the exercise of the right of capture in naval war.

XII. Convention relative to the creation of an International Prize Court.

XIII. Convention concerning the rights and duties of neutral Powers in naval war.

XIV. Declaration forbidding the throwing of projectiles and explosives from balloons.

These Conventions and Declaration shall form so many separate acts. These acts shall be dated this day, and may be signed up to June 30, 1908, at The Hague, by the plenipotentiaries of the Powers represented at the Second Peace Conference.

The Conference, actuated by the spirit of mutual agreement and concession characterizing its deliberations, has agreed upon the following declaration, which, while reserving to each of the Powers represented full liberty of action as regards voting, enables them to affirm the principles which they regard as unanimously admitted :

It is unanimous :

1. In admitting the principle of obligatory arbitration.

2. In declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of international agreements, may be submitted to obligatory arbitration without any restriction.

Finally, it is unanimous in proclaiming that, although it has not yet been found feasible to conclude a Convention in this sense, nevertheless the divergences of opinion which have come to light have not exceeded the bounds of judicial controversy, and

that, by working together here during the past four months, the collected Powers not only have learnt to understand one another and to draw closer together, but have succeeded in the course of this long collaboration in evolving a very lofty conception of the common welfare of humanity.

The Conference has further unanimously adopted the following resolution :

The Second Peace Conference confirms the resolution[1] adopted by the Conference of 1899 in regard to the limitation of military expenditure ; and inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the Governments should resume the serious examination of this question.

It has besides uttered the following *vœux* :

1. The Conference recommends to the signatory Powers the adoption of the annexed draft Convention[2] for the creation of a Court of Arbitral Justice, and putting it into force as soon as an agreement has been reached respecting the selection of the judges and the constitution of the Court.

2. The Conference utters the *vœu* that, in case of war, the responsible authorities, civil as well as military, may make it their special duty to ensure and safeguard the maintenance of pacific relations, more especially of the commercial and industrial relations between the inhabitants of the belligerent States and neutral countries.

3. The Conference utters the *vœu* that the Powers may regulate, by special treaties, the position, as regards military charges, of foreigners residing within their territories.

4. The Conference utters the *vœu* that the preparation of regulations relative to the laws and customs of naval war may figure in the programme of the next Conference, and that in any case the Powers may apply, as far as possible, to war by sea the principles of the Convention relative to the laws and customs of war on land.

Finally, the Conference recommends to the Powers the assembly of a Third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the programme of this Third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition.

In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a programme which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This committee should further be entrusted

[1] *Ante*, p. 21. For the proceedings of the Second Conference on this subject, see *post*, p. 892.
[2] *Post*, p. 226.

with the task of proposing a system of organization and procedure for the Conference itself.

In faith of which the plenipotentiaries have signed the present Act and have affixed their seals thereto.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent to all the Powers represented at the Conference.

[Here follow signatures.]

Oral Report of Mr. Louis Renault, Reporter of the Drafting Committee, on the Final Act, October 16 and 17, 1907 [1]

GENTLEMEN:

I have come to make a report on behalf of the Drafting Committee which was appointed during the third plenary session. There has not been sufficient time for me to prepare a written report; I shall give you merely a few explanations, rather dry indeed, but nevertheless a necessary part of the work of the committee. The *procès-verbal* will take the place of the report that I have not been able to draw up. I therefore ask your indulgence and your patience in listening to these explanations, which will necessarily be less brief than a written report would be. You were good enough to show a confidence in this Drafting Committee, which it considered at times excessive. It frequently happened that your Commissions or your committees, when they met with obstacles, sought the aid of the Drafting Committee to help them over the difficulties with which they were confronted, and this we did to the best of our ability.

We were anxious to justify your confidence, and we know that we have remained scrupulously faithful to our mission.

We have endeavoured to be clear and precise and, if we have at times modified the texts drawn up by you, we have done so without altering the sense of the provisions which they contained. Our work was minute; it required a careful reading of all the provisions. The subcommittee on drafting, of which I was president, consisted of Messrs. Kriege, Scott, Lammasch, van den Heuvel, Hurst, Fusinato and Asser, and met fourteen times. The texts which it decided upon were, after two readings, submitted to the Drafting Committee, which met four times. We have therefore taken every precaution to make the work, which is now submitted to you, as far from imperfect as possible.

I shall first explain the arrangement of the Final Act, which you will be called upon to sign.

We have followed the system of the Final Act of 1899. It contains at the beginning an enumeration of all the delegates who participated in the work of the Conference. We have likewise followed the model of 1899 in drawing up the preamble. We had, however, to make some changes, taking into account the part President Roosevelt played and the fact that this was a Second Conference.

[1] *Actes et documents*, vol. i, pp. 342, 579.

The result of your labours, whatever may be said of them, is not a negligible quantity. This is easily seen from the number of Conventions which you have elaborated.

All the agreements decided upon by the Conference have been called 'Conventions', as you will see. In the projects emanating from the Commissions there was a great diversity of appellations. The word 'regulations', among others, did not seem to us suitable for an international act.

The Final Act will contain, as in 1899, a clause giving the right to sign the Conventions up to June 30, 1908. We have allowed a longer time limit than that of 1899, because there are many more Powers represented in the Conference; but I hope that few among them will take advantage of this time limit, and I venture personally to express the wish that the Conventions may receive at once the greatest possible number of signatures. The Final Act contains likewise a declaration, resolutions, and *vœux*. Such are the declaration concerning obligatory arbitration and the resolutions relating to armaments and to the meeting of the Third Conference.

Before examining each Convention in particular, I must say a few words upon two questions of a general nature.

All the Powers here represented may sign until June, 30, 1908; but what is the situation in regard to Powers that are not represented?

This question has been solved in several ways. In 1899 the open-door system was adopted, except, however, in regard to the Convention concerning the pacific settlement of international disputes. For that reason a protocol was signed on the 14th of last June in which the signatory Powers consented to the adhesion of Powers which had not taken part in the Conference of 1899, in order to permit them to participate in the work of the Conference of 1907.

To-day the question presents itself in a different manner, by reason of the large number of States that are here represented and the small number of those that have remained out of our deliberations. I may add that there has been no question of modifying the rule laid down by the Conference of 1899 on the subject of the Convention for the pacific settlement of international disputes.

Article 53[1] of the Convention concerning the establishment of a Prize Court reserves to certain Powers, determined in advance in Article 15 and the annexed table, the right to adhere to the Convention. This restrictive provision was necessary in order to preserve the harmony of the project, by which there was established a relation between the composition of the Court and the number of the contracting Powers. With respect to the other Conventions, we found that there were three different opinions:

1. Continuance of the rule of 1899, system of open conventions.

2. Right of adhesion limited to the Powers assembled at the Second Conference. This is equivalent to making the Conventions closed conventions.

3. System adopted by the Conference on the revision of the Geneva Convention in 1906 (Article 32), according to which the Conventions would be closed in principle. Nevertheless the adhesion of non-contracting Powers would be permitted, and this adhesion would become definitive if, within one year from the notification of the intention to adhere, none of the contracting Powers had formally opposed it, silence on their part for a year being considered sufficient tacit consent.

These three systems gave rise in committee to exhaustive arguments. The arguments

[1] *Post*, p. 7

upon which stress was laid in support of the second and third, and which started from a common point, consist in considering the States signing a convention as part of a society where a stranger is not free to enter, but must ring and request admittance. The system of the open door presents certain annoyances for the Netherland Government, which might find itself in an embarrassing position in case of a request for permission to adhere on the part of States whose status is ill-determined and equivocal. In spite of these arguments, which the president of the subcommittee desires to submit with entire impartiality to the Conference, the majority of the committee declared themselves in favour of the system of the open door, for the following reasons :

1. A restrictive system would constitute a step backward from the liberal system adopted in 1899, which gave rise to no mistakes.

2. The Conventions, to which the committee proposes to apply the system of the open door, are not of the nature of mutual concessions, like conventions between a few States. They are general in character and are chiefly declarations of principles. It is therefore desirable that they be accepted by the greatest possible number of States, so as to constitute a code of universal law.

3. There is the possibility of a new State, which may be formed to the detriment of another and which would frequently meet with insurmountable opposition on the part of this other. It is true, as was pointed out, that through diplomatic negotiations it might be possible to overcome certain ill-will, but there might be persistent obstinacy.

The second general question concerns the extent of the application of the Conventions The essential principle followed by the committee is that the Conventions are binding only between contracting Powers ; that is only the common law. But the Conventions relating to war, which contain provisions concerning neutrals, give rise to a new problem. Must all the belligerents be contracting parties in order that the Convention may apply with respect to neutrals, in the relations between the contracting belligerent and contracting neutrals ? The question has already been decided by the Conference in regard to the Convention relating to the Prize Court (Article 51) ;[1] it must also be decided with respect to the other Conventions, with the single exception of the Convention relating to the opening of hostilities, in regard to which we have deemed it advisable to lay down a special rule.

The following is the form which we have generally adopted :

> The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

The reason this form was adopted is that a belligerent should not be under a restraint which is not imposed upon the enemy. This principle is not only just in itself, but its application has the still further advantage of facilitating the extension of the Conventions by making it more advantageous to all the States to adhere to them.

I have now some explanations to make to you as to the provisions which, in conjunction with the chief of the *Service du Protocol* of the Ministry of Foreign Affairs of the Netherlands, were adopted in regard to the clauses of a diplomatic nature with which the Conventions close. Certain modifications have been made in the final provisions which appear in the Conventions of 1899. In the first place they concern the procedure in the matter of ratifications. It was agreed that, in order to avoid complications, there should not be a *procès-verbal* for the deposit of each ratification, but a common *procès-verbal* for the

[1] *Post*, p. 755.

various ratifications deposited at the same time. In the matter of adhesions, we were obliged to decide a point of law, namely, the date from which adhesions should become effective, and, particularly, whether account should be taken of the interval between the date of the request and the date of its receipt. We decided that an adhesion should become effective from the date of the receipt by the Netherland Government of the request for permission to adhere.

Likewise in conjunction with Baron van Hogendorp, we omitted the lengthy formality of placing seals upon all the Conventions, reserving it only for the Final Act.

I have now, gentlemen, to make a few explanations concerning the four Conventions which have been distributed among you. The first, which you approved some time ago, is the 'Convention for the adaptation to maritime warfare of the principles of the Geneva Convention'. The preamble, as you will see, is modest. The Drafting Committee made a change in Article 13, which is not merely a change in form, and, if I insist upon it, it is to relieve us of responsibility. We perceived that the provision of Article 13 was too absolute in character. It is, as a matter of fact, difficult to impose upon neutral war-ships, which, for reasons of humanity, have taken on board sick and wounded, the obligation to see to it that such sick and wounded take no further part in hostilities. It would hinder their humanitarian intentions to impose upon them too absolute an obligation on this score. That is why the new Article 13[1] mentions this obligation only with a restriction, and this change was adopted without objection.

In the Convention concerning 'the creation of a Prize Court', in order to give satisfaction to a general observation made by his Excellency Mr. Carlin, we have modified the reading of Article 27[2] to make it conform more closely to the Convention concerning the pacific settlement of international disputes. Other slight changes were made in the texts already voted concerning the method of adhesion. In such cases we have followed the general provisions to which I have alluded above.

The Convention[3] concerning the 'rights and duties of neutral Powers and persons in case of war on land' is made up of texts originating from different sources, which we thought it wise to combine.

This Convention is composed of four chapters.

The first chapter is drawn from proposed regulations which originated in a French proposition. The committee considered that it was preferable to put Article 10, relating to escaped prisoners of war, in Chapter II, which is devoted to belligerents in neutral countries.

Chapter II is composed of a portion of the Regulations concerning the laws and customs of war on land, which had no place in the instructions to be given by belligerents to their troops, since it concerns the status of soldiers who may be in a neutral country under various circumstances. We have added thereto the article relating to escaped prisoners, of which I have spoken; hence the title of the chapter might be considered incomplete. We do not believe that this is a very serious matter, and I am mentioning it only that future critics may know that we were aware of it.

Chapter III is a respectable refuge given to the surviving articles of the proposition of the German delegation concerning neutral persons.

Chapter IV concerns the article proposed by his Excellency Mr. Eyschen in the matter of railroads. We changed its reading, in the first place for the purpose of making its text

[1] *Post*, p. 711. [2] *Post*, p. 751. [3] *Post*, p. 533.

as nearly as possible like that of the old Article 54 of the Regulations concerning the laws and customs of war on land, and we put in the words : ' whether it be the property of the said Powers or of companies and private persons '. We then endeavoured to put the two paragraphs of the article in harmony. We sanctioned the right of neutral Powers to exercise a certain compensatory privilege by allowing them to retain railroad material coming from belligerent States to the same extent as such retention is practised by the belligerents.

Finally, there remains the Convention[1] relating to ' certain restrictions with regard to the exercise of the right of capture in naval war '. The Fourth Commission had sent us five projects, which we first decided could be combined in a single Convention ; but we were obliged to give up this idea in view of the numerous reservations which were made as regards certain of them, and we grouped together only the three projects which received a unanimous vote, with few reservations. The Convention, which is inspired by a single idea and to which we have consequently given a very broad title, is composed of three chapters corresponding to the three original projects. I must call your attention particularly to the chapter relating to postal correspondence. The text voted by the Conference was composed of three paragraphs. This form, which was defective, was caused by the reservations formulated by one of the delegations concerning a portion of the article. As these reservations could not relate to words, they were obliged to relate to a paragraph. Inasmuch as this delegation has withdrawn its reservation, we were enabled to give greater unity of form by omitting paragraph 3 and inserting a common provision for neutral vessels and enemy vessels. Finally, the text voted by the Conference contained, in regard to the exception made in the case of blockade, certain obscurities which have now disappeared.

These various Conventions, thus modified, will, I hope, receive your approval.

GENTLEMEN :[2]

You have before your eyes the Final Act of the Conference, the arrangement of which I explained to you yesterday. I shall not return to the preamble, which I have already read to you and which mentions the circumstances under which the present Conference met. The Act next contains an enumeration of all the Powers represented at the Conference, as well as the names of their delegates. Each delegation should here make whatever corrections are necessary. One of our secretaries, Mr. van Roijen, will take note of them, and it is necessary that they be communicated to him as soon as possible. In the proof only the word ' delegate ' appears opposite each name, while some are delegates plenipotentiary and others technical, scientific, or assistant delegates. It is naturally the business of each delegation to give the proper title of each of its delegates. Only delegates plenipotentiary, furnished with full powers, can sign the Final Act, which is in itself a diplomatic act, and the Conventions.

Our work will stop on October 18, 1907, and that will be the date of the Final Act and Conventions. It is possible that the Conventions will not be signed until Saturday, and some signatures may not be affixed to them until even later. You have until June 30, 1908, to be considered as signatories, and not merely as adherents ; but I hope that there will be a great number of signatures right now, which will attest the value that we attach to our labours.

[1] *Post*, p. 732.

[2] *Actes et documents*, vol. i, p. 579.

There are mentioned in the Final Act fourteen Conventions, the text of one resolution, one declaration, and *vœux* to the number of five.

As to the *Conventions* (of which thirteen are Conventions properly so-called and one a Declaration) there are some special explanations to be made which I began yesterday and shall finish presently.

The *declaration*[1] relating to obligatory international arbitration was adopted by you unanimously in yesterday's session, upon the proposal of the First Commission.

The *resolution*[2] relating to armaments is printed just as it was voted by the Conference upon the proposal of Sir Edward Fry.

I shall say a few words about the *vœux*.

In the first place we have the *vœu* concerning the adoption of the Draft Convention[3] for the creation of the Court of Arbitral Justice. This *vœu*, which has not been modified, admits of an annex.

The second *vœu*, concerning the recommendation made to the States that they assure and protect the maintenance of peaceful commercial and industrial relations between belligerent States and neutral countries, proposed by the Second Commission upon the initiative of his Excellency Mr. Eyschen, has undergone only a few changes in style, which were made, however, in conjunction with the author.

The third *vœu*, concerning regulation by special conventions of the status of foreigners residing within the territory of the Powers, as regards military charges, was in no way modified.

The fourth *vœu*, contemplating the elaboration, by the next Conference, of regulations relating to the laws and customs of naval war, was proposed by the Fourth Commission, upon the report of Mr. van Karnebeek. We have made only a few changes in its style.

In the draft that you have before you there is a fifth *vœu*,[4] which you adopted at the last plenary session upon the proposition of Baron d'Estournelles de Constant; but the Drafting Committee, while appreciating its great importance, considered that it did not possess the political and legal character of the other *vœux* which figure in the Final Act, and consequently that it should not be included therein. Nevertheless mention will be made of it in the *procès-verbal*, and, to assure this, the president of the Conference is to call on the president of the Carnegie Committee to bring this *vœu* to his attention.

Lastly, we have a final declaration, which is our testamental act, as it were, in which we recommend to the Powers the meeting of a Third Peace Conference. We call attention to the necessity of preparing its work some time in advance. It would be desirable that, two years before the probable time of its meeting, a preparatory committee be charged by the Governments with the duty of collecting various propositions to be submitted to the Conference, and to prepare a programme which the Governments should decide upon in sufficient time for it to be carefully studied.

Thus ends the official *procès-verbal*, which alone will have the honour of receiving the seals of the delegates, and which will bear the date of October 18, 1907.

It remains for me to pass in review the Conventions which the Drafting Committee carefully examined, and about which I have not yet had an opportunity to speak.

The first,[5] concerning 'the pacific settlement of international disputes', underwent

[1] *Ante*, p. 215. [2] *Ante*, p. 210; *post*, p. 894. [3] *Post*, p. 226.
[4] *Actes et documents*, vol. i, p. 342. This *vœu* had reference to the building of the Palace of Peace. *Post*, p. 202.

two revisions at the hands of the Drafting Committee. The Convention of 1899 alluded to non-existent institutions which ought to be established. The committee examined the articles which mentioned such institutions, and which had to be revised, taking into account the fact that these institutions exist to-day. These are questions of style which were easily settled by the subcommittee and by the general Drafting Committee.

The object of the second Convention[1] is to give diplomatic form to what is called the 'Porter proposition'. As you will see, its preamble is very simple. We have made two articles containing two different ideas: the first article includes paragraphs 1 and 2 of the proposition; the third paragraph, concerning the operation of arbitration, to which allusion is made in paragraph 2 of Article 1, is the subject of Article 2. Then follow the usual clauses, which present no peculiarities.

In the matter of the Convention[2] relating to the 'opening of hostilities', I shall call your attention to the scope of its application. Articles 1 and 2 are the same as the corresponding articles of the proposition as it was voted.[3] The extent of the application of Article 2 presents a peculiarity upon which I think I ought to dwell. In a general way we have decided, as I explained to you yesterday, that Conventions which place restrictions upon the rights of belligerents should be applied reciprocally; that is to say, when the two belligerents are contracting Parties. In Article 3 of the present Convention we have established two different rules: the first paragraph sanctions the general rule in the matter of the provision of Article 1, and paragraph 2 provides that Article 2 is applicable to a contracting belligerent with respect to neutral Powers that are likewise contracting Parties, even though the enemy is not a contracting Party. We believe that in this we have not deviated from our general rule, which we consider essential, to the effect that a belligerent should not be forced to observe a restraint which is not imposed upon the enemy; but that we have acted in behalf of belligerents, as it is to the interest of them all to notify neutrals of the outbreak of hostilities, and in behalf of neutrals, to whose interest it is to know this fact as soon as possible.

The Convention[4] relating to the 'laws and customs of war on land' is a revision of that of 1899,[5] which latter is a revision of the project of the Brussels Conference of 1874. As you will see, we have kept the preamble of 1899, because we considered that it was an integral part of the Convention and that it had even influenced its adoption.

We have made some slight changes in the text of the Convention, because we had to introduce the principle of the right to an indemnity in case of violation of the annexed regulations, a principle admitted upon the proposal of the German delegation. The obligation rests upon the Governments themselves and consequently has no place in Regulations concerning instructions to be given to armies. In so far as the Regulations themselves are concerned, I shall not call your attention to the various unimportant changes that we have made in the style.

In the matter of Article 53, I have some special explanations to give.

The Danish delegation had caused an amendment to Article 53 to be voted.[6] We have detached it from that article and made it Article 54. The former Article 54, relating to railroads, was, with some changes, transferred to the Convention respecting the rights and duties of neutrals in war on land, as we did not wish to change the numbering of the Regulations. You will observe that in this new Article 54 two words which appeared

[1] *Post*, p. 489.
[2] *Post*, p. 500.
[3] *Post*, p. 507.
[4] *Post*, p. 509.
[5] *Ante*, p. 120.
[6] *Post*, p. 527.

in the Danish proposition are missing. These are ' or enemy '. We considered that the word ' occupied ' had here as broad a meaning as possible. It applies to the presence of the enemy in enemy territory, either by disembarking or invasion, or by *occupation* in the technical sense; but it applies also to any irregular occupation—for instance, a belligerent entering neutral territory and there cutting a cable. If we have not put ' occupied or enemy ', it is because if we had, the word ' occupied ' could then be explained only as the occupation of neutral territory, an utterly anomalous state of affairs, which we could not allow to appear in a legal convention.

In the matter of the Convention[1] relative to the 'status of enemy merchant ships on the outbreak of hostilities ', I have very little to say. It is, in the main, a regulation of what are called *days of grace*, and we have changed Article 2, paragraph 2, purely for grammatical reasons.

In the Convention[2] relating to the 'conversion of merchant ships into war-ships ', we have changed merely the style and we have given the preamble a more modest and conventional form.

In the matter of the Convention[3] relating to the 'laying of automatic submarine contact mines ', we have made a few more important changes. We found that Article 7 contained obscurities, and have given it a new form which makes it clearer, which change has been approved by the president and the reporter of the Third Commission.

We now come to the Convention[4] relating to 'bombardment by naval forces in time of war '. This is a legacy from the First Peace Conference,[5] which has found in you a faithful testamentary executor. We have introduced a few changes in the style, and have made some other changes for the purpose of eliminating certain obscurities. We believed that the reference in Article 2 might occasion some error and fail to be understood. Article 2 enumerates certain places which are not affected by the prohibition stipulated in Article 1. Then comes a third paragraph alluding to the necessity of immediate military action. But this paragraph is not clear and might lead to the belief that perhaps it is then permissible to bombard an undefended town. This paragraph 3 alludes only to what may be bombarded, that is to say, military works and not an undefended town. The reference to paragraph 1 of the same article has precisely this meaning, because this paragraph implies that the bombardment can be directed only at the places enumerated, and not at the town itself. The reference to Article 1 would, on the whole, have been understood just as well. I suppose that this is the opinion of the reporter of the project.

In the Convention[6] concerning the ' rights and duties of neutral Powers in naval war ', there is nothing to be said about the preamble, since you have already voted it, upon the proposal of the Third Commission. We deemed it necessary to add to Article 9 the words, ' or roadsteads ' which had been inadvertently omitted.

That ends our examination of the Conventions. It still remains for me to make a few explanations concerning the Declaration[7] ' prohibiting the discharge of projectiles and explosives from balloons '. We renewed the Declaration of 1899. It is true that it had lapsed and that we are really making a new Declaration. That of 1899 was made for a period of five years; upon the proposal of the British delegation,[8] that of 1907 will remain in force until the close of the Third Peace Conference. As to the final provisions, we have let those of 1899 stand, and have not substituted the new provisions which we

[1] *Post*, p. 579. [2] *Post*, p. 590. [3] *Post*, p. 645. [4] *Post*, p. 693
[5] *Ante*, p. 21, *vœu* no. 6. [6] *Post*, p. 832. [7] *Post*, p. 888. [8] *Actes et documents*, vol. i, p. 111.

deemed it wise to put in the various conventions. We considered that it would be simpler to leave this Declaration in its original form, so that it would conform to the other two Declarations of 1899 which are still in force.

This Declaration gives rise to another remark. You will recall that it was voted by 29 yeas to 8 nays, with 7 abstentions. It may be asked why under these circumstances, does the Declaration figure in the Final Act and thus appear to be presented as the work of the Conference, although it was not adopted unanimously. The committee, before taking this action, was careful to assure itself that the Powers which had voted in the negative were not opposed to the insertion of the Declaration in the Final Act. That is what took place yesterday on the subject of the Convention relating to the ' Prize Court '. In making my explanations upon this point, I forgot to state that there was only one delegation which had voted against it and that we did not insert this Convention in the Final Act until we had ascertained that there was no opposition to this action on the part of this delegation.

I shall take advantage of this opportunity to return to the vote upon this last Convention. I had hardly finished speaking when an objection was laid before us concerning Article 19, according to which the Court elects its president and vice-president *every three years*. The result is, we were told, that, as there are Powers whose judges will sit only two years, these judges will of right be deprived of the possibility of being elected president or vice-president. We could have changed this period and fixed upon two years, but then the Powers who have the right to have a judge for only one year would raise the same objection. Under these circumstances, we make the proposition that no period be fixed and thus all exclusion of right would be eliminated. You will conclude with us that this is an act of justice and good policy. The Prize Court itself will have the power of deciding, by its own regulations, for what period of time it will elect its president and its vice-president. This is likewise the rule which we propose be laid down in the project relating to the creation of a Court of Arbitral Justice. The two cases are similar.

Now, Gentlemen, I have finished the series of explanations which I had to make to you on behalf of the Drafting Committee.

DRAFT CONVENTION RELATIVE TO THE CREATION OF A COURT OF ARBITRAL JUSTICE [1]

PART I.—CONSTITUTION OF THE COURT OF ARBITRAL JUSTICE

ARTICLE 1

With a view to promoting the cause of arbitration, the contracting Powers agree to constitute, without altering the status of the Permanent Court of Arbitration, a Court of Arbitral Justice, of free and easy access, composed of judges representing the various juridical systems of the world, and capable of ensuring continuity in arbitral jurisprudence.

ARTICLE 2

The Court of Arbitral Justice is composed of judges and deputy judges chosen from persons of the highest moral reputation, and all fulfilling conditions qualifying them, in their respective countries, to occupy high legal posts, or be jurists of recognized competence in matters of international law.

The judges and deputy judges of the Court are appointed, as far as possible, from the members of the Permanent Court of Arbitration. The appointment shall be made within the six months following the ratification of the present Convention.

ARTICLE 3

The judges and deputy judges are appointed for a period of twelve years, counting from the date on which the appointment is notified to the Administrative Council created by the Convention for the pacific settlement of international disputes. Their appointments can be renewed.

Should a judge or deputy judge die or retire, the vacancy is filled in the manner in which his appointment was made. In this case, the appointment is made for a fresh period of twelve years.

ARTICLE 4

The judges of the Court of Arbitral Justice are equal, and rank according to the date on which their appointment was notified. The judge who is senior in point of age takes precedence when the date of notification is the same.

The deputy judges are assimilated, in the exercise of their functions, with the judges. They rank, however, below the latter.

[1] Annex to the first *voeu* of the Second Peace Conference. *Actes et documents*, vol. i, p. 702.

ARTICLE 5

The judges enjoy diplomatic privileges and immunities in the exercise of their functions, outside their own country.

Before taking their seat, the judges and deputy judges must, before the Administrative Council, swear or make a solemn affirmation to exercise their functions impartially and conscientiously.

ARTICLE 6

The Court annually nominates three judges to form a special delegation, and three more to replace them should the necessity arise. They may be reelected. They are balloted for. The persons who secure the largest number of votes are considered elected. The delegation itself elects its president, who, in default of a majority, is appointed by lot.

A member of the delegation cannot exercise his duties when the Power which appointed him, or of which he is a national, is one of the parties.

The members of the delegation are to conclude all matters submitted to them, even if the period for which they have been appointed judges has expired.

ARTICLE 7

A judge may not exercise his judicial functions in any case in which he has, in any way whatever, taken part in the decision of a national tribunal, of a tribunal of arbitration, or of a commission of inquiry, or has figured in the suit as counsel or advocate for one of the parties.

A judge cannot act as agent or advocate before the Court of Arbitral Justice or the Permanent Court of Arbitration, before a special tribunal of arbitration or a commission of inquiry, nor act for one of the parties in any capacity whatsoever so long as his appointment lasts.

ARTICLE 8

The Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are even, by lot.

ARTICLE 9

The judges of the Court of Arbitral Justice receive an annual salary of 6,000 Netherland florins. This salary is paid at the end of each half-year, reckoned from the date on which the Court meets for the first time.

In the exercise of their duties during the sessions or in the special cases covered by the present Convention, they receive the sum of 100 florins *per diem*. They are further entitled to receive a travelling allowance fixed in accordance with regulations existing in their own country. The provisions of the present paragraph are applicable also to a deputy judge when acting for a judge.

These emoluments are included in the general expenses of the Court dealt with in Article 31, and are paid through the International Bureau created by the Convention for the pacific settlement of international disputes.

ARTICLE 10

The judges may not accept from their own Government or from that of any other Power any remuneration for services connected with their duties in their capacity of members of the Court.

ARTICLE 11

The seat of the Court of Arbitral Justice is at The Hague, and cannot be transferred, unless absolutely obliged by circumstances, elsewhere.

The delegation may choose, with the assent of the parties concerned, another site for its meetings, if special circumstances render such a step necessary.

ARTICLE 12

The Administrative Council fulfils with regard to the Court of Arbitral Justice the same functions as to the Permanent Court of Arbitration.

ARTICLE 13

The International Bureau acts as registry to the Court of Arbitral Justice, and must place its offices and staff at the disposal of the Court. It has charge of the archives and carries out the administrative work.

The secretary general of the Bureau discharges the functions of registrar.

The necessary secretaries to assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

ARTICLE 14

The Court meets in session once a year. The session opens the third Wednesday in June, and lasts until all the business on the agenda has been transacted.

The Court does not meet in session if the delegation considers that such meeting is unnecessary. However, when a Power is party in a case actually pending before the Court, the pleadings in which are closed, or about to be closed, it may insist that the session should be held.

When necessary, the delegation may summon the Court in extraordinary session.

ARTICLE 15

A report of the doings of the Court shall be drawn up every year by the delegation. This report shall be forwarded to the contracting Powers through the International Bureau. It shall also be communicated to the judges and deputy judges of the Court.

ARTICLE 16

The judges and deputy judges, members of the Court of Arbitral Justice, can also exercise the functions of judge and deputy judge in the International Prize Court.

Part II.—Competency and Procedure

Article 17

The Court of Arbitral Justice is competent to deal with all cases submitted to it, in virtue either of a general undertaking to have recourse to arbitration or of a special agreement.

Article 18

The delegation is competent :

1. To decide the arbitrations referred to in the preceding article, if the parties concerned are agreed that the summary procedure, laid down in Part IV, Chapter IV, of the Convention for the pacific settlement of international disputes is to be applied.

2. To hold an inquiry under and in accordance with Part III of the said Convention, in so far as the delegation is entrusted with such inquiry by the parties acting in common agreement. With the assent of the parties concerned, and as an exception to Article 7, paragraph 1, the members of the delegation who have taken part in the inquiry may sit as judges, if the case in dispute is submitted to the arbitration of the Court or of the delegation itself.

Article 19

The delegation is also competent to settle the *compromis* referred to in Article 52 of the Convention for the pacific settlement of international disputes if the parties are agreed to leave it to the Court.

It is equally competent to do so, even when the request is only made by one of the parties concerned, if all attempts have failed to reach an understanding through the diplomatic channel, in the case of :

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, providing for a *compromis* in all disputes, and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the delegation. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of questions to be submitted to compulsory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

Article 20

Each of the parties concerned may nominate a judge of the Court to take part, with power to vote, in the examination of the case submitted to the delegation.

If the delegation acts as a commission of inquiry, this task may be entrusted to persons other than the judges of the Court. The travelling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them.

ARTICLE 21

The contracting Powers only may have access to the Court of Arbitral Justice set up by the present Convention.

ARTICLE 22

The Court of Arbitral Justice follows the rules of procedure laid down in the Convention for the pacific settlement of international disputes, except in so far as the procedure is laid down in the present Convention.

ARTICLE 23

The Court determines what language it will itself use and what languages may be used before it.

ARTICLE 24

The International Bureau serves as channel for all communications to be made to the judges during the interchange of pleadings provided for in Article 63, paragraph 2, of the Convention for the pacific settlement of international disputes.

ARTICLE 25

For all notices to be served, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the Power on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requests addressed for this purpose can only be rejected when the Power applied to considers them likely to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

ARTICLE 26

The discussions are under the control of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by one of the parties cannot preside.

ARTICLE 27

The Court considers its decisions in private, and the proceedings are secret.

All decisions are arrived at by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge, in the order of precedence laid down in Article 4, paragraph 1, is not counted.

ARTICLE 28

The judgement of the Court must give the reasons on which it is based. It contains the names of the judges taking part in it ; it is signed by the president and registrar.

ARTICLE 29

Each party pays its own costs and an equal share of the costs of the trial.

ARTICLE 30

The provisions of Articles 21 to 29 are applicable by analogy to the procedure before the delegation.

When the right of attaching a member to the delegation has been exercised by one of the parties only, the vote of the member attached is not recorded if the votes are evenly divided.

ARTICLE 31

The general expenses of the Court are borne by the contracting Powers.

The Administrative Council applies to the Powers to obtain the funds requisite for the working of the Court.

ARTICLE 32

The Court itself draws up its own rules of procedure, which must be communicated to the contracting Powers.

After the ratification of the present Convention the Court shall meet as early as possible in order to elaborate these rules, elect the president and vice-president, and appoint the members of the delegation.

ARTICLE 33

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated through the Netherland Government to the contracting Powers, which will consider together as to the measures to be taken.

PART III.—FINAL PROVISIONS

ARTICLE 34

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* of the deposit of each ratification shall be drawn up, of which a duly certified copy shall be sent through the diplomatic channel to all the signatory Powers.

ARTICLE 35

The Convention shall come into force six months after its ratification.

It shall remain in force for twelve years, and shall be tacitly renewed for periods of twelve years, unless denounced.

The denunciation must be notified, at least two years before the expiration of each period, to the Netherland Government, which will inform the other Powers.

The denunciation shall only have effect in regard to the notifying Power. The Convention shall continue in force as far as the other Powers are concerned.

Report to the Conference from the First Commission Recommending the Creation of a Court of Arbitral Justice[1]

(Reporter, Mr. James Brown Scott)

Inter leges silent arma

Gentlemen:

Before undertaking the systematic exposition and analysis of the project for the establishment of the Court of Arbitral Justice, voted by the committee of examination [B] and referred to the subcommission of the First Commission, it may be advisable to devote a few paragraphs, by way of introduction, to the Permanent Court of Arbitration, created in 1899, by the First Conference, alongside of which it is proposed to establish a Court of Arbitral Justice, in order to supplement the existing Court.

It will be recalled that Article 16 of the Convention of 1899 provided:

> In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

That this solemn declaration of a broad and beneficent principle might not remain a dead letter, the Conference undertook to create a Court in which international controversies might be arbitrated. Article 20 provides as follows:

> With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

The framers of the Convention had in mind the arbitration of international conflicts, and, admitting as incidental to arbitration that the parties litigant choose their own judges,[2] Article 17 added that 'the arbitration convention is concluded for questions already existing or for questions which may arise eventually. It may embrace any dispute or only disputes of a certain category'.

If Articles 16, 20, and 17 be compared and analysed, it is evident that questions of a judicial nature were deemed peculiarly susceptible of arbitration, and by the establishment of a Permanent Court of Arbitration it was hoped that these questions would be frequently arbitrated and decided on the basis of respect for law. So far it would seem that the foundations were laid for a Court in the judicial sense of the word, but arbiters, the choice of the parties litigant, instead of judges were to be appointed.

[1] *Actes et documents*, vol. i, p. 347. This report was laid before the First Commission in the name of a committee [B] composed of, first, the officers of the commission: their Excellencies Messrs. Barbosa, Mérey von Kapos-Mére, Sir Edward Fry, honorary presidents; his Excellency Mr. Léon Bourgeois, president; his Excellency Mr. Esteva, Mr. Kriege, and his Excellency Mr. Pompilj, vice-presidents; Mr. Scott, reporter; and as having been designated by the subcommission, his Excellency Baron Marschall von Bieberstein (Germany), his Excellency Mr. Choate (United States of America), Mr. Lammasch (Austria-Hungary), his Excellency Baron Guillaume (Belgium), Baron d'Estournelles de Constant (France), Mr. Louis Renault (France), Mr. Fromageot (France), Mr. Georgios Streit (Greece), Mr. Guido Fusinato (Italy), their Excellencies Messrs. Eyschen (Luxemburg), Asser (Holland), Candamo (Peru), d'Oliveira (Portugal), Beldiman (Roumania) and Martens (Russia).

[2] Article 15.

Inasmuch, however, as the Permanent Court was declared by Article 21 to be competent for all arbitration cases, it is manifest that the framers of the convention contemplated that questions other than those of a judicial nature might be submitted to the Permanent Court. There was thus created a single institution which might decide purely legal questions on the basis of respect for law, and broader questions of a non-judicial nature, either or both of which were to be decided by judges, that is, arbiters, chosen by the parties in controversy.

In modern States judicial questions are decided by judges in courts of justice, and the judges are not the direct appointees of the parties. In matters of purely private interests which may be compromised, judges of the parties are as much in place as they would be out of place in a court of justice.

The difference between judicial and non-judicial questions, and the procedure applicable to each, was outlined by his Excellency Mr. Bourgeois before the First Commission. Replying to the criticisms of their Excellencies Mr Choate and Mr. Asser upon the shortcomings and defects of the Permanent Court of 1899, he said:

> "If there are at present no judges at The Hague, it is because the Conference of 1899, taking into consideration the whole field open to arbitration, intended to leave to the parties the duty of choosing their judges, which choice is essential in all cases of a special gravity. We should not like to see the Court created in 1899 lose its essentially arbitral character, and we intend to preserve this freedom in the choice of judges in all cases where no other rule is provided.
>
> "In controversies of a political nature especially, we think that this will always be the real rule of arbitration, and that no nation, large or small, will consent to go before a court of arbitration unless it takes an active part in the appointment of the members composing it.
>
> "But is the case the same in questions of a purely legal nature? Can the same timidity and distrust appear here? . . . And does not every one realize that a real court composed of real jurists may be considered as the most competent organ for deciding controversies of this character and for rendering decisions on pure questions of law?
>
> "In our opinion, therefore, either the old system of 1899 or the new system of a truly permanent court may be preferred, according to the nature of the case. At all events there is no intention whatever of making the new system compulsory. The choice between the Tribunal of 1899 and the Court of 1907 will be optional, and the experience will show the advantages or disadvantages of the two systems.

Impressed by the justice of these views, the framers of the present project have had primarily in mind the establishment of a court for the determination of questions of a judicial nature, without, however, depriving the Powers of the right to resort to it for the settlement of differences of another character. Their aim and purpose is to carry the work of 1899 a step further by instituting a Court of Arbitral Justice for the judicial decisions of international controversies.

Article 20, previously quoted, looked to a Permanent Court, but it is common knowledge that the Court is not permanent, for it exists only for the special case and has to be created anew for each case submitted. There is indeed a permanent list from which the judges can be, and indeed must be, chosen for the particular case. The framers of the Convention meant the Court to be accessible at all times to the suitors, and it was established in order to facilitate recourse to arbitration. This excellent end was frustrated by faulty machinery, because an unconstituted court cannot be said to be accessible

at any time, much less at all times. As stated by his Excellency Mr. Asser, a founder and friend of the Court, 'it is difficult, time-consuming, and expensive to set it in motion'. And in the same connexion his Excellency Mr. Choate said:[1]

> One cannot read the debates which ushered in the taking of that great step by the First Conference without realizing that it was undertaken by that body as a new experiment and not without apprehension, but with an earnest hope that it would serve as a basis at least, of further advanced work in the same direction by a future Conference. . . .
>
> We do not err, Mr. President, in saying that the work of the First Conference in this regard, noble and far-reaching as it was, has not proved entirely complete and adequate to meet the *progressive demands* of the nations, and to draw to the Hague tribunal for decision any great part of the arbitrations that have been agreed upon, and that in the eight years of its existence, only four cases have been submitted to it, and of the sixty judges, more or less, who were named as members of the Court, at least two-thirds have not, as yet, been called upon for any service. . . . Certainly it was for no lack of adequate, competent, and distinguished judges, for the services they have performed in the four cases which they have considered have been of the highest character, and it is out of those very judges that we propose to constitute our new proposed Court.
>
> I am inclined to think that one of the causes which has prevented a more frequent resort of nations to the Hague tribunal, especially in cases of ordinary or minor importance, has been the expensiveness of a case brought there, and it should be one element of reform that the expense of the Court itself, including the salaries of the judges, shall be borne at common expense of all the signatory Powers. . . .
>
> The fact that there was nothing permanent, or continuous, or connected in the sessions of the Court, or in the adjudication of the cases submitted to it, has been an obvious source of weakness and want of prestige in the tribunal. Each trial it had before it has been wholly independent of every other, and its occasional utterances, widely distant in point of time and disconnected in subject-matter, have not gone far towards constituting a consistent body of international law or of valuable contributions to international law, which ought to emanate from an international tribunal representing the power and might of all the nations. . . . It has done great good so far as it has been permitted to work at all. . . .
>
> Let us then seek to develop out of it a Permanent Court which shall hold regular and continuous sessions, . . . which shall speak with the authority of the united voice of the nations, and gradually build up a system of international law, definite and precise, which shall command the approval and regulate the conduct of the nations. By such a step in advance, we shall justify the confidence which has been placed in us and shall make the work of this Second Conference worthy of comparison with that of the Conference of 1899.

Such are the general features of the project we submit to you.[2]

In thus calling attention to some of the palpable defects of the Convention of 1899 no attempt is made to belittle the Permanent Court, which is a landmark in the development of international arbitration. Eight years have now passed since the creation of the Permanent Court of Arbitration, and the Court has been called into being four times. The institution has been tested and has stood the test, and we are able to view the Court in the light of experience. Now this experience shows that the theory of 1899 was correct and that the institution created is workable but expensive; it likewise shows that it

[1] *Actes et documents*, vol. II, p. 328; *American Addresses at the Second Hague Peace Conference* (Boston, 1910), p. 79.

[2] Ibid., vol. I, p. 392, *annexe* B. This project is quoted article by article in this report. Except for some formal changes made by the Drafting Committee and a change in Article 8 (*post*, p. 255, footnote), it is identical with the preceding (p. 226) Draft Convention adopted by the Conference.

may be improved, and that the great improvement consists in making the Court, in fact as in theory, permanent. The most eloquent testimony to the necessity of this improvement is the fact that a founder and friend, and the most experienced and authoritative of living arbiters, his Excellency Mr. Martens, presented in the very first days of the Conference a project for the permanence of a judicial committee to be selected from the present Court. If the father can lay hands upon the child and suggest that he mend his ways, it is not to be wondered at that the godfather should speak more boldly.

The United States of America has always favoured international arbitration, in theory as in practice, as the ponderous volumes of Moore's *Digest of International Arbitrations to which the United States has been a Party* amply show. In 1899 the American delegation co-operated earnestly, shoulder to shoulder, with the British and Russian delegations in the creation of the present Permanent Court, and it has appeared as plaintiff in two of the four cases tried before it. As the United States was reasonably successful in each case, it cannot be said that it is a defeated litigant that suggests changes and improvements of a fundamental nature. The experience of the United States with its Supreme Court leads it to believe that a Court of Arbitral Justice can be created to decide international disputes between equal and sovereign States of the family nations, just as surely and truly as the Supreme Court decides disputes of an international character between the states of the American Union.

The United States has always believed and said that the Court of 1899 is the first step to a Permanent Court of Arbitral Justice, and in so saying it merely consults its own recent past. It may not be known generally that the United States instituted a court of arbitration a hundred and thirty years ago. In the fundamental and constitutional act, called the Articles of Confederation, arbitration of international difficulties between the states was established in principle and in fact in the following manner.

Congress was to be the last resort on appeal in controversies between the states over boundaries, questions of jurisdiction, and other matters. When the authorities or authorized agents of a state petitioned Congress to settle a dispute or difference, notice of the fact was given to the other state in controversy and a day assigned for the appearance of the two parties by their agents, who were thereupon directed to appoint members of the tribunal by joint consent. Failing an understanding, Congress designated three persons out of each of the United States (thirty-nine), and from the list of such persons each party could alternately strike out one, the petitioners beginning, until only thirteen remained. From these thirteen, seven or nine were drawn out by lot, and the persons thus designated composed the court, which decided the controversy by a majority of votes. A quorum of at least five judges was required. In case of non-appearance of one of the parties without a valid reason, or refusal to take part in the formation of the tribunal, the Secretary of the Congress performed this duty in his stead. The award was final in all cases, and each state pledged itself to carry out the award in good faith. The judges were required to take an oath before one of the judges of the supreme or superior court of the state in which the tribunal sat, that they would perform their duties carefully and without partiality or desire for gain.

Even a superficial examination of these provisions shows a striking likeness between the Court at The Hague and its American predecessor.

The life of the American court of arbitration was short: it failed to justify its existence; lacking the essential elements of a court of justice, it was superseded within ten years

of its creation by the present Supreme Court, in which controversies which might lead to war, if between sovereign States, are settled by judicial means.[1]

Will history repeat itself?

Conscious of the weakness and defects of the American court of arbitration, and recognizing the admirable results of the judicial settlement of international controversies by a permanent court composed of judges, the American delegation presented a project for the establishment of a court of law composed of learned and experienced judges, open to all the signatory Powers without the delays and formality necessarily involved in the organization for each case of a special tribunal.

When the first subcommission of the First Commission convened, August 1, 1907, it found before it two propositions looking to the permanency of the International Court. The first was a Russian project,[2] the second the original project of the American delegation.[3]

The discussion that took place on August 1 and on August 3 was of a general nature, and dealt with the question whether the establishment of a Permanent Court composed of judges, ready to receive and decide cases submitted to it, was in itself desirable in present condition.

At the session of August 1 his Excellency Mr. Joseph H. Choate unfolded and explained the American project.[4] He began by quoting the following passage from President Roosevelt's letter of April 5, 1907, to Mr. Carnegie, read at the Peace Congress held at New York:

> I hope to see adopted a general arbitration treaty among the nations; and I hope to see the Hague Court greatly increased in power and permanency, and the judges in particular made permanent and given adequate salaries, so as to make it increasingly probable that in each case that may come before them, they will decide between the nations, great or small, exactly as a judge within our own limits decides, between the individuals, great or small, who come before him. Doubtless many other matters will be taken up at The Hague; but it seems to me that this of a general arbitration treaty is perhaps the most important.

His Excellency Mr. Choate then stated that the instructions to the American delegation were to secure, if possible, a plan by which the judges shall be selected from the different countries, that the different systems of law and procedure and the principal languages shall be fairly represented.

> We have not (said he), in the proposition which we have offered, attempted even to sketch the details of the constitution and powers and character of our proposed court. We have not thought it possible that one nation could of itself prescribe or even suggest such details, but that they should be the result of consultation and conference among all the nations represented in a suitable committee to be appointed by the president to consider them.
>
> The plan proposed by us does not in the least depart from the voluntary character of the court already established. No nation can be compelled or restrained to come before it, but it will be open for all who desire to settle their differences by peaceful methods.

[1] *Missouri* v. *Illinois* (1905), 200 U.S., 496, 518.

[2] *Post*, p. 279. [3] *Post*, p. 280.

[4] *Actes et documents*, vol. II, pp. 109, 127. The entire speech of Mr. Choate may be found at pp. 78–84 of *American Addresses at the Second Hague Peace Conference*. Boston, 1910.

Having thus described the project, Mr Choate gave an outline of its main provisions :

In the first article of our project we suggest that such a Court of Arbitration ought to be constituted—and that is the great question of principle to be first decided. The judges should enjoy the highest moral consideration and a recognized competence in questions of international law. They shall be designated in such a way that the nations, great and small, shall have a voice in designating the manner of their choice. They shall fairly represent all the different systems of existing law and procedure, all the principal languages of the world ; they shall be named for a certain number of years, to be decided by the Conference, and shall hold their offices until their respective successors shall have accepted and qualified.

Our second article provides that our Permanent Court shall sit annually at The Hague, and that they shall remain in session as long as the business that shall come before them will require ; that they shall appoint their own officers and, except as this or the succeeding Conference prescribes, shall regulate their own procedure ; that every decision of the Court shall be by a majority of voices.

It is best that the judges shall be of equal rank, shall enjoy equal diplomatic immunity, and shall receive a salary, to be paid out of the common purse of the nations, sufficient to justify them in devoting to the consideration of the business of the Court all the time that shall be necessary. By the third article we express our preference that in no case, unless the parties otherwise agree, shall any judge of the Court take part in the consideration or decision of any matter coming before the Court to which his own nation shall be a party. In other words, we shall have it in all respects strictly a court of justice and not partake in the least of the nature of a joint commission.

By the fourth article we should make the jurisdiction of this Permanent Court large enough to embrace the hearing and decision of all cases involving differences of an international character between sovereign States, which they had not been able to settle by diplomatic methods, and which shall be submitted to it by an agreement of the parties ; that it shall not have original jurisdiction, but that room shall be given to it to entertain appeals, if it should be thought advisable, from other tribunals, and to determine the relative rights, duties, or obligations arising out of the sentence or the decrees of commissions of inquiry or specially constituted tribunals of arbitration.

The fifth article provides that the judges of the Court shall be competent to act as judges upon commissions of inquiry or special arbitration tribunals, but in that case, of course, not to sit in review of their own decisions, and that the Court shall have the power to entertain and dispose of any international controversy that shall be submitted to it by the Powers.[1]

His Excellency Mr. Martens thereupon pronounced a remarkable discourse,[2] showing, in the first place, that under the terms of the programme for the Conference the creation of a Permanent Court was permissible, and giving the idea of permanence the support of his theoretical and practical experience.

We are agreed upon one essential and indisputable fact, namely, that the present Permanent Court is not organized as it should be. An improvement is needed, and it is our task to make it. This task is an important one, indeed the most important one, in my opinion, of all those devolving upon us.

I have under my eyes the Russian circular of April 3, 1906, which contains the programme adopted by all the Powers. It speaks, first of all, of the necessity of

[1] Mr Scott thereupon explained technically and in detail the principles upon which a Permanent Court should be based. [*Actes et documents*, vol. ii, p. 313. For an English version of Mr Scott's address, see pp. 84–97 of *American Addresses at the Second Hague Peace Conference*, Boston, 1910.]

[2] *Actes et documents*, vol. ii, p. 321.

perfecting the principal creation of the Conference of 1899, that is, the Permanent Court: 'The First Conference separated in the firm belief that its labours would subsequently be perfected from the effect of the regular progress of enlightenment among the nations, and abreast of the results acquired from experience. Its most important creation, the International Court of Arbitration, is an institution that has already proved its worth and brought together, for the good of all, an areopagus of jurists who command the respect of the world.'

It thus appears that his Excellency Mr. Martens recognized the deficiencies in the work of 1899. 'The Court of 1899 is but an idea which occasionally assumes shape and then again disappears.' The realization of these effects induced the Russian delegation to present a project,[1] but it did not by any means offer its project as the sole basis of the deliberations. The project in the first place sanctions the absolute choice of the arbitrators by the Powers. The idea of the list is retained, but, considering that the arbitrators of the case should be known to each other and be at least in part at the disposal of the nations, Mr. Martens suggested the idea of periodical meetings, during which the members should select a permanent tribunal of arbitration to be always at the disposal of the Powers which might desire to have recourse to it.

This Permanent Court was to be composed of three members, but the number of judges could be increased at any time. Instead of three members, five, seven, or nine could be elected. This is, however, a question of detail.

The advantage of the Russian project consists in the retention of the present foundations, on which it proposes to construct another edifice better adapted to the just demands of international life.

His Excellency Baron Marschall von Bieberstein pledged, in brief but eloquent terms, the support of the German delegation:

> I declared a few days ago that the German Government considers the establishment of a Permanent Court of Arbitration as a real step in the line of progress.
>
> I wish now, while this discussion is being opened, formally to repeat my declaration in the name of the German delegation. I take a genuine pleasure in accepting the general principles so eloquently defended by the delegates from the United States.
>
> We are ready to devote all our energy toward the accomplishment of this task which Mr. Martens very correctly defined, on presenting it, as one of the most important ones of the Second Peace Conference.

His Excellency Sir Edward Fry gave to the idea the support of the British delegation and their Excellencies Messrs. de la Barra, on behalf of Mexico, and Larreta, Drago and Sáenz Peña, first delegate from Argentine, stated that their delegations were in favour of the idea of permanency. At the following session their Excellencies Messrs. Esteva, first delegate from Mexico; Milovanovitch, in the name of the Serbian delegation; Belisario Porras, delegate from the Republic of Panama; J. N. Léger, delegate from Haiti; José Gil Fortoul, delegate from Venezuela; Ivan Karandjouloff, delegate from Bulgaria; the Marquis de Soveral, in behalf of Portugal; Samad Khan, Mumtas-es-Saltaneh, in behalf of Persia; and J. P. Castro, in behalf of Uruguay, stated that they agreed to the general outlines of the American project, some without reservation and others making reservations regarding the composition of the Court. His Excellency Mr. Esteva, in particular, maintained that he voted only with reservations, 'because the principles which are to serve as a basis in the establishment of the Permanent Court

[1] *Post*, p. 270

were of such great importance that the Mexican delegation would not give its final vote until it had learned of the various projects for the organization of the Court '.

In the session of the third of August, his Excellency Mr. Choate repeated what he had previously said in his discourse, that the proposed Court was not to be obligatory, that it was not to supplant the Permanent Court of 1899, and that each litigant should have the free and untrammelled right to choose which of the two institutions he preferred.

Whereupon his Excellency Mr. Beernaert, of Belgium, delivered a long and careful address in which he replied to the arguments in favour of the proposed Court, and professed his profound and earnest conviction that the line of progress was in the direction of 1899, that the institution of 1899 was preferable to the proposed one, and that the new Court with permanent judges imposed upon the litigants would destroy the principles of selection which is the essence of arbitration.

His Excellency Sir Edward Fry replied briefly to the remarkable oration of Mr. Beernaert and stated in a few short sentences the problem before the Commission :

> If it were a question of supplanting the present Permanent Court by a new Court created, I should without hesitancy side with his Excellency Mr. Beernaert, but the American scheme proposes the creation of a new Court *in addition* to the present Court. The two Courts will work together toward the same goal, and the one which appears to answer the needs of the nations best will survive.
>
> The choice will be free to the nations, and it will be very certain that the most effective Court will be chosen.

The discussion was practically closed by the eloquent and unanswerable discourse of his Excellency Mr. Léon Bourgeois, who spoke not as the president of the Commission, but as first delegate of France, distinguishing between the Permanent Court of Arbitration of 1899 and the proposed Court, showing conclusively that each would have its separate and distinct sphere of interests and influence, and that the existence of the two Courts would be a double guaranty for the world's progress towards justice and peace.

> What we must ascertain [he said] is whether, for limited purposes and under special conditions, it is not possible to secure the working of arbitration more quickly and easily under a new form in no way incompatible with the first one.
>
> For questions of a purely legal nature a real court composed of jurists should be considered as the most competent organ. . . . It is therefore either the old or the new system that is to be preferred, according to the nature of the cases.
>
> Thus we see before us two distinct domains : that of permanency and that of compulsion. However, we reach the same conclusions in both domains.
>
> In the domain of universal arbitration there is a zone of possible compulsion and a zone of necessary option. There is a vast number of political questions which the condition of the world does not yet permit to be submitted universally and compulsorily to arbitration.
>
> Likewise, in the domain of permanency, there are cases whose nature is such as to permit and perhaps warrant their submission to a permanent tribunal. However, there are others for which the system of 1899 remains necessary, for it alone can give the nations the confidence and security without which they will not appear before arbitrators.
>
> Thus it is seen that the cases for which the permanent tribunal is possible are the same as those in which compulsory arbitration is acceptable, being, generally

speaking, cases of legal nature. Whereas political cases, in which the nations should be allowed freedom to resort to arbitration, are the very ones in which arbitrators are necessary rather than judges, that is, arbitrators chosen at the time the controversy arises.

The president having thereupon submitted the American proposition to a vote, twenty-eight votes were cast in favour of taking into consideration the establishment of a Permanent Court of Arbitration, twelve States refraining from voting.[1]

The American and Russian propositions were then referred to the committee of examination for the elaboration of a project.[2]

The committee of examination was therefore confronted by two projects at its first meeting on August 13, 1907. The Russian project [3] was not discussed. The American project [4] served as a basis for discussion, but it is useless to consider it in detail, for it was withdrawn in favour of a common project of the German, American, and the English [5] delegations. Later, at the third meeting on August 29, his Excellency Mr. Barbosa, first delegate from Brazil, presented a project [6] which he accompanied by a powerful and detailed address. This project was, however, afterwards withdrawn by his Excellency Mr. Barbosa.[7] Propositions from the Bulgarian, Haitian, and Uruguayan delegations regarding the composition of a Permanent Court were also presented.[8]

Upon the presentation of the project of the three delegations of Germany, the United States, and Great Britain, for the organization of a Permanent Court, an animated discussion arose as to the name which the Court, if established, should bear. For it was felt that, wittingly or unwittingly, the name chosen either would or should express the nature of the institution to be created, and distinguish it clearly from the existing Court.

The name chosen in the first draft was ' High International Court of Justice ', the intention of the authors of the project being to indicate that the Court was to be an International Court and that its purpose would be to decide any and all claims submitted to it under a sense of that judicial responsibility which is supposed peculiarly to exist in courts of justice.

It was objected that the expression ' High Court ' indicated the existence of lower courts, and that therefore the term ' High Court ' in itself either included or presupposed inferior courts from which an appeal might be taken. It was suggested by the Austro-Hungarian delegation that, in such case, a misunderstanding might arise, for instead of being a court of first instance, depending upon the voluntary submission of the parties to a controversy, the expression ' High Court ' might seem to be synonymous with a court of cassation. The British delegation explained that the term ' High Court ' as

[1] *Actes et documents*, vol. II, p. 350. Those voting in favour of the motion were Germany, United States, Argentine, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Dominican Republic, France, Great Britain, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Russia, Salvador, Uruguay, Venezuela. Those refraining were Austria-Hungary, Belgium, Denmark, Spain, Greece, Norway, Roumania, Serbia, Siam, Switzerland, Turkey.

[2] As in the case of obligatory arbitration the president added to the committee a certain number of members: their Excellencies Baron Marschall von Bieberstein, Mr. Choate, Mr. Eyschen, Mr. Beldiman, Mr. Candamo, and Mr. Louis Renault. At the first meeting of the committee of examination B, the president appointed a subcommittee for drafting composed of Messrs. Asser, Renault, Kriege, Lammasch, Crowe, Scott. Mr. Scott was designated reporter of committee of examination B.

[3] *Post*, p. 270.

[4] *Post*, p. 280.

[5] *Post*, pp. 285, 287.

[6] *Post*, p. 288.

[7] *Actes et documents*, vol. II, p. 702.

[8] *Post*, pp. 281, 282, 285.

understood in Great Britain did not imply necessarily the idea of a court of appeal, but is also used to designate a court of first instance for certain cases of great importance.

Another objection made to the terminology was the use of the word 'justice' because, if unqualified, it would seem or might seem that the Court to be created was a law court in the strict judicial sense rather than a Court of Arbitration. The Austro-Hungarian delegation therefore proposed that the title should show clearly the arbitral nature of the Court.

His Excellency Mr. Barbosa felt that the unqualified presence of the word 'justice' would not only give rise to a misunderstanding, but would be a mistake, because it would mean that the administration of justice was to be the sole purpose of the Court, whereas, as a matter of fact, the purpose in mind was the administration of arbitral justice.

His Excellency Mr. Choate, speaking for the authors of project, expressed a willingness to accept the title most satisfactory to the committee. 'We leave', he said, 'the christening of the child to the committee. Once christened, the child's success in life depends on its acts, not on its name.' To this President Bourgeois replied: 'The question is not merely one of name, but rather of sex. In any event, the committee is unanimously of the opinion that the new institution should not be vested with the attributes of a court of appeal.'

The authors of the project, taking note of the desire of the committee, proposed in second reading the title 'International Court of Justice', but, yielding to the general desire of the committee, finally accepted the title 'Court of Arbitral Justice' as the one most likely to indicate at once the nature and scope of the proposed institution.

Having ascertained the name of the Court, we can now pass in review the articles which explain its nature and functions.

Project for the Establishment of a Court of Arbitral Justice

Article 1

> With a view to promoting the cause of arbitration, the contracting Powers agree to constitute, without altering the status of the Permanent Court of Arbitration, a Court of Arbitral Justice, of free and easy access, composed of judges representing the various juridical systems of the world, and capable of ensuring continuity in arbitral jurisprudence.

An attentive examination of the first article of the project shows the reason for the creation of the Court, namely, first, 'to promote the cause of arbitration', and secondly, to assure 'the continuity of arbitral jurisprudence'. In order to attain these desirable ends, the authors of the project considered as indispensable a court in permanence, as distinct from a court to be constituted for a particular occasion, access to which should be free and easy, and which, by embracing in its composition the different juridical systems of the world, would be fitted to ascertain and develop a system of international law based upon a large and liberal spirit of equity in touch with the needs of the world.

For, although we speak of international law as an international system, it is common knowledge that the system of international law as understood and applied in any community is unfortunately, insensibly influenced by national feeling or prejudice, much as the stream is coloured by the stratum over which it flows. For this national interpretation it was sought, by means of the Court, to substitute an international interpretation,

and by a series of decisions based upon each other and pervaded by a sense of justice it would seem no vain hope that the institution so created would not only develop but, in the course of time, create by judicial means a system of jurisprudence truly international. In the absence of the distinct legislation it must always be a question open to discussion, how far a tribunal is bound by previous or existing decisions. The difficulty becomes infinitely greater when isolated tribunals of arbitration pass upon the same allied questions without the sense of responsibility which comes from a previous decision of the same tribunal. By the establishment of a Court of Arbitral Justice it may be hoped, indeed expected, that a Court sitting in permanence will not lightly overrule or deviate from previous decisions unless there be overwhelming and compelling reasons ; and it is also clear that a Court, knowing that its decision is likely to be authority with its successor and cited as a precedent, will devote the labour and reflection to the decision necessary to make it a landmark in international law. The twofold purpose, namely, ' to advance the cause of arbitration ' and to assure ' the continuity of arbitral jurisprudence ', would seem to demand a Permanent Court, and the permanence of the Court would insensibly and inevitably assure not merely the continuous but the scientific development of arbitral jurisprudence.

To effectuate the fundamental purpose of the Court it is not alone sufficient that it be permanent, although permanency is indeed a first requisite. If the Court is to develop an international, not a national system of law, it seems to need no argument that the various systems of law should find representation within the Court and upon the bench. In a national court this proposition is so axiomatic that it would neither be questioned or discussed, but the problem is here complicated by the fact that many systems of law exist and that these various systems must find adequate representation. Different systems of law exist in different States, but an international court must embrace the various systems of the world. If the Court is to judge according to equity and international law, it must not be the equity of any one system, but the equity which is the resultant of the various systems of law. Just as the individual rarely frees himself from this environment, so the jurist is influenced by his system of law and the training in it. Supposing, therefore, that each is influenced by his training, it is necessary to have judges trained in the various systems of law in order that the equity administered by the Court may be truly the spirit of the laws. For the purpose of the Court municipal law must be nationalized. In this case, and in this case only, can the judgement be equitable in any international sense, for the judgement so formed will be based upon international equity as well as international law.

It is stated that the jurist is the product of his training. It is likewise true that the individual is influenced by his environment and possesses, in greater or lesser degree, the characteristics of his nation. It would be futile, if indeed it were possible, to denationalize a judge. But the presence in the Court of judges trained in the various systems of law, and representing in their intellectual development characteristics of their respective nations, would go far toward engendering an international spirit.

But even admitting the presence of the various prerequisites for a Court of Arbitral Justice, it is necessary that the access to the Court be easy, indeed that it be free, otherwise the difficulties of the Permanent Court of 1899 arise. It is not sufficient that the door be opened. It will not do that the door be opened with difficulty. It must not be forced ; it must yield readily to the touch of plaintiff or defendant. In the interest

of justice and of the peaceful settlement of international difficulties it should be open. It should invite, not discourage, attendance, and therefore burdensome conditions should not exist. The access should be free and easy; free in the sense that no fee should be paid for entrance, and easy in that the desire to enter should of itself be sufficient. It therefore seemed indispensable to the authors of the project that the preliminary expenses should not be required, and that the expenses of the Court, including therein the salaries of the judges, should be borne by the signatory Powers, not by the individual suitors; for expenses incurred in the interest of all should be shared by all

The original draft expressed this thought by the phrase 'easy and gratuitous access.' As, however, the word 'gratuitous' seemed ambiguous, it was suggested by his Excellency Mr. Martens that a phrase be chosen that gives full expression to the thought it was intended to convey; and as only the expenses of the Court were to be borne by the community, and as each litigant was to bear its own expense and an equal share of the costs in the case, it was suggested that the expression 'easy and free' would be less misleading and therefore more accurate. The suggestion of Mr. Martens was accepted and incorporated in the text adopted by the committee.

Admitting the Court of Arbitral Justice to be necessary or advantageous, the question naturally arises, what should be the relation between the proposed Court and the existing Permanent Court of Arbitration created by the Convention of 1899? Were the Court intended as a substitute for the Permanent Court, the question would be one of no great importance, but as the authors of the project disclaimed expressly any intention to displace or indeed modify the creation of 1899, it was necessary that this intent should find adequate expression. It would be possible to organize a new Court without mentioning the old, so that the two institutions, each meant for a different purpose, would coexist. A matter of such fundamental importance should not, however, be left to implication, and the authors of the project expressed the idea clearly and precisely in the words 'that the new Court should be organized and exist alongside the Permanent Court of Arbitration'. As, however, the expression 'alongside' might seem to reflect upon the older and existing institution, it was decided, upon the motion of his Excellency Mr. Mérey, that the text of Article 1 should state, in definite terms, that the new Court presupposes the existence of the old, and the old Court was to be in no wise jeopardized by the creation of the new. Mr. Mérey therefore proposed to replace the expression 'alongside the Permanent Court' by the phrase 'maintaining however, the actual Court', which wording would seem to indicate more clearly the maintenance of the older institution and its connexion with the new Court. In consequence of this suggestion the principle advocated by Mr. Mérey was accepted and strengthened in the following manner, namely. 'without altering the status of the Permanent Court of Arbitration', for the latter expression includes not merely the desire to maintain the Court of 1899, but states positively that the new Court shall not injure or alter the Permanent Court of Arbitration. This wording proposed by the authors of the project was accepted by the committee and incorporated in the final text.

But supposing that the new institution be created and exist alongside the other, without altering its status, the question is still unanswered, namely, what is the relation between the Court of 1899 and the new institution? Various views were expressed on the subject. One view would make the new Court a committee of the older Court, but constitute it within the Permanent Court. Another view, differing but slightly from the former, would

make it independent in name, but by appointing its judges from the members of the Permanent Court of Arbitration would, in reality, make it a development of the existing Court. Still another view would recognize the independence of the institution by placing it alongside the Permanent Court as an independent institution, but would establish a close connexion between the two by appointing its judges, as far as possible, from among the members of the original Court.

As will be seen, the last view was the one accepted by the committee.

Article 2

> The Court of Arbitral Justice is composed of judges and deputy judges, chosen from persons of the highest moral reputation, and all fulfilling conditions qualifying them, in their respective countries, to occupy high legal posts, or be jurists of recognized competence in matters of international law.
>
> The judges and deputy judges of the Court are appointed, as far as possible, from the members of the Permanent Court of Arbitration. The appointment shall be made within the six months following the ratification of the present Convention.

It will be seen that this article is composed of three parts dealing respectively, first, with the qualification of the judges; secondly, with their nomination; and thirdly, with the time within which the nomination shall be made. Let us consider each in its proper order.

It cannot be denied that the respect for a court of justice depends upon the character and attainments of its judges, and every community, with even a rudimentary respect for justice, must see to it that the bench, like Caesar's wife, be above suspicion. The method of selection may be appointed by the sovereign Power or he may be elected by popular vote; in any case he must possess the qualities which not only inspire but command respect.

The Convention of 1899 prescribed that the persons chosen for arbitrators should be 'of known competency in questions of international law', and that they should, in addition, enjoy 'the highest moral reputation'.[1]

It seemed unnecessary to the authors of the present project to express this requirement; because it is impossible to suppose that the signatory Powers would select any who did not possess this character in the highest degree. But in order that it might not seem to have escaped attention, and for the sake of completeness, the passage was borrowed from the Convention of 1899 and incorporated in the final wording of the article. The additional requirements stipulated in the present project arise from the very nature of the institution.

As his Excellency Mr. Léon Bourgeois pointed out, in his powerful and convincing argument before the first subcommission, the Permanent Court of 1899 was fitted to subserve a twofold purpose, namely, the decision of political and judicial questions. As the present Court is pre-eminently destined, as indicated by its name and its nature, to decide judicial questions and to act as a Court of Arbitral Justice, it seemed necessary to require that its judges should possess the qualifications for judges in their respective countries; otherwise they might not bring to the Court that knowledge of their judicial systems so essential to the successful operation of an international tribunal. In the

[1] *Ante*, p. 30, Article 23.

next place, it was hoped that judges might be selected for the new Court who had had experience in developing and interpreting the judicial systems of their respective countries. Therefore it was provided that the judges and deputy judges for the new Court should possess the qualifications for appointment to the highest courts of their respective nations.

The fundamental purpose of the authors of the project was clearly and succinctly expressed by Dr. Kriege in the following language:[1]

> There are certain States in which eligibility to the various judicial offices is governed by requirements of various kinds and degrees. If we should not require that an international judge possess all of the judicial qualifications required of the justices of the supreme court of his own country, if we should confine ourselves to prescribing that the judges fulfil the conditions required for appointment to a judicial office, it would, theoretically, be impossible to send to the Court persons who do not possess the competence without which its important duties cannot be performed. In some countries, for instance, persons who have not even read law may be appointed to the office of justice of the peace. It is obvious that such a magistrate should not sit on an international bench.

But foreseeing the possibility that the greatest authorities upon the subject of international law might not have fulfilled judicial posts in their respective countries, or indeed might not in some cases possess the requirements for admission to the supreme court in their respective countries, the authors of the project provided that 'jurists of recognized competence in matters of international law' should be eligible. The purpose was not to exclude a competent authority by limiting the range of selection, but to open the Court to all who possess the qualifications, accentuating, as far as possible, judicial experience. The authors of the project could not overlook the fact that the most competent authorities in international matters are often to be found in our universities and schools of learning.

The purpose, as thus clearly outlined in the first paragraph, is to obtain a body of jurists trained in the municipal law of the various countries, and familiar, practically as well as theoretically, with the details and intricacies of international law as it has been slowly developed in centuries of conflict and assumed a definite and systematic shape. It is freely admitted that no method of selection, and no qualifications, however rigid, will infallibly produce the jurist. In the last resort the man is superior to any qualifications, and the excellence of the Court must depend upon the character and personal force of the judges selected rather than upon academic and artificial distinctions.

The second part of Article 2 deals with the selection of persons who possess the qualifications of judges, and in this connexion the committee took occasion to express fully and in detail the relation that should exist between the Permanent Court of Arbitration and the new Court.

His Excellency Mr. Barbosa declared that the expression that the judges should be chosen, as far as possible, from the members of the Permanent Court failed to establish any really obligatory rule to do so, and that rather than seem to create a legal obligation where none existed, it would be better to say that the signatory Powers *might* choose the judges and deputy judges from the members of the Permanent Court.

It might well happen, however, that none of the judges of the present Court could accept a permanent appointment, either because they were otherwise engaged at home

[1] *Actes et documents*, vol. ii, p. 661.

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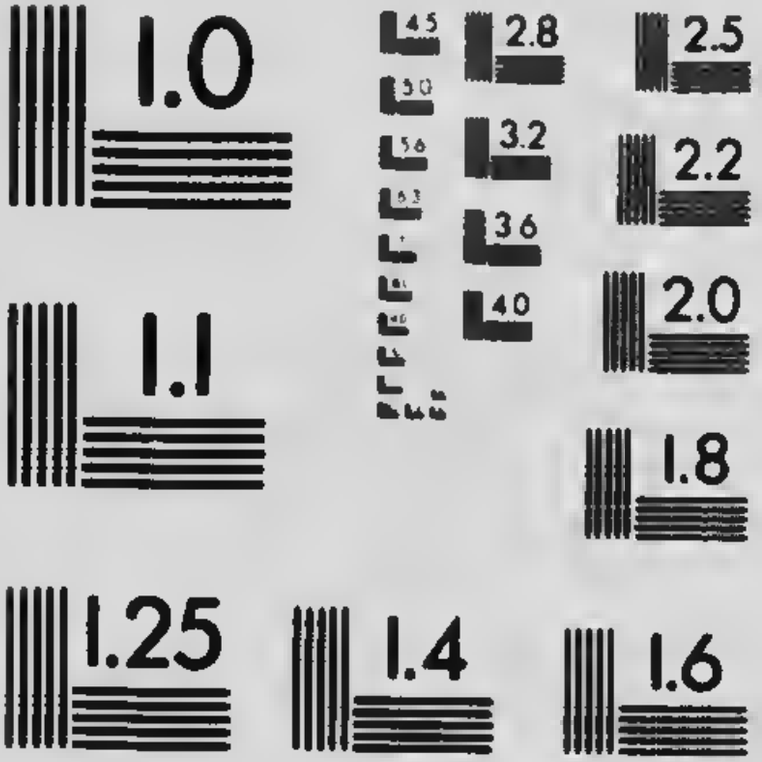

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or because they might be unwilling to pledge themselves to remain permanently or frequently at The Hague. His Excellency Mr. Asser thought the objection might be met by permitting each State to appoint an additional judge, making the number of judges appointed by each State for the actual Court five instead of four, to which his Excellency Mr. Choate replied that the addition of an extra judge would increase a list already large. His Excellency Baron Marschall von Bieberstein felt that the choice among the members of the Court of 1899 should be the rule, whereas President Bourgeois preferred that the judges of the new Court should be chosen *by* and *from* the members of the Court of 1899. He subsequently proposed that the rule of appointment suggested by Baron Marschall be adopted in principle, and that in default of suitable members in the Permanent Court the signatory Powers might then be free to look beyond the members of the present Court.

Baron Marschall suggested that, on the whole, the method announced in the second article should be retained, and the matter was referred to the drafting committee to consider and report a final text. The committee, after mature reflection, preferred the original text, and as such it was ultimately adopted.

In this way the committee indicated very clearly its desire that the Permanent Court of Arbitration should remain in existence, that it should furnish, as far as practicable, the judges for the new Court, and that the signatory Powers should appoint the judges and deputy judges from the members of the present Court as far as circumstances would permit. Of these circumstances the signatory Powers, as sovereign States, naturally would be the proper and exclusive judges. While, therefore, the proposed Court would be independent, as indicated in the first article, it would nevertheless derive in large measure its strength, substance, and influence from the institution of 1899. In the plenary session of the First Commission, on Thursday, October 10, the wording of the paragraph was slightly modified upon the motion of his Excellency Mr. Hammarskjöld, first delegate of Sweden, so as to bring it into greater harmony with the provisional character of the text, which presupposes for its application an agreement of the nations upon the method of selecting the judges. The word 'choice' was substituted for 'nomination', and the phrase 'signatory Powers' was omitted. In this form the article is more accurate although its meaning remains unchanged.

The last part in Article 2 is purely formal in its nature. It neither gave rise to discussion in the committee nor does it need explanation in the report, for it provides merely that the judges shall be nominated within the six months following the ratification of the present Convention.

ARTICLE 3

> The judges and deputy judges are appointed for a period of twelve years, counting from the date on which the appointment is notified to the Administrative Council created by the Convention of July 29, 1899. Their appointments can be renewed.
>
> Should a judge or deputy judge die or retire, the vacancy is filled in the manner in which his appointment was made. In this case, the appointment is made for a fresh period of twelve years.

Article 3 commended itself generally to the committee of examination, for both in the first and the second reading of the project it was adopted without comment or observation.

It appears, therefore, that the judges of the Court are nominated for a certain term

and that they are re-eligible. The fundamental idea underlying this provision was to secure regularity and continuity of judicial decision, for it was thought advisable, indeed essential, that the international community should have the benefit of the experience acquired by a judge upon the bench. The provision of the reappointment of the judges aimed to establish another guaranty for the continuity of judicial decision as well as the permanence of the Court itself.

In the next place it is necessary that the appointment of the judge be notified in some way to an international body, and it was thought advisable to notify each individual appointment to the Administrative Council instituted by the Convention of July 29, 1899, for the pacific settlement of international disputes. The council was designated for this purpose because it is composed of the diplomatic representatives of the signatory Powers, and it was felt that the appointment of the judge, in itself a high international act, should be communicated to the representatives of the nations rather than to the International Bureau, which possesses clerical rather than diplomatic standing.

The second paragraph of Article 3 deals with the filling of a vacancy, whether caused by the death or resignation of a judge. It will not escape your notice that this provision of the article is borrowed from Articles 23 and 35 of the Convention of 1899. It has nothing to do with the causes of the vacancy, which may lead to much controversy and give rise to differences of opinion. It simply provides that the vacancy, however created, should be treated as an original vacancy, and that the judges should be appointed in the manner provided for in the first paragraph, as in the case of an original appointment. It necessarily follows, therefore, that the appointment to fill a vacancy should be for the full term of twelve years.

The question arose frequently in committee, and was carefully examined, whether a provision should not be inserted in the project guaranteeing the immovability of the judges. The committee of examination gave the matter their earnest consideration, and came to the conclusion that it was unwise to give fuller expression to the doctrine of immovability or to attempt to define in advance the causes which might lead to the removal of judges. It was suggested that the legislative dispositions of the signatory Powers might be taken as guide, but as these are so various it seemed impossible to reconcile them and state the result in a single clause.

The authors of the project considered that fixing the mandate of the judge at a period of twelve years was in itself a sufficient guarantee against arbitrary revocation, and that the exercise of the right of recall or dismission should be left to the good sense as well as the good faith of the various Governments. The nomination for the period of twelve years and the provision for a new appointment in vacancies arising from death or resignation of the judge in reality establish the principle of immovability.

Should the Government recall its judge and appoint another in his stead, the appointment would nevertheless be valid, because upon taking oath as judge he is entitled to participate in the decision of the cases, and the judgement in which he takes part would likewise be valid and binding.

Although the matter seems free from doubt, nevertheless, upon the suggestion of President Bourgeois, the conclusion of the authors of the project upon the validity of a judgement rendered in such circumstances is specifically stated in the report, lest future interpretation or controversy might question the jurisprudence which the Court is called upon to develop.

It was proposed to include in the general term of 'unworthiness' all grounds of dismissal, but the difficulty then presented itself as to who should be the judges of the question.

No positive provision is therefore inserted in the project on this subject, and the case is left to be decided when and as it arises.

In choosing the relatively long term of twelve years the authors of the project had in mind not merely to secure the tenure of the judge and the desire to give the signatory Powers the benefit of the experience obtained by the exercise of the judicial functions, but also to safeguard, as far as possible, the fundamental and controlling principle of impartiality; for association in the analysis and development of international law and co-operation in judicial decision would develop inevitably an *esprit de corps* which would necessarily influence each judge in the performance of his duties. Acting under judicial responsibility, individual opinion, indeed prejudice, would lose something of its rigidity, and the decision of the Court would offer the highest guarantees for international impartiality.

Article 4

> The judges of the Court of Arbitral Justice are equal and rank according to the date on which their appointment was notified (Article 3, paragraph 1). The judge who is senior in point of age takes precedence when the date of notification is the same.
>
> The deputy judges are assimilated, in the exercise of their functions, with the judges. They rank, however, below the latter.

The provisions of Article 4 are largely formal in their nature and self-explanatory. It, however, seemed advisable to the authors of the project to state the provisions in clear terms, so that as little as possible be left to conjecture.

The judges of the Court are and must necessarily be equal. As they cannot occupy the same place at one and the same time, it seemed advisable to prevent the possibility of a dispute as to rank or position. Any one familiar with the history of diplomacy will recall the difficulty that grave and dignified diplomats have had in finding their appropriate places at international conferences.

It seemed proper that the rank of the individual judge should be determined by the date of his appointment, as provided in Article 3, paragraph 1. But it might well happen that two judges were appointed on the same date and entered upon the performance of their duties simultaneously. To obviate disagreement or conflict, however trifling, the authors of the project provided that precedence should in that case yield to age. This provision is of importance in case the president and vice-president do not take part in the determination of a case before the Court (Article 26, paragraph 1).

The second paragraph of the article assimilates the deputy to the titular judges in the performance of judicial functions, but indicates in clear and express terms that the deputies take rank after the titular judges, although among themselves the provisions of the first paragraph would apply.

The second paragraph of the fourth article, which has been borrowed from the Prize Court Convention, was added to bring the Prize Court and the Court of Arbitral Justice into harmony.

ARTICLE 5

The judges enjoy diplomatic privileges and immunities in the exercise of their functions, outside their own country.

Before taking their seat, the judges and deputy judges must, before the Administrative Council, swear or make a solemn affirmation to exercise their functions impartially and conscientiously.

This article is composed of two paragraphs, each dealing with a separate yet not dissimilar subject. The provisions that the judges shall in the performance of their duties, enjoy the privileges and immunities of diplomatic agents is too familiar to need comment, and is taken without modification from the Convention of 1899 (Article 24).

It cannot be denied, however, that the expression is rather general and definite in its nature, because the privilege and immunity referred to may concern only the privileges and immunities at The Hague, or it may relate to diplomatic immunity in third countries. This ambiguity was called to the attention of the committee by Professor Lammasch, in very apt language.[1]

He remarked that it would be advantageous to define more clearly the words 'outside of their countries', because it is possible that a State may choose as judge a citizen or subject of another State, in which case it would be necessary to stipulate in Article 5 that 'their countries' means 'the countries of origin'.

Mr. Kriege, representing the authors of the project, felt that a mention of the observation of Mr. Lammasch in the report would be sufficient, and that it was inadvisable to modify the text of 1899, which has been generally approved and accepted.

The second paragraph of Article 5 relates to the oath or affirmation which the judge or deputy is to take before entering upon the performance of his official duties.

Any one familiar with the history of courts of justice knows that the matter of oath and the supposed religious sanction attaching to it has, at times, created great difficulty in one and the same country. It will not escape reflection that men of the highest character and professional attainment have refused to take an oath, but have expressed their willingness to make a solemn affirmation. Controversy and discussion have resulted in authorizing a person, entering upon official duty, to pledge his conscience to faithful performance in the manner binding upon him personally and individually, and affirmation is assimilated to oath. In countries of diverse nationalities and in which different religious systems prevail it would seem expedient to attempt to provide an oath binding upon all. It was suggested that the oaths required of the judicial officers in their respective countries might be the test, but as these differ there would be a lack of uniformity. It was therefore finally proposed by the authors of the project that the judge should take an oath or solemn affirmation to exercise judicial functions incumbent upon him impartially and conscientiously, and that for purely formal reasons this oath should be taken before the diplomatic representation, namely, the Administrative Council at The Hague. In this manner the oath or affirmation would be a matter of international record.

ARTICLE 6

The Court annually nominates three judges to form a special delegation and three more to replace them should the necessity arise. They may be re-elected. They are balloted for. The persons who secure the largest number of votes are considered

[1] *Actes et documents*, vol. ii, p. 663.

elected. The delegation itself elects its president, who, in default of a majority, is appointed by lot.

A member of the delegation cannot exercise his duties when the Power which appointed him or of which he is a *ressortissant* is one of the parties.

The members of the delegation are to conclude all matters submitted to them, even if the period for which they have been appointed judges has expired.

In the original text of the project the present article appeared as follows :

ARTICLE 6

The High Court shall annually nominate three judges, who shall form a special committee during the year, and three more to replace them should the necessity arise.

A member of the committee cannot exercise his functions when the Power which appointed him is one of the parties.

The members of the committee shall conclude all matters submitted to them, even if the period for which they have been appointed judges has expired.

It will be seen that the article has undergone considerable modification in subsequent amendments, due to criticism and suggestion within the committee. These modifications are of two kinds, the first affecting the form, the second the substance.

His Excellency Mr. Martens objected to the use of the words ' special committee ' as inconsistent with the nature and purpose of a court of justice.

Desiring to overcome this objection, which was of a formal nature, because the functions would be the same whatever the name ultimately chosen might be, the drafting committee proposed ' commission ', in order to bring the Prize Court and the proposed Court into exact harmony. Mr. Martens objected that ' special commission ' was as unsatisfactory as ' special committee ', and proposed ' special tribunal '.

The expression ' special tribunal ' was, however, objectionable, because the use of the word ' tribunal ' might lead to misunderstanding, as the word was used in a different sense in the Convention of 1899. Another and more fundamental objection to the use of the word ' tribunal ' seemed to exist in the fact that its presence might suggest that the small committee was in itself a separate and distinct court charged with the performance of certain duties and functions. As the purpose of the authors of the project was to create a single court for the decision of international difficulties of a judicial nature, it seemed inadmissible to use an expression which might by implication suggest the creation at one and the same time of two institutions. As the small body proceeded from the larger body and derived all of its power from the larger, it was finally suggested that the expression ' delegation ' would indicate the source, that it would not even by implication create an independent body, and that it might hope to meet, as it actually did, the objections made to the various designations. The expression ' special delegation ' was therefore used in the first instance, but in the subsequent articles the small body is referred to as ' delegation ' without the adjunction of the word ' special '.

In the next place, the wording was criticized as faulty because, while providing that three members should be designated, the method of their selection was left undetermined. For that reason it was provided in the amended text that the three members, and the deputies to replace them in case of their inability to act, should be elected by ballot by the Court, and that those should be considered elected who received the greatest number of votes.

His Excellency Mr. Martens proposed that the three members and their deputies composing the delegation should be capable of re-election. The right of the Court to designate the members necessarily presupposes this possibility, but the committee of examination followed the suggestion of Mr. Martens by stating it *expressis verbis*.

The original text of Article 6 made no reference to the president of the delegation, it being supposed that the rules of Court would prescribe the necessary regulations. However, it was subsequently decided that the article should be complete in itself and not leave a matter of such importance to future regulation. The delegation, therefore, was given power to elect its president by majority, and failing a majority, to select him by lot.

The emendations of paragraphs 2 and 3 of the article under consideration went to their substance. The authors of the project meant to exclude from the delegation subjects or citizens of the party in litigation, believing that their presence in such a small body might tend to destroy the judicial character of the delegation by assimilating them too closely to arbiters.

Mr. Lammasch suggested that a nation entitled to appoint a judge of the Court of Arbitral Justice might select a subject or citizen of another country, and that, during his tenure of office and presence in the delegation, the country of his origin might appear as plaintiff or defendant before the delegation. In order to insure the largest measure of impartiality he proposed to insert after the words ' the country which appointed him ' the clause ' or of which he is a subject or citizen '. The proposition was immediately accepted and appears in the final text.

The third paragraph of Article 6 permits the delegation, as composed at the time of the submission of a case, to sit until the case has been disposed of, even although the year of their appointment shall have expired. It is admitted that this provision can be questioned in theory, as was pointed out by President Bourgeois, because it might happen that two delegations would be sitting, at least for a while, at one and the same time. But the authors of the project took council of practice rather than theory and fortified themselves by the maxim *interest reipublicae ut sit finis litium*. The submission of a partially decided case to new judges might prolong indefinitely a decision, and theory may well yield to practice to subserve the interest of justice. Another reason for the extension in question arises from the fact that the matters submitted to the delegation are of a nature to be rapidly decided, and that the theoretical difficulty is likely to be the exception instead of the rule.

His Excellency Mr. Asser felt that the period of a year was too short, and that the difficulty would be overcome by lengthening the term. The authors of the project opposed this suggestion, and their views were set forth by Mr. Kriege as follows :[1]

> The judges will hold in the special commission a very peculiar position and their functions will be of a very delicate nature. The Court must therefore be given opportunity to form an estimate of their respective industry and fitness, and the facility of replacing them within a comparatively short period. If any member stands the test, the Court may, by re-electing him, avail itself of his experience. . . .
>
> The authors of the project thought it advisable to enable eminent and busy men to serve on the commission without relinquishing their high positions at home, which would undoubtedly be the case if they had to occupy their seats for more than one year.

[1] *Actes et documents*, vol. ii, p. 665.

The purpose of the provision in question was to present a ready means of settling a difficulty by providing a small body of judges to which it could be presented and decided. The proceeding is therefore in the nature of a summary proceeding and, the designation being for a year, would permit a small delegation of trained judges on permanent session during the course of the year to receive and decide any cases presented. At the same time the limitations of their mandate would prevent them from constituting themselves in permanence and creating within the Court an institution which might compete with it.

The reason advanced by Mr. Kriege that jurists of recognized ability might be willing to serve on the committee for a year, whereas it might be impossible for them to serve on it for a longer time, seemed to the authors of the project a sufficient reason why the mandate should not be extended beyond a year. The possibility of re-election would in itself seem to meet the objection of his Excellency Mr. Asser.

Article 7

> A judge may not exercise his judicial functions in any case in which he has, in any way whatever, taken part in the decision of a national tribunal, of a tribunal of arbitration, or of a commission of inquiry, or has figured in the suit as counsel or advocate for one of the parties.
>
> A judge cannot act as agent or advocate before the Court of Arbitral Justice, the Permanent Court of Arbitration, before a special tribunal of arbitration or a commission of inquiry, nor act for one of the parties in any capacity whatsoever so long as his appointment lasts.

The project in all its parts looks to the impartial administration of justice, for partiality is as unpardonable and objectionable in an international as in a municipal court, and the authors of the project devoted themselves with singleness of purpose to secure and safeguard that impartiality, without which an international court would be without business as it would be without respect.

To secure this impartiality and to prevent even the breath of suspicion, the judge of the Court of Arbitral Justice is forbidden to take part in the decision of the case, if he has officiated as a judge in its former disposition. If the case was originally decided in a national tribunal of which the international judge was at that time a member, or if he sat as arbitrator in a tribunal of arbitration, or if he was a member of a commission of inquiry which found the facts, or, finally, if he had been previously employed as counsel or advocate of one of the parties in the decision of the case which is submitted to the determination of the Court of Arbitral Justice, it seems indispensable in the interest of justice that such a judge, considering his judicial antecedents, should not be permitted to take part in the decision of the case in the Court of Arbitral Justice. Human nature is prone to justify itself, and experience shows that judges are not wholly free from the frailties of mankind. It is not intimated that a judge in the performance of his official duties would be influenced by his previous conduct and decision, but the fear that he might be influenced is sufficient in itself to disqualify him from taking part in the decision of the case. It may be that a judge so placed would strain a point not to be influenced, and, if so, such conduct would be detrimental to the interests of the parties. It therefore seems advisable to remove him from all possibility of criticism, and by so doing perform a service to him as well as create confidence in the Court.

Respect for the position and situation of the judge requires that he shall not appear during the tenure of his office as agent or advocate before the Court of Arbitral Justice. As there is established an intimate relation between the new Court and the Permanent Court of Arbitration, it was likewise thought advisable to prevent his appearance in any capacity before this august tribunal. The objection to his officiating as advocate or agent before a special tribunal of arbitration is not perhaps so cogent, nor is his exclusion from a commission of inquiry justified by the same imperious necessity; but the duties of agent and advocate are so incompatible with the calm and poise of a judge that it seems advisable, in the interests alike of judge and Court, to prevent him from uniting in his person these differences and at times incompatible qualities.

The foregoing prohibitions would seem adequately to cover the subject, but in order to prevent indirectly the performance of duties incompatible with judicial impartiality, the authors of the project forbade the judge 'to act for a litigant, in any capacity whatsoever, during his tenure of office'. This latter clause would prevent him from giving advice and counsel to parties litigant, even though he did not appear as agent or advocate. It seems, therefore, that the judge is to devote himself to his judicial duties with singleness of purpose during his entire term, and the possibility of his being interested, either directly or indirectly, in any capacity other than that of judge is excluded by the express wording of the article.

It should be added that the provisions of the article in its present form were adopted by the committee without observation.

The original text of the first paragraph of the foregoing article was as follows:

> In no case, unless with the express consent of the parties in dispute, can a judge participate in the examination or discussion of a case pending before the International High Court of Justice when the Power which has appointed him is one of the parties.

The presence or absence of subjects or citizens upon the Court, when their country of origin is a party to the proceeding before it, gave rise within and without the committee to grave discussion and reflection. It is familiar doctrine that a man should not be judge and advocate in his own cause, and this provision obtains in all systems of national jurisprudence. The purpose of the American delegation in proposing the establishment of the new Court, composed of judges, was to secure not approximate but that absolute justice which obtains in a highly organized and well-regulated court of justice. It did not mean to question the impartiality of nationals. It meant to remove from them any suspicion of partiality which might arise if they passed judgement upon a case in which their own country or the country appointing them was involved or interested. The American delegation therefore wished to exclude from the proposed Court an American judge, supposing he was a member of the Court at the time when an American case was submitted, and to leave the decision of the Court solely to the foreign judges.

In this view the British delegation concurred.

The German delegation, however, felt that the presence of a national upon the Court at such a time would be a guaranty that the national view would be carefully presented to the judges in chamber, and that the assistance of such a one in drawing up the final judgement would be an advantage both from his familiarity with national jurisprudence and from his desire to prevent the formulation of the judgement in such a way as might seem to reflect, unwittingly or improperly, upon the nation of which he is the appointee.

These arguments are of themselves convincing, unless their realization should affect the question of impartiality. In a small Court the presence of a national might cast a suspicion of partiality, as is the case with small tribunals of arbitration, where the struggle of each party is supposed to be to win over the umpire. In a large Court, however, the difficulty of convincing a majority would be so great that the suspicion of partiality could not easily arise. The proposition, therefore, of the German delegation, that nationals should sit in cases in which their respective countries were involved, was accepted by the American and British delegations.

A strong and convincing argument for the German amendment lies in the fact that the Court sought to be created is an International Court, and that its jurisdiction depends upon general or special agreements of arbitration. The essence of arbitration consists in the free choice of judges. It would seem unwise to exclude nationals unless the reasons for their exclusion was overwhelming. The resort to arbitration should not be discredited, and the desire of its friends should be to cure the defects rather than to kill the system. As, therefore, the presence of nationals in a numerous body is unlikely to impair the usefulness of the Court, and possesses, on the contrary, the advantages mentioned in the German amendment, and in addition preserves intact the arbitral character of the tribunal, the amendment was unanimously adopted by the committee of examination.

The amendment proposed and accepted has the advantage not merely of meeting a general desire but of carrying out a suggestion made by the Russian Government in 1899, for the constitution of a tribunal of arbitration, of which the third section is as follows:

> If one or more Powers among those in litigation are not represented upon the arbitral tribunal. . . . each of the two parties in litigation shall have the right to be represented thereon by a person of its own choice acting as judge and having the same rights as the other members of the tribunal.[1]

The presence of nationals within the Court is important from another point of view, namely, because its decision is not limited in its effect to the nations in controversy. It affects international law as a whole, and the nations should not be disqualified, merely because their respective countries are parties litigant, from contributing to and influencing the development of international law.

ARTICLE 8

> Every three years the Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are even, by lot.

The provisions of this article, short and simple as it is, are yet of fundamental importance, for it means that the Court is to choose its own officers by ballot without dictation. The president is not to be imposed upon the Court, neither is he to be selected by an alphabetical arrangement nor by lot. The Court itself is to determine the qualities it prefers in a president, and elect as presiding officer the one who possesses those qualities.

The vice-president is likewise selected by the Court, and as he is to preside in the absence of the president, it is to be supposed that he will possess the qualifications in as eminent a degree as the president himself.

[1] *Ante*, p. 101.

As the selection of these officers is of vital importance, the article provides that the election shall result from an absolute majority of the members of the Court on the second ballot.

Should no candidate receive this absolute majority, plurality will suffice to elect; and if opposing candidates should receive an equal number of votes, lot will decide between them. It is unlikely that all these methods of election and selection will be resorted to, but it seemed advisable to specify them in the article for the sake of completeness. A difficulty inevitably exists in the case of a tied vote, which can be easily met by drawing lots, even although there are other methods. For example, the senior judge in date of service, as evidenced by his oath of office, might be declared elected. What shall be done, however, if the two candidates in question took oath on the same day? In such a case the age of the respective candidates might be considered, as wisdom and experience are supposed to come with age. The committee seemed to prefer this mode of selection, and the last clause of the article was directed to be modified in this sense. The committee of examination, however, did not find the reasoning convincing, and on second reading the article was adopted as stated above.

It will be noted that the president and vice-president are selected for a period of three years. This period is in its nature arbitrary. It was felt that the Court should have the benefit of the experience obtained by the presiding officers in the performance of their judicial duties, and that this experience might be lost if an election took place every year. If a presiding officer prove himself competent and equal to his duties, he can be re-elected. Should he fail to meet the expectations of the Court, another may be selected in his place. To the authors of the project less than three years seemed too short. More than three years might prove an embarrassment in the highly improbable event that the presiding officer failed to command the confidence of his colleagues.[1]

Article 9

The judges of the Court of Arbitral Justice receive an annual salary of 6,000 Netherland florins. This salary is paid at the end of each half-year, reckoned from the date on which the Court meets for the first time.

In the exercise of their duties during the sessions or in the special cases covered by the present Convention, they receive the sum of 100 florins *per diem*. They are further entitled to receive a travelling allowance fixed in accordance with regulations existing in their own country. The provisions of the present paragraph are applicable also to a deputy judge when acting for a judge.

These emoluments are included in the general expenses of the Court dealt with in Article 31, and are paid through the International Bureau created by the Convention of July 29, 1899.

In the original text the salaries of the judges, as well as the additional compensation to be received by them for performance of their professional duties at The Hague, were omitted. In other respects the final wording differs only in matters of style from the original form.

Let us consider each paragraph in turn.

It was felt advisable that judges of the Court of Arbitral Justice should receive

[1] In the final business session of the Conference held October 17, 1907, it was decided to omit from the project any indication of the manner in which the president and vice-president might be elected. *Infra*, p. 225.

an annual salary of 6,000 Dutch florins, for the reason that, as judges, they may be called at any time to officiate at The Hague and that some specific allowance should be made for the services that they stand ready to render. The allowance is admittedly out of proportion to the services it is expected they will perform, but if a modest compensation is open to difficulty and criticism, the committee felt that a larger amount would be open to greater and more serious objections.

If the honorarium be the attraction, rather than the dignity and the nature of the employment, it is possible that politics rather than fitness might enter into the selection. An advocate with a large practice could not be expected to absent himself for long periods; but a judge of fine qualities, rather than a successful advocate, is required for the Court of Arbitral Justice. As jurists rather than practitioners are to be selected, it will not appear that this compensation, modest as it is, is to be despised. If it be borne in mind that the judge does not, at least at present, need to reside permanently at The Hague, and may therefore follow his profession or calling in his own country, it will be seen that the compensation, small as it may seem, is not the sole source of his income; it is additional to it, and therefore is not so insignificant as it would appear at first sight.

The honorarium is, according to this article, to be paid semi-annually, to date from the first meeting of the Court.

There is a further provision that the judges in active service shall receive an additional sum to cover expenses during the official residence at The Hague. This allowance, while not generous, seems adequate, and it was felt by the committee that 100 florins a day would cover the ordinary expenses to which a judge would be subjected.

But as the judges are to be taken from all parts of the world, it is obviously unjust that they should pay their travelling expenses to and from the Court. Were this so, in many cases the position of judge might become a burden, and would entail not merely sacrifice of professional employment, but the additional outlay for necessary and incidental travelling expenses. The committee deemed it inadvisable to fix any rate of mileage. The provisions of each country in the matter of travelling allowances seemed, on the whole, the fairest standard.

While these dispositions relate principally to titular judges of the Court, the deputies, while acting as judges, are clearly entitled to equality of treatment. But there is this difference, that the titular judges receive a fixed salary while the deputies only receive travelling expenses and the daily allowance of 100 florins while engaged in the trial of cases.

In the original text the various sums mentioned were to be borne by the signatory Powers, according to the proportion established for the Bureau of the Universal Postal Union, whereas in the final form the general expenses of the Court are to be paid by the International Bureau, according to the subsequent agreement of the signatory Powers.

Article 10

> The judges may not accept from their own Government or from that of any other Power any remuneration for services connected with their duties in their capacity of members of the Court.

The purpose of this article, like that of so many others in this project, is to safeguard in the largest possible manner the impartiality of the judges, and to protect them, directly

and indirectly, from the slightest charge or suspicion which would reflect upon their honour or freedom and therefore upon their impartiality.

Article 9 provided that the judge should receive compensation at the hands of the signatory Powers. Article 10 provides that he shall receive a salary for the performance of judicial duties solely from the Powers, and that neither directly nor indirectly shall he receive compensation from the home Government for the performance of his judicial duties. If he be a magistrate, if he be an officer of the State or a professor in a university under State control, he is in a certain sense supported by the State, but the salary received is of quite a different origin and is distinct from that received by him as judge of the Court of Arbitral Justice. In the same manner it is provided that the judge shall not receive compensation from any other Power, whether it be in the form of payment or in the more insidious form of gift; for either method would necessarily carry with it the idea of reward for past services, which idea is inconsistent with equal, exact, and impartial justice.

The provisions of this article apply not merely to services rendered in the Court, but to any services in any other judicial capacity in accordance with the provisions of the project, such as membership in the delegation, membership in a commission of inquiry, etc.

ARTICLE 11

> The seat of the Court of Arbitral Justice is at The Hague, and cannot be transferred, unless absolutely obliged by circumstances, elsewhere.
>
> The delegation (Article 6) may choose, with the assent of the parties concerned, another site for its meetings, if special circumstances render such a step necessary.

This article looks to the physical permanence, as it were, of the Court. It is not enough that the judges be selected and definitely known; the Court itself must meet at a certain time and in an ascertained place. That place, by general agreement, is The Hague. The reasonableness of this provision was such as to secure its unanimous acceptance without discussion.

As the purpose of the delegation is different from that of the Court, it seems to follow that the provisions concerning it might differ. Such is the case, for it is provided that the delegation may, with the assent of the parties litigant before it, choose another place for its meetings if special circumstances require it. The reason for this is that the delegation is meant to be a small, permanent body, formed out of the general court and representing it in small matters. Its membership is purposely small, so that the business before it may be rapidly transacted.

It is likewise purposely small, so that it may be enlarged to meet the requirements of a particular case; and Article 20 permits either party litigant to designate a judge of the general Court to sit with the delegation. If the delegation, as it seems probable or at least possible, acts as a commission of inquiry, then each party in controversy has the right to add a member chosen within or without the Court. If it be used for a trifling dispute, and if its presence in a place other than The Hague seems advantageous to the litigants, then its place of meeting may be changed upon request and agreement of the parties. If it sits as a commission of inquiry, that is to say, for the finding of the fact rather than the discovery or application of a principle of law, freedom is left it to meet, upon request of the parties, where the facts in dispute and the evidence to support them may be most readily ascertained or procured.

In considering the question of the use of the delegation for purposes of commissions

of inquiry, his Excellency Mr. Eyschen asked if the delegation were required to act, upon request, as a commission of inquiry. The question involved is of fundamental importance and was considered by the committee in its larger aspect, namely, whether or not the judges of the Court are obliged to exercise judicial functions as commissioners of inquiry, or in any other capacity for which they may be requested. The obligation to serve seems to rise from the very nature of the case, for the judge is appointed, takes the oath, and receives the compensation allowed by Article 9, on condition that he fulfil the duties of his high office. It would seem that the obligation of the judge to exercise his judicial functions in accordance with the terms of his mandate is so formal and so manifest as to make it useless to stipulate it expressly.

It is indeed true that the judges of the Permanent Court of Arbitration are not obliged to serve, but the judges of the new Court of Arbitral Justice are salaried officials. His Excellency Mr. Martens considered the matter of very grave importance,[1] as it seems to imply the right of the judges to refuse to perform their judicial duties. He recalled the fact that the Powers quite frequently, for one reason or another, met refusals from members of the Permanent Court whom they had approached. No one is compelled to accept appointment to the Court, but from the moment that the position is accepted the obligation must be discharged; its duties may not be evaded by any one. His Excellency Mr. Martens further pointed out the necessity of making, by positive stipulation, the members of the Court independent of their Governments. Without such precaution a State could easily, on political grounds, reprove a judge, over whom it has jurisdiction, for accepting the office of judge in such or such a case.

The president of the committee answered that it was clear that the judges of the new Court were to be salaried officers of the international judiciary; that the necessity for a new text is not apparent; that it would be sufficient to define in the report the character of the functions and the obligations therein involved, and to mention in the minutes the remarks made and the agreement reached in the committee in that respect.

The committee was satisfied with the explanation given, and it does not seem advisable to state in positive or express terms a duty incumbent upon a judge by the very nature of his appointment and acceptance of office.

Article 12

The Administrative Council fulfils with regard to the Court of Arbitral Justice the same functions as to the Permanent Court of Arbitration.

The provisions of this article seem to require neither comment nor explanation, for it is a further indication of the necessary and close relation between the proposed Court and the Permanent Court of Arbitration.

Article 13

The International Bureau acts as registry to the Court of Arbitral Justice and must place its offices and staff at the disposal of the Court. It has charge of the archives and carries out the administrative work.

The secretary general of the Bureau discharges the functions of registrar.

The necessary secretaries assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

[1] *Actes et documents*, vol. ii, p. 636.

The original text is as follows :[1]

> The International Bureau of the Permanent Court of Arbitration acts as registry to the International High Court of Justice. It has charge of the archives and carries out the administrative work.

It will be seen that its scope is somewhat enlarged and completed in the final wording. In either form the article is another example of the close and necessary connexion between the two Courts. For just as the Administrative Council is common to both Courts, the International Bureau is likewise at the service of both. It is the clerk's office for the proposed Court, and places at its disposition its quarters and staff. It has the custody of the archives and the supervision of administrative duties. In addition, the secretary general of the International Bureau acts as clerk of the proposed Court.

The third paragraph of the article is new and is based upon the discussion and the revised provisions for the commissions of inquiry and the International Prize Court. The experience of the last few years has shown the necessity of translators and the difficulty of securing them. In the same way, the presence of stenographers is essential to the prompt administration of business. It was thought advisable to provide in express terms that these functionaries should be designated by the Court and that they should take oath of office or solemn affirmation before the Court for the faithful performance of their duties. By these provisions, trifling as they may seem, it is hoped that the delay and difficulty experienced in the past will be obviated.

Article 14

> The Court meets in session once a year. The session opens the third Wednesday in June and lasts until all the business on the agenda has been transacted.
>
> The Court does not meet in session if the delegation considers that such meeting is unnecessary. However, when a Power is party in a case actually pending before the Court, the pleadings in which are closed, or about to be closed, it may insist that the session should be held.
>
> When necessary, the delegation may summon the Court in extraordinary session.

The phraseology of this article has undergone, at the hands of the committee, considerable modification and very great improvement. In its original form[2] it was as follows :

> The High Court shall meet in session once and, if necessary, twice a year. The sessions shall open the third Wednesday in July and the third Wednesday in January, and shall last until all the business on the agenda has been transacted.
>
> The sessions shall not take place if the special committee decides that business does not require it.

The provisions of this article are important, for they affect in a large measure the permanency as well as the impartiality of the Court, that is to say, the two fundamental and controlling ideas of the authors of the project.

In proposing that the Court be established in permanence, the American delegation had in mind the necessary corollary, that the judges should themselves reside at The Hague, ready at any time to undertake the important duties which might be confided to them. It was objected that residence at The Hague would practically denationalize the judge,

[1] *Post*, p. 284, Article 13.

[2] Ibid., Article 14.

an objection which failed to impress the American delegation, whose great desire was to free judicial decision from national bias. It was further suggested that it would detract from the dignity of the Court and be embarrassing to the judges to be in permanence, if few or no cases should be presented in the first months or years of its establishment. The reply to that was and is, as indicated by their Excellencies Mr. Choate and Baron Marschall, that the foreign offices of the signatory Powers are burdened with the weight of international cases awaiting final disposition, and that if the Court were established, and commanded the respect of the world, the signatory Powers would vie with each other in presenting cases to it. Indeed the fear of Baron Marschall was that the Court would be overworked at the beginning of its career. Mr. Choate called attention to the fact that in the first years of the existence of the Supreme Court of the United States there was little or no litigation before it, that it frequently adjourned for lack of business, and that it was only as the Court established itself in confidence that business flocked to it. There was, therefore, no reason to prevent the Court of Arbitral Justice from being in permanence, as the Supreme Court has been, ready to receive the cases presented to it.

Another view may be mentioned, namely, that of his Excellency Mr. Asser, who believed that most matters would be presented to and decided by the delegation, so that it was a matter of comparative indifference how often the Court met or how long it remained in session. This view failed to commend itself to the authors of the project, whose intention was not to entrust a small committee with the decision of international conflicts of grave importance, but to reserve them for the enlightened and profound consideration of a Court adequately representing and versed in the various judicial systems of the world.

It was finally agreed that the Court should meet at least once a year, and that it should remain in session until the cases properly presented and ripe for decision should be decided. The date of meeting, necessarily arbitrary, was set for the month of June, and as nearly as possible to the opening of the Second Conference.

In order to prevent a session of the Court without cases for its consideration, the second paragraph authorized the delegation to inform the judges that there was no case awaiting their decision, and thus prevent the expenses incident to the assembling of the Court. This provision, wise in itself, seemed open to criticism because it placed the Court under the control of the delegation, instead of placing the delegation under the control of the Court. This objection was admirably stated by his Excellency Count Tornielli in the following language :[1]

> If the commission may decide that the business does not require the convocation of the Court, it may well happen that certain cases will remain in abeyance. This power of the commission seems arbitrary.

It was suggested that the Court might frame a rule for such a case, but the committee hesitated to invest the Court with a power whose exercise might eventually imperil the usefulness of the institution. The president (Mr. Bourgeois) proposed the following amendment : ' The session shall not take place if the commission decides that there is no business ready for submission.' The proposed restatement of the article was satisfactory to his Excellency Count Tornielli. The committee of examination, to which the matter was referred, accepted the principle and strengthened it by making the calling of the Court

[1] *Actes et documents*, vol. ii, p. 670.

obligatory, if a signatory and litigating Power requested the convocation of the Court. The wording as adopted was as follows :

> However, when a Power is party in a case actually pending before the Court, the pleadings in which are closed or about to be closed, it may insist that the session should be held.

The amendment as proposed and accepted was not intended to deprive the delegation of its rights to call the Court into session, but solely to remove from the delegation the power to prevent the Court from assembling, if its convocation be desired by a party to the controversy. Lest this amendment should seem to have a greater effect than its proposers intended, the final paragraph of the article confers in express terms this right upon the delegation in the following language : ' When necessary, the delegation may summon the Court in extraordinary session.'

It is thus that Article 14 in its present form is a compromise based upon an exchange of views within the committee. One view would have had the Court permanently in session ; another view would only have the Court summoned when the delegation considered that the business was ripe for determination. The compromise consisted in making the sessions of the Court depend upon the expressed will of the parties litigant, with the happy result of avoiding extremes, which, in matters of judgement and discretion, are doubly dangerous.

Article 15

> A report of the doings of the Court shall be drawn up every year by the delegation. This report shall be forwarded to the contracting Powers through the International Bureau. It shall also be communicated to the judges and deputy judges of the Court.

This article, which did not appear in the original project, was added at the request of the committee. As originally drafted it provided that [1] ' the special commission shall submit to the Administrative Council an annual report upon the labours of the Court. The said report shall be communicated to all the judges and deputy judges of the Court.'

The first sentence requires that an account of the proceedings (*compte rendu*) of the Court shall be prepared annually by the delegation, setting forth the work of the Court as well as that delegation. But the *compte rendu* has an importance and interest far transcending its communication to the Court. The judgements of the delegation will effect not merely the immediate parties in controversy, but will be of profound interest to the signatory Powers at large. Therefore it seemed indispensable that the *compte rendu* should be transmitted to the signatory Powers by the Administrative Council.

His Excellency Mr. Martens felt that the original wording of the article, namely, that a report be presented to the Administrative Council, was open to objection, because the duty might seem to involve the relation of superior and inferior, and he did not think it was wise to establish such a relation, even by implication, between the Administrative Council and the Court. He further feared that this course might seem to confer upon the Administrative Council the right of examination and criticism, whereas, in his view, the Administrative Council should contine itself solely to transmitting the report without criticism or comment.

In order, therefore, to meet these objections, the committee of examination decided to substitute the International Bureau for the Administrative Council as the medium of

[1] Ibid.

transmission, and by the use of the expression *compte rendu* to make the performance of the duty simply clerical. It was further decided by the committee that the *compte rendu* in question should likewise be communicated to the judges and to the deputy judges.

Article 16

The judges and deputy judges, members of the Court of Arbitral Justice, can also exercise the functions of judge and deputy judge in the International Prize Court.

In the original project this article appeared provisionally as follows:

Article 15

Provisions respecting the relations of the International High Court of Justice with the International Prize Court, especially as regards holding office as judge in both Courts.

It was intended by the authors of the project to establish between the proposed Prize Court (now fortunately adopted by the Conference) and the present proposed Court the close relations which exist between the Permanent Court and the proposed Court of Arbitral Justice by permitting the judges of the Court of Arbitral Justice to act as judges in the Prize Court. The purpose of the project was not to subordinate either Court to the other, but to indicate to the Powers the possibility, indeed the advisability, that the judges of the Court of Arbitral Justice should possess the qualifications fitting them for judges of the Prize Court.

The articles already cited and discussed deal exclusively with the organization of the Court of Arbitral Justice and suggest only incidental questions of jurisdiction. The second title of the project deals with the competence and procedure of the proposed Court, and is therefore of the highest importance. The organization is, as it were, the covering; the competence and procedure are the essence.

Part II

Competency and Procedure

Article 17

The Court of Arbitral Justice is competent to deal with all cases submitted to it, in virtue either of a general undertaking to have recourse to arbitration or of a special agreement.

The original text of this article was as follows:[1]

Article 16

The International High Court of Justice shall be competent:

1. To deal with all cases of arbitration which, by virtue of a general treaty concluded before the ratification of this Convention, would be submitted to the Permanent Court of Arbitration unless one of the parties objects thereto.

2. To deal with all cases of arbitration which, in virtue of a general treaty or special agreement, are submitted to it.

[1] *Post*, p. 285, Article 10.

Proposition of the German and American Delegations

3. To revise awards of tribunals of arbitration and reports of commissions of inquiry, as well as to fix the rights and duties flowing therefrom, in all cases where, in virtue of a general treaty or special agreement, the parties address the High Court for this purpose.

The original text shows that a marked difference of opinion existed among the authors of the project, and it is therefore not astonishing that a like divergence of view should manifest itself in the committee.

The authors of the project intended to give the widest liberty to parties litigant to choose between the two Courts, and therefore provided that a case of arbitration arising under a general treaty of arbitration, concluded before the ratification of the Convention establishing the Court, might be submitted to the Court for determination, and that the Court would take jurisdiction therefor unless the other party to the controversy opposed.

The second paragraph made the Court competent to consider all cases of arbitration presented to it by virtue of a general treaty or of a special agreement.

The third paragraph sought to specify in detail the various matters which might come before the Court by virtue of a general treaty or special agreement, by providing that the awards of tribunals of arbitration and reports of commissions of inquiry might be, upon the express agreement of the parties, submitted to the Court for review.

As regards the reports of commissions of inquiry, the delegations of Germany and the United States of America were inspired by the amendments proposed by Russia to the Convention relating to commissions of inquiry, as it seemed not improbable that parties in controversy might wish to submit the findings of a commission of inquiry to a judicial tribunal in order that the rights and duties arising from the facts found by the commission of inquiry might be determined in a judicial proceeding.

It should be said, however, that the delegation of Great Britain believed it inadvisable and unnecessary to express this eventuality in an article, because, as the submission of the Court would arise solely by voluntary agreement of the parties in controversy, it deemed it unnecessary to stipulate in an article that the parties could do specifically what they were generally empowered to do. The delegations of Germany and the United States felt that the special article would remove any doubt as to the jurisdiction of the tribunal to entertain such controversies if presented, and that therefore the paragraph would subserve a highly useful purpose.

The opposition to the article as originally framed was led by his Excellency Mr. Fusinato,[1] who observed that paragraph 1 of Article 16 created a presumption in favour of the new Court, and expressed the opinion that a convention could not be modified without the consent of the parties. 'It is not enough', he said, 'to grant the parties the right to object. It would therefore be desirable to add to the paragraph the proviso that it would be with the "express assent of the parties". But if so modified, paragraph 1 becomes useless, as the case contemplated by it is already provided for in paragraph 2 of the same article.'

As to paragraph 3 of the article, Mr. Fusinato remarked that, as a rule, revision can only take place before the judge who pronounced the sentence, so that the recourse contemplated in paragraph 3 would not be a revision, but a judgement on appeal or annulment.

[1] *Actes et documents*, vol. ii, p. 628.

If the parties agree to resort to the new Court under the conditions set forth in paragraph 3, they certainly may do so ; but this case comes within the general provision of paragraph 2, and paragraph 3 should therefore be suppressed.

In regard to the objection to the first paragraph of the original draft, it is sufficient to say that the committee shared Mr. Fusinato's view, and was unwilling to create, directly or indirectly, a presumption in favour of the proposed Court. As remarked by Professor Renault, if the new Court won universal approbation, it could only be by reason of its merits and its advantages.

As the competency of the Court is solely to depend upon the express assent of the parties, it follows that the distinction between paragraphs 1 and 2 of the original text falls and is no longer necessary. The committee therefore decided to suppress the first paragraph. The second paragraph, based as it is upon the express agreement of the parties, was unanimously accepted.

It was, however, suggested that the word ' general ', qualifying treaty ', should be omitted, but that the phrase ' special agreement ', accompanying it, be retained. Mr. Renault explained that the antithesis between the two expressions ' general treaty ' and ' special agreement ' would indicate that in the first case the controversy could be submitted to arbitration under the general treaty of arbitration or of a general clause of arbitration contained in the treaty ; whereas the phrase ' special agreement ' would refer to an agreement of the parties to submit a special controversy to the Court, whether bound or not to do so by an antecedent treaty. He therefore proposed the following happy formula : ' by virtue of a stipulation to arbitrate or of an agreement to arbitrate '. The committee adopted the principle laid down by Professor Renault and embodied it in the final text of the article in the following form :

> The Court of Arbitral Justice is competent to deal with all cases submitted to it, by virtue of a general stipulation to arbitrate, or of a special agreement.

The third paragraph of the original draft gave rise to animated discussion and searching criticism.

The difficulty in the matter of revision arises, as was pointed out by Mr. Fusinato, from the possible confusion between ' revision ' in the strict sense of the word and ' appeal '. Now ' revision ' implies, indeed presupposes, in general a re-examination before the tribunal or judge pronouncing the original decision, as appears from Article 55 of the Convention of 1899 for the pacific settlement of international disputes, which permits the parties litigant to reserve in the *compromis* the right to demand the revision of the arbitral award. By virtue of this article the revision proceeds from the express agreement of the parties, as evidenced by the act of submission. The right of revision exists because it is expressly reserved. If, therefore, the parties agree to invest the new Court with jurisdiction of the cases contemplated by paragraph 3 of the original draft, they may assuredly do so. In such a case the submission to the Court would arise solely from the ' special agreement ', that is to say, from the express will of the parties. Viewed in this light, the reason for the separate existence of the paragraph fails, and the committee decided to suppress paragraph 3, with the distinct understanding, however, that the ' special agreement ' referred to in paragraph 2 permits revision by the Court of Arbitral Justice.

Article 18

The delegation (Article 6) is competent :

1. To decide the arbitrations referred to in the preceding article, if the parties concerned are agreed that the summary procedure, laid down in Part . . . of the revised Convention of July 29, 1899, is to be applied ;

2. To hold an inquiry under and in accordance with Part III of the Convention of July 29, 1899, in so far as the delegation is entrusted with such inquiry by the parties at issue acting in common agreement. With the assent of the parties concerned and as an exception to Article 7, paragraph 1, the members of the delegation who have taken part in the inquiry may sit as judges, if the case in dispute becomes the subject of arbitration, either by the Court, or the delegation itself.

Article 17 dealt with the general jurisdiction of the Court of Arbitral Justice. Article 18 deals with the limited jurisdiction of the delegation.

In the first place, the delegation is clothed with jurisdiction to consider the cases of arbitration enumerated in the preceding article, if the parties agree to the 'summary proceeding' proposed by the French delegation. An examination of the French proposal to that effect shows that it aims solely to provide a Court ready at all times for the trial of questions of trifling importance. The machinery for the selection of judges created by the Convention of 1899 is slow and cumbersome, and in small cases it seems unlikely that litigants will resort to it. The French delegation therefore proposed an easier and quicker method to constitute the Court and to decide the case submitted with the least possible delay. For this reason the proceedings before the Court are to be written, not oral, although the testimony of the witnesses or experts is permitted, and the tribunal possess the right to summon them in accordance with the provisions of the following article.[1]

> The proceedings are conducted exclusively in writing. Each party, however, is entitled to demand the *appearance* of witnesses and *experts*. The tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

The French proposition does not sacrifice care and deliberation to rapidity of procedure, but lays stress upon the fact that it is often more important to settle small matters rapidly than to subject them to the careful, and therefore protracted, examination of a large tribunal.

The first sentence of the second paragraph is the same as in the original text, with the exception of some formal changes which in no way affect the sense. Its object is to make the delegation competent to sit as a commission of inquiry if chosen by the parties for such a purpose. The declaration of competency does not of itself convert the delegation into a commission of inquiry ; it merely authorizes the delegation as such to act as a commission if chosen by the parties, otherwise not.

Such at least was the opinion of the authors of the project, but the Austro-Hungarian delegation moved to withdraw the competency from the Court. Professor Lammasch recalled the distinction made in 1899 between the commission of inquiry and the Arbitral Court, and declared that in his opinion the two were incompatible. One answer to this

[1] See *post*, p. 468, Article 6.

objection is that there does not seem to be any reason why the delegation should be incompetent if the parties wished it to act, because judges trained in weighing and sifting evidence for the sole purpose of ascertaining the facts of a case would be peculiarly qualified for commissioners of inquiry. The fact that each party might add a member to the delegation (Article 20), who would probably be a technical expert, shows clearly that the delegation when sitting as a commission of inquiry would not act as a Court. There would seem, therefore, to be no reason in the nature of things to prevent the delegation from acting as a commission of inquiry. This reasoning did not, however, convince Mr. Lammasch, who admitted that the members of the delegation might properly act as commissioners if chosen, but insisted that the delegation as such should not be chosen, as it would be tempted to act as a judicial tribunal rather than as a finder of facts.

The president (Mr. Bourgeois) pointed out that inasmuch as Article 10 of the project relating to commissions of inquiry provided that the parties should have absolute freedom in composing the commission, it seemed difficult to prevent them from applying to the delegation. It is obvious that the spirit of the commission of inquiry must not be confounded with that of the Court, but if the purpose be to restrict the functions of the judges it should be so stated in express terms. The difficulty was solved by a vote of the committee for the maintenance of the article as proposed.

It therefore being decided that the delegation could act as a commission of inquiry, if requested by the parties litigant, the question was raised and discussed whether the members of the delegation should receive extra compensation for such services. His Excellency Mr. Asser felt that they merited additional compensation, but his Excellency Mr. Choate, by a comparison of Articles 17 and 20 of the project, demonstrated conclusively that only members of the commission of inquiry not chosen from the judges of the Court should receive special remuneration, whereas, on the other hand, no special compensation should be allowed to the members of the Court.

As pointed out by Mr. Renault, paragraph 2 of Article 8 is decisive, because it allows a certain sum to the judges of the Court during the session of the performance of their duties created by the Convention. For a like reason the travelling expenses should be allowed if members of the delegation are obliged to sit elsewhere than at The Hague. His Excellency the president of the Conference, Mr. Nelidow, remarked that these allowances were included in the costs of the case, and that it was only necessary to mention this fact in the report and minutes.

The committee thereupon dropped further consideration of the subject and took up the question of the special jurisdiction with which the delegation should be vested.

The intention of the authors of the project in creating the delegation was to have ready and at hand a small body capable of enlargement and modification in order to decide speedily and with judicial certainty questions of lesser importance. His Excellency Mr. Asser advanced the opinion that to limit the jurisdiction of the delegation was tantamount to restricting the choice of the parties, because if they preferred to apply to the delegation, why should it not receive and determine the matter in controversy? The answer would seem to be twofold: the first answer to Mr. Asser[1] was that the American delegation could not accept his proposition. Desiring the establishment of a court of

[1] *Actes et documents*, vol. ii, p. 673.

justice, not a special committee to be endowed with the same powers and jurisdiction as the Court, it therefore must reject a provision which would strip the Court of all its authority and leave it nothing but the annual election of the three members of the delegation.

A stronger and more convincing reply was made by Mr. Crowe, who said : [1]

> While Article 18, paragraph 1, does not restrict the freedom of parties, it is in the interest of the Court itself. The Court's decisions are destined, in the author's opinion, to create a jurisprudence and gradually to develop international law by the weight and authority of its judgements. I therefore think it very unwise to endanger the authority of its decision by permitting a small committee of three members to pass upon questions of fundamental importance.

The president summarized the debate as follows : [2]

> The question now raised is that of the character to be given the jurisdiction of the delegation. Shall its jurisdiction be limited to certain matters or should we assign to it general functions ? The authors of the draft think that this latter theory is dangerous ; I partake of their opinion ; it is necessary here to proceed with prudence and to postpone increasing the functions of the delegation ; we should not risk lessening the importance of the Court at the outset.

Upon reference to the committee, the motion to make the jurisdiction of the delegation co-extensive with that of the Court of Arbitral Justice was negatived.

The final sentence of Article 18 is an addition to the original wording, and was added pursuant to a suggestion of Mr. Renault, who felt that the presence of judges familiar with the facts found by the delegation sitting as a commission of inquiry would be of great advantage whenever the parties in controversy submit, by special agreement, the findings of the commissioners to the Court or its delegation for further and final determination. The committee of examination recognized that the functions of finders of the fact and interpreters of law were so different in theory and in practice that there was no occasion to exclude the members of the delegation if the parties desired their presence. The following paragraph was therefore proposed and accepted :

> With the assent of the parties concerned, and as an exception to Article 7, paragraph 1, the members of the delegation who have taken part in the inquiry may sit as judges, if the case in dispute is submitted to the arbitration of the Court or of the delegation itself.

Article 19

The delegation is also competent to settle the *compromis* (Article 31 of the Convention of July 29, 1899) if the parties are agreed to leave it to the Court.

It is equally competent to do so, even when the request is only made by one of the parties concerned, if all attempts have failed to reach an understanding through the diplomatic channel, in the case of :

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present convention has come into force, providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the delegation. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of questions to be submitted to obligatory arbitration, unless the

[1] Ibid., p. 674.

[2] Ibid., p. 673.

treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its *ressortissants*, and for the settlement of which the offer of arbitration has been accepted.

This arrangement is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

This article was numbered 18 in the first draft and was worded as follows :

ARTICLE 18

The special committee is also competent to settle the *compromis* (Article 31 of the Convention of July 29, 1899), if the parties are agreed to leave it to the Court.

It is equally competent to do so, even when the request is only made by one of the parties concerned, if all attempts have failed to reach a diplomatic agreement in the case of :

1. A dispute arising from contract debts claimed as due to the *ressortissants* of one country by the Government of another country, and for the settlement of which an offer of arbitration has been accepted.

Proposition of the German Delegation

2. A dispute covered by a general treaty of arbitration providing for a *compromis* in all disputes and containing no stipulation to the contrary. Recourse cannot, however, be had to the High Court if the Government of the other country declares that in its opinion the dispute does not come within the category of questions to be submitted to obligatory arbitration.

The first two paragraphs of the original project met with little or ›position and were adopted with the formal change proposed by his Excellency Coun. nielli, namely, that the words ' a diplomatic agreement ' be replaced by the phrase ' an ag ement through diplomatic channels '.

The third paragraph, providing for the formulation of the *compromis* in the matter of contract debts, was explained as follows by Mr. Scott.[1]

The proposition concerning contractual debts lays down the principle that States must not use force in collecting contractual debts, but must resort to arbitration. The enforcement of the principle depends on the *compromis*, and it is often more difficult to frame the *compromis* than to decide on arbitration. It therefore seemed advisable to entrust the formulation of the *compromis* to an impartial and neutral special committee, which would thus assist both parties and prevent a regrettable resort to armed force.

An examination of the provisions of the Convention of 1899, dealing with this matter discloses an omission of Article 31. If the parties fail to agree upon the *compromis*, it is not concluded. This defect we propose to remedy.

The article was reserved at the first reading in order to await the vote of the project dealing with contractual debts, but in the second reading, on September 5, the article was adopted in principle, subject to some changes in phraseology.

The proposition of the German delegation aroused perhaps greater discussion and interest than any article on the project. It will be noted that the proposal was not con-

[1] *Actes et documents*, vol. ii, p. 639.

curred in by the American and British delegations. The provisions of the article were thus explained and justified by the most competent authority, his Excellency Baron Marschall von Bieberstein:

> Our proposition is conceived upon the same general lines as paragraph 1, but it possesses a much more general character. The case presented is that of the parties having concluded a treaty making arbitration obligatory—either in a general way or in specific cases—and providing for the signature of a *compromis*. I may take as an example the first two articles of the treaty between the Netherlands and Denmark.
>
> Now the following difficulty may arise: the two parties, although agreeing in equal good faith to admit that the difference between them comes within the bounds of obligation, fail to reach an agreement as to the text of the *compromis*. The situation then becomes peculiar: two Powers have erected machinery with a mutual promise to put it into operation when divided by a contention. A contentious case arises and they cannot use the machinery because of their inability to agree. In such a case an obligatory arbitration, which shines on paper, vanishes in fact. This condition would be contrary not only to the great idea of obligatory arbitration, but also to the great idea which impels us to exert our efforts in the cause of the peaceful settlement of disputes among States. Arbitration would be obligatory as long as there is no dispute, but would become optional as soon as one arises. We favour obligatory arbitration, but desire it to produce real results. We wish to perfect it so that it will become an available reality.
>
> In accordance with this sentiment I have the honour to offer the following proposition: if two parties agree to admit that a case comes within the bounds of the obligation, and if no agreement can be reached on the *compromis*, each of the parties shall have the right to demand that the *compromis* be drawn up by the commission [delegation].
>
> In a word, we propose the *obligatory compromis* as the complement of the *obligatory arbitration*.

His Excellency Sir Edward Fry briefly stated the reasons why the other two delegations did not accept the Baron's proposal. He considered it impossible to maintain the rule in paragraph 1, and not to make obligatory in one case what was optional in the other.

He further remarked that the German proposition could in no case change the application of existing conventions and could never be applied to them. But the obligatory character of the second part is very doubtful, since it is always possible that one of the parties will declare that the principle of obligatory arbitration does not apply. This provision is apt to invite Governments to resort to delay by declaring that the contentious case does not come under the treaty, in order to draw up the *compromis*.

His Excellency Mr. Choate likewise refused to accept the article in its original form.[1]

> The delegation of the United States of America cannot accept the German proposition. As a matter of fact, it deals with cases in which diplomatic negotiations have failed, and only by the hypothesis of a general treaty of arbitration.
>
> Nothing like this was ever inserted in the thirty treaties which have heretofore been concluded; it has never been proposed to impose a *compromis* accepted by both parties.
>
> You are aware, gentlemen, of the difficulties which with the Senate in obtaining approval of the treaties signed by the American Government. The delegation of the United States believes it is a matter of moral impossibility for it to sign at this time a convention providing for the eventual signature of the *compromis* in advance without any knowledge of its text or scope.

It will be seen from these various quotations that there was an irreconcilable difference of opinion on this subject. The American and British delegations felt that the provisions

[1] Ibid., p. 642.

of the article could not be well applied to treaties already concluded, when the parties had no knowledge of the fact that the *compromis*, which often decides the case, might be prepared by a body over which they had no control. Its retroactive effect was therefore unacceptable, but they believed that the delegation might well be given the power to establish the *compromis* in cases of treaties concluded or renewed after the acceptance of the convention; for if the Powers were unwilling to permit the *compromis* to be framed by the delegation, they could readily protect themselves by the insertion of a special clause in the treaty.

The German delegation, in a spirit of conciliation, took note of the criticisms, and presented, at a subsequent session, a revised text which met with the approval of the committee and was adopted. In its final form the clause is destitute of all compulsory features, and makes the power of the delegation to settle the *compromis* dependent practically upon the consent of both parties.

Turning now from the matters of form to matters of substance, it would appear that Article 19 contains two separate and distinct parts: the competence of the Court of Arbitral Justice or of the delegation to establish the *compromis* when the parties appeal to the Court for its formulation; and, secondly, the competence of the Court or delegation to frame the *compromis* upon the request of one of the parties litigant.

Concerning the first there can be no difficulty, because if the parties are agreed, there can be no reason whatever why the delegation should not perform the service requested.

The difficulty, however, in the second is very considerable, because the Court is given the power to frame the *compromis* upon the demand of either party to the controversy. It cannot be denied, however, that the provision, not being retroactive but referring to the future, permits the parties to reach an agreement on the question at issue, should they so desire. The recourse to the Court is not obligatory. If they have not concluded the *compromis*, then, lest the purpose of arbitration be frustrated, the article provides that the *compromis* shall be established by a thoroughly non-partisan body, in no way connected with the controversy and having no interest in its determination other than to see that justice be done.

The consequence of a refusal to frame the *compromis* when an agreement to arbitrate is made can be seen at once by a reference to the second paragraph of the proposition relating to contract debts.

Proposition of the United States of America concerning the Treatment of Contractual Debts

In order to prevent armed conflicts between nations, of a purely pecuniary origin, growing out of contract debts claimed from the Government of one country by the Government of another country as due to its nationals, the signatory Powers agree not to resort to armed force for the collection of such contract debts.

This stipulation, however, shall not apply when the debtor State rejects or ignores a proposal of arbitration, or, in case of acceptance, makes it impossible to establish the *compromis*, or, after arbitration, fails to comply with the award.

It is further agreed that the arbitration here considered shall conform to the procedure provided by Chapter III of the Convention for the pacific settlement of international disputes adopted at The Hague, and that it will determine, in so far as the parties should not have agreed thereupon, the validity and the amount of the debt and the time and mode of settlement.

The third paragraph of this same document shows the reasons for the provision of the present article, because the Convention of 1899 fails to provide any machinery for the establishment of the *compromis* when the parties fail to agree. It would seem as advisable as it is advantageous to resort to the Court rather than to run the risks of armed intervention. But it must be borne in mind that the provision of the article only applies if the offer of arbitration made by one party has been accepted by the other.

Recourse to the Court is permissive, not obligatory. 'This provision is not applicable if its acceptance is conditioned upon the *compromis* being established by some other method.'

The provision has no retroactive effect and looks only to the future, and if a party litigant desires that the delegation shall have nothing to do with the settlement of the *compromis*, it may, by virtue of this special clause, exclude the delegation.

The third paragraph of Article 19 is general in its nature and applies to the general treaty of arbitration concluded or renewed after the present Convention goes into effect. If the parties have stipulated in the treaty that a *compromis* be framed, it is for the parties to determine either in the treaty or in some subsequent period the exact terms of the *compromis*.

If the parties have explicitly excluded the delegation without providing another method for the formulation of the *compromis*, the delegation is incompetent.

If the parties have provided in the treaty a particular form of *compromis*, or if they have entrusted with its negotiation a particular tribunal or individual, then the Court is incompetent, unless a new agreement, superseding the old one, be made. And, finally, in order that the optional nature may clearly appear, the article does not content itself with designating some machinery other than the Court, but provides that the Court shall be incompetent if it is explicitly excluded.

In the last sentence of the paragraph the power and right are expressly reserved to the State in controversy to reject the intervention of the Court, if it should appear that the international difference does not properly belong to the category of questions to be submitted to obligatory arbitration. Or, in other words, if, in the opinion of the defendant, the case is not included in the arbitration treaty, or, if included, it falls under the reservations concerning vital interests or honour, the mere suggestion of their existence and presence in the controversy excludes the intervention of the Court. It appears, therefore, that the will of the State is free and untrammelled, and that the provisions of the article, while they may be a great aid to the parties litigant, cannot in any way be considered as a restriction of their freedom. In a word, the delegation is competent to prepare the *compromis*, if the parties litigant, who always possess the right to frame it, have not excluded its competence in the matter of contract debts or in any other case.

Article 20

> Each of the parties concerned may nominate a judge of the Court to take part, with power to vote, in the examination of the case submitted to the delegation.
>
> If the delegation acts as a commission of inquiry, this task may be entrusted to persons other than the judges of the Court. The travelling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them.

The present article is in reality composed of three parts. The first is of a general nature, and permits each party to the controversy to add a judge of the Court to the delegation. The second provides that if the delegation acts as a commission of inquiry,

each party litigant may add an additional member, who shall be chosen either within or without the Court, leaving the party unrestricted liberty of choice.

In the third place, it is stipulated that the persons so added, not being members of the Court, shall be compensated by those who have appointed them. Let us consider each in turn.

As frequently stated, the purpose of the delegation is to determine smaller cases with accuracy and dispatch. But it may happen that the case is of sufficient interest to justify the intervention of a larger body. In such case either party would be free to select a judge from the Court to act with the delegation until the case under question was disposed of. The delegation would then consist of five persons, still a small but more considerable body. Doubt was expressed whether the persons so added should take part in the formation of the judgement, or whether they should merely assist the judges in reaching a conclusion. Upon reflection, it was felt that a judge should always act as a judge, not as an expert; and that if added to the delegation he could not, without derogation of his functions, be denied the right to take part in the judgement while a member of the delegation.

The question whether the delegation might act as a commission of inquiry has already been dealt with in Article 18, and it is therefore unnecessary to discuss whether it is advisable or expedient that the delegation as such should perform the duties of commissions of inquiry. The question involved is whether or not the delegation sitting as a commission of inquiry should be enlarged by the presence of other persons, and if so, whether those persons should be chosen within or without the Court. The peculiar nature of the questions submitted to a commission of inquiry furnished the answer. A commission of inquiry is not a judicial body. It is not necessarily composed of judges, and, even if it were, these judges find the facts of the case without deducing therefrom legal responsibility. If it be, for instance, a question of fact concerning an accident upon the seas, it would seem that the judges would be much aided by the presence of naval experts; that experts so added should form an integral part of the delegation sitting as a commission, and should take part in the determination, because judicial training is not essential where no legal judgement is pronounced.

The question naturally arises, Shall the parties adding members to the delegation compensate them in proportion to the services rendered? If the added members are judges of the Court, all thought of compensation is excluded, because while sitting with the delegation they merely perform judicial duties for which they are already compensated. If the added member is not a judge of the Court, he should neither expect nor receive compensation except from the party whose representative he is for the time being. Therefore the last paragraph provides that 'the travelling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them'.

The provision concerning expenses was added in response to certain inquiries made in the committee, and in order to prevent any doubt or uncertainty that might arise. Mr. Kriege's brief explanation to the committee is so conclusive and in point as to justify quotation from the minutes without addition or modification:[1]

> It is advisable to distinguish two possible contingencies. If the parties call upon the judges of the Court, the community shall bear the expenses; because it is the intention of the authors to place the whole Court and choose judges or experts, the parties themselves shall defray the expenses involved in their choice.

[1] *Actes et documents*, vol. II, p. 654

ARTICLE 21

The contracting Powers only may have access to the Court of Arbitral Justice set up by the present Convention.

The question involved in this article is one of policy, for if all parties, whether signatory or non-signatory, were admitted freely to the Court, neither the character nor the jurisdiction of the Court would be altered. The authors of the project, upon the suggestion of his Excellency Mr. Asser, thought that the Court should be established and open to the signatory Powers, and that to allow non-signatory Powers to avail themselves of the Court would throw an additional and unjustifiable financial burden upon the Powers supporting the Court. But it should be borne in mind, as stated by the president (Mr. Bourgeois), that the term 'contracting Powers' likewise includes those who may subsequently adhere to the Convention. The committee concurred in the views expressed by the article, which was adopted without further observation.

ARTICLE 22

The Court of Arbitral Justice follows the rules of procedure laid down in the Convention of July 29, 1899, except in so far as the procedure is laid down in the present Convention.

It seems unnecessary to comment upon this article, for it would be difficult to express more concisely and clearly the idea which inspired it. It may, however, be said that the article offers an additional evidence of the relation between the proposed Court and the Permanent Court of Arbitration. The rules of the procedure devised by the Convention of July 29, 1899, are applicable to and binding upon the proposed Court, unless the present Convention shall expressly or indirectly modify them.

ARTICLE 23

The Court determines what language it will itself use, and what languages may be used before it.

This article deals with a single but important detail. If it be intended that the judge and agent shall understand one another, it is necessary that the language used be either common to or understood by both.

In the amendments to the Convention of 1899 it is provided that the parties litigant shall determine the language or languages to be used in the Court of Arbitration. In an International Court, composed of a large number of judges, it is evident that the imposition of any one language might greatly embarrass or even work a hardship upon the judges. The parties litigant must therefore accept the language or languages prescribed by the Court.

ARTICLE 24

The International Bureau serves as channel for all communications to be made to the judges during the interchange of pleadings provided for in Article 39, paragraph 2, of the Convention of July 29, 1899.

This article was justified by Mr. Kriege, on behalf of the authors of the project, in the following manner:[1]

Under Article 39 of the Convention of 1899 the acts and documents produced by the parties are to be communicated to the members of the tribunal of arbitration

[1] Ibid., p. 678.

in the form and within the periods fixed by the tribunal. Pursuant to the resolution of the committee of examination C, this provision will be modified so that in a general way the *compromis* will contain stipulations as to form and time in which the communication shall take place. This rule, however, does not appear to be applicable to proceedings before the Court consisting of a large number of judges. It will be preferable to order that the International Bureau shall serve as a channel for all communications to be made to the judges of the Court.

To this statement it seems unnecessary to add anything.

Article 25

For all notices to be served, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the Power on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requests addressed for this purpose shall be executed according to the means at the disposal of the Power applied to under its domestic legislation. They can only be rejected when this Power considers them likely to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

This article is conceived in the desire to aid the Court in the largest measure possible in the performance of its judicial duties. It is taken, with slight modifications, from the revised project of the commissions of inquiry elaborated by committee of examination A. The last paragraph has been added in order to bring the article into harmony with the Prize Court Convention, which contains similar provisions.

The essence of the article consists in the fact that the signatory Powers pledged themselves to co-operate with the Court in order to inform parties, witnesses, and experts who may reside in different countries and to whom the notifications are to be addressed. It was thought advisable to permit the Court to address itself directly to the Governments in order to avoid the delay incident to transmission through diplomatic channels. Should, however, the latter course be deemed preferable, the Court may request the appropriate organ of the Government in whose territory the Court or the delegation is sitting to act in its behalf. It may happen, however, that this intervention might affect injuriously the sovereignty or security of the Power upon which the request is made. Suppose, for example, a State secret be involved. If such be the case, it follows necessarily that the Power should have the right to refuse without exposing itself to criticism, for it should be the sole judge whether or not its interests are affected by the proposed communication.

It is readily understood that these applications necessarily involve some expense, and it is reasonable to provide that the outlay be fully reimbursed; but as the request is in the interest of justice, it should not be made a source of revenue.

Finally, the project provides for notice to be given to the parties in the place where the Court holds its session, and in such case the notices should be served by the International Bureau.

It is difficult to see wherein these provisions are subject to criticism. They do indeed bind States to perform certain services, but the signatory Powers bind themselves by

signing the Convention, and undertake in advance to comply with requests of this nature that may be made upon them. It is in the interest of the community of nations that the States thus voluntarily take upon themselves a certain burde...

There will be noticed in the wording of paragraph 2 a slight modification, purely formal and intended only to make the intent and meaning of the text clearer.

Article 26

The discussions of the Court are under the control of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by one of the parties in dispute cannot preside.

The first paragraph calls for no comment.

The last paragraph supposes that the judge of the party litigant may be president, vice-president, or president *pro tempore*. In any of these cases he should yield the presidency during the trial of the controversy, because the impartiality of the proceedings might be questioned if the subject or citizen of a party litigant wielded the influence which naturally belongs to the presidency.

Article 27

The Court considers its decisions in private, and the proceedings are secret.

All decisions of the Court are arrived at by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge, in the order of precedence laid down in Article 4, paragraph 1, is not counted.

The deliberations of the Court are and should be secret, lest outside influence might in some way make itself felt.

Only the results of the deliberations, that is to say, the determination of the case, have an interest for the public.

The decision of the Court is reached by a majority of the judges present, without taking into consideration the judges who may happen to be absent. Should no majority exist, that is to say, if the Court is evenly divided, some means must be provided to produce a majority and thus reach a decision. Were a preponderating influence given to the presiding officer, this might enhance the authority of the office to such a degree as to endanger in certain circumstances the fair and impartial administration of justice. It was therefore thought preferable to secure the requisite majority by discarding the vote of the judge last in the order of precedence established by Article 4, paragraph 1. This method has the advantage of giving the Court the benefit of the skill and experience of the judge whose vote is not counted, inasmuch as he takes part in the trial as well as in the formulation of the judgement.

Article 28

The judgement of the Court must give the reasons on which it is based. It contains the names of the judges taking part in it; it is signed by the president and registrar.

The first clause of this article seems sufficiently clear without an explanation, and will doubtless prove satisfactory. A difference of opinion exists whether the names of the judges should be mentioned who dissent from the judgement of the Court. Some

undoubtedly believe that a judge who does not concur with the majority has a right to have the fact of his dissent recorded, even although he does not deliver a dissenting opinion. On the other hand, many competent authorities believe that a statement of dissent would tend to weaken the judgement by showing that the opinion was not unanimous. The authors of the project were unwilling to decide this delicate question. They contented themselves with the provision that the names of the judges taking part in the proceedings shall be mentioned, without indicating concurrence or dissent. In order to prevent the implication of assent or dissent, it is provided that the judgements and decrees of the Court are to be signed by the presidents and clerks. The president's signature does not imply concurrence in the judgement : it merely guarantees the genuineness of the judgement, in the same way that the signature of the clerk guarantees the authenticity of the official copy of the judgement.

Article 29

Each party pays its own costs, and an equal share of the costs of the trial.

The original project did not contain this article, which was added upon the suggestion of his Excellency Mr. Martens, in order that there should be no doubt of the obligation of the parties litigant to meet the costs in the case other than those which fall under the head of general expenses.

Article 30

The provisions of Articles 21 to 29 receive analogous application in the procedure before the delegation.

When the right of attaching a member to the delegation has been exercised by one of the parties only, the vote of this member attached is not recorded, if the votes are evenly divided.

The first paragraph indicates in no uncertain way that the delegation is an integral part of the Court, and, as such, the procedure of the Court must apply to and be followed by the judges sitting as a delegation.

The second paragraph seeks to avoid a deadlock caused by equality of votes in the delegation. Article 20, it will be recalled, permits each party litigant to add a judge or another member to the delegation. Should both avail themselves of that provision, the judges thus designated would stand upon a basis of perfect equality.

If only one of the parties should avail itself of this right, there is no reason why the vote of the judge so added should not be counted. If, however, there were an even division of votes, it seemed to the authors of the project inadvisable to make the decision turn upon the fortuitous presence of a judge who is not a regular member of the Court. In such a case the vote will not be counted.

Article 31

The general expenses of the Court of Arbitral Justice are borne by the contracting Powers.

The Administrative Council applies to the Powers to obtain the funds requisite for the working of the Court.

In the absence of a definite composition of the Court and the ascertainment of the degrees in which the signatory Powers shall be represented in the Court, it seems useless

to attempt to determine the proportion in which the expenses will be borne. Suffice to say, that the expenses should be borne by the signatory Powers, since the institution is created for their benefit : *cuius est commodum, eius est periculum.*

The final paragraph of the article is purely formal and self-explanatory.

Article 32

> The Court itself draws up its own rules of procedure, which must be communicated to the contracting Powers.
>
> After the ratification of the present Convention, it shall meet as early as possible, in order to elaborate these rules, elect the president and vice-president and appoint the members of the delegation.

Article 22 states that the Court shall follow the rules of procedure prescribed by the Convention of July 29, 1899, except as otherwise provided in the present Convention.

The provisions of the Convention of 1899 and Part II of the present Convention are general in their nature. This may seem to be a lack of provision, but it was thought advisable to lay down certain general principles of procedure and to permit the Court to frame its rules of Court according as circumstances and experience might dictate. In any case the Court should communicate to the signatory Powers its rules when framed, so that litigants may know in advance the rules to be observed and followed in the conduct of cases.

The second paragraph looks for as early a session after the ratification of the conventions as possible. This is imperative because, until the Court meets and organizes, it cannot be ready for the determination of cases. Its rules of procedure can only be properly prepared in the presence of and with the co-operation of the judges. The president and vice-president must be elected, not in advance, but by the judges themselves when they assemble, and the delegation could not well be chosen in advance. It is necessary therefore, that the Court should meet at as early a moment as possible after the ratification of the Convention, in order to perfect its organization, to frame its rules of procedure, and to prepare for the exchange of views. This would be in itself a justification for the assembling of the Court, and would give the judges ample employment for that leisure which it is claimed they will enjoy, at least in the first session of their existence.

Article 33

> The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated through the Netherland Government to the contracting Powers, which will consider together as to the measures to be taken.

While Article 32 makes the Court competent to determine its rules, it was not thought advisable to permit it to modify the provisions of the present Convention concerning procedure. It was felt that the amendments to be made to the general procedure should be the result of experience, and should therefore be suggested merely as experience shows it is necessary or advisable. The Court, however, is a judicial body, not a legislature, and the proposed modifications neither could or should take effect until they have been communicated to the signatory Powers and approved by them. What concerns all should be the work of all.

Part III

FINAL PROVISIONS

Article 34

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague

A *procès-verbal* of the deposit of each ratification shall be drawn up, of which a duly certified copy shall be sent through the diplomatic channel to all the contracting Powers.

Article 35

The Convention shall come into force six months after its ratification.

It shall remain in force for twelve years, and shall be tacitly renewed for periods of twelve years, unless denounced.

The denunciation must be notified, at least two years before the expiration of each period, to the Netherland Government, which will inform the other Powers.

The denunciation shall only have effect in regard to the notifying Power. The Convention shall continue in force as far as the other Powers are concerned.

These dispositions are wholly of a formal nature, and do not seem to need explanation or comment.

We do not conceal from ourselves the fact that our work still presents gaps and difficulties. It is hardly necessary to call attention to the absence, in the project, of provisions for the constitution of the Court and the selection of the judges. These questions were discussed at great length in the committee, but no solution acceptable to all the States represented could be found. It is to be hoped that an agreement will soon be reached in this respect, and, prompted by this hope, the committee declared itself in favour of the following resolution :[1]

> The Conference recommends to the signatory Powers the adoption of the project it has voted for the creation of a Court of Arbitral Justice, and putting it into force as soon as an agreement has been reached respecting the selection of the judges and the constitution of the Court.

Our aim, gentlemen, has been not merely to build the beautiful façade for the Palace of International Justice ; we have erected, indeed furnished the structure, so that the judges have only to take their places upon the bench. It is for you to open the door ; it is for the Governments to usher them in. There can be no doubt that suitors, filled with a sense of deference and security, will appear before this imposing Areopagus in such numbers as to demonstrate that the judicial settlement of international disputes has ceased to be a formula of the future by becoming that of the present !

[1] The discussion may be found in *Actes et documents*, vol. ii, pp. *697 et seq.* This recommendation became *vœu* No. 1 in the Final Act, *ante*, p. 216.

ANNEX 1 [1]

PROPOSAL OF THE RUSSIAN DELEGATION

PART IV

INTERNATIONAL ARBITRATION

CHAPTER II

The Permanent Court of Arbitration

ARTICLE 24

The members of the Permanent Court of Arbitration meet once every year at The Hague in full session.

These meetings are competent :

1. To select by secret ballot three members from the list of arbitrators who, during the following year, must be ready at any time to constitute immediately the permanent tribunal of arbitration.

2. To consider the annual report of the Administrative Council and of the International Bureau.

3. To express the opinion of the Permanent Court of Arbitration upon the questions which have arisen during the course of the procedure of an arbitration court as well as on the acts of the Administrative Council and the International Bureau.

4. To exchange ideas on the progress of international arbitration in general.

The same members of the permanent tribunal of arbitration may be reelected in the above-mentioned meeting of the members of the Permanent Court of Arbitration for a further year of service.

ARTICLE 25

In case the Powers in dispute consent to leave their difference to arbitration, they address the International Bureau requesting the immediate convocation of the members of the permanent tribunal of arbitration.

The two parties are free each to add one member, specially designated, to the body of the permanent tribunal of arbitration.

ARTICLE 26

In the absence of the convocation of the permanent tribunal of arbitration the parties in dispute may proceed in the following manner for the constitution of a special arbitration tribunal :

Each party names two arbitrators, and these together choose an umpire.

In case the votes are equal, the choice of the umpire is entrusted to a third Power designated by the parties by common agreement.

If agreement is not reached on this subject, each party designates a different Power and the choice of the umpire is made in concert by the Powers thus designated.

The tribunal being thus composed the parties notify the International Bureau of their decision to constitute a special arbitration tribunal and the names of the arbitrators.

ARTICLE 27

The permanent tribunal of arbitration meets on the date fixed by the parties.

The members of the Permanent Court of Arbitration, in the exercise of their functions and outside of their own Governments, enjoy diplomatic privileges and immunities.

(Then follow Articles 25 *et seq.* of the arbitration Convention of 1899.)

[1] *Actes et documents*, vol. II, p. 1030, *annexe* 75.

ANNEX 2[1]

PROPOSITION OF THE DELEGATION OF THE UNITED STATES OF AMERICA

In conformity with the instructions of its Government the delegation of the United States of America has the honour to submit the following proposition, with a view to facilitate the immediate reference to judicial determination of international differences that cannot be settled through the diplomatic channel, for the organization of a Permanent Court of Arbitration accessible at all times and, in the absence of contrary stipulation of the parties, performing its functions in conformity with the rules of procedure set forth in the Convention of 1899 or adopted by this Conference.

Although our delegation does not deem it expedient to formulate in detail the organization, jurisdiction or procedure of this tribunal, the delegation is ready to submit at the proper time some suggestions concerning the details of this proposition calculated to assist the special committee in its consideration of the question. However, in view of the importance and aim of the question, the delegation of the United States of America respectfully suggests that it would be appropriate for the president of the First Commission to designate a special committee of not more than nine members, to which shall be submitted the proposition presented and the others of like nature as well as those dealing with the diverse details of the proposition; the special committee after mature deliberation should make a report of its views and recommendations to the first subcommission of the First Commission.

DRAFT

1

A Permanent Court of Arbitration shall be organized, to consist of fifteen judges of the highest moral standing and of recognized competency in questions of international law. They and their successors shall be appointed in the manner to be determined by this Conference, but they shall be so chosen from the different countries that the various systems of law and procedure and the principal languages shall be suitably represented in the personnel of the Court. They shall be appointed for . . years, or until their successors have been appointed and have accepted.

2

The Permanent Court shall convene annually at The Hague on a specified date and shall remain in session as long as necessary. It shall elect its own officers and, saving the stipulations of the Convention, it shall draw up its own regulations. Every decision shall be reached by a majority, and nine members shall constitute a quorum. The judges shall be equal in rank, shall enjoy diplomatic immunity, and shall receive a salary sufficient to enable them to devote their time to the consideration of the matters brought before them.

3

In no case (unless the parties expressly consent thereto) shall a judge take part in the consideration or decision of any case before the Court when his nation is a party therein.

4

The Permanent Court shall be competent to take cognizance and determine all cases involving differences of an international character between sovereign nations, which it has been impossible to settle through diplomatic channels and which have been submitted to it by agreement between the parties, either originally or for review or revision, or in order to determine the relative rights, duties, or obligations in accordance with the finding, decisions, or awards of commissions of inquiry and specially constituted tribunals of arbitration.

[1] *Actes et documents*, vol. II, p. 1031, *annexe 76*.

5

The judges of the Permanent Court shall be competent to act as judges in any commission of inquiry or special tribunal of arbitration which may be constituted by any Power for the consideration of any matter which may be specially referred to it and which must be d ⁻mined by it.

6

The present Permanent Court of Arbitration might, as far as possible, constitute the basis of the Court, care being taken that the Powers which recently signed the Convention of 1899 are represented in it.

ANNEX 3[1]

PROPOSAL OF THE BULGARIAN DELEGATION

AMENDMENTS TO THE PROPOSAL OF THE UNITED STATES OF AMERICA

I

ARTICLE 1

A Permanent Court of Arbitration shall sit at The Hague. It shall be composed of fifteen judges, of which a third shall be renewed every third year, beginning from the date of its composition.

The first as well as the second renewal of judges shall be effected by lot, and subsequent renewals at the expiration of nine years from the date of their election or re-election.

The judges whose names are drawn by lot, or whose appointments for nine years have expired, shall always be eligible for re-election.

The elections of judges shall take place in the following manner :

Each of the States signatory to the present Convention shall designate one person at least of recognized competence in questions of international law and enjoying the highest moral reputation ; the persons thus designated shall meet at The Hague and choose from among themselves the required number of judges for the composition or completion of the Court, each State having the right to but a single voice in the vote.

The time of the first meeting of the electors who shall choose the first fifteen judges shall be determined and communicated to the signatory States by the International Bureau.

The convocations of electors to fill the places of a third of the judges, or to renew their appointments, as well as to make up their number to fifteen in case there are vacant places in consequence of death or other causes, shall be made every three years by the same Bureau.

. . . . . .

II

ARTICLE 3

Each of the parties in dispute has the right to challenge :

(*a*) The judge of the nationality of the adverse party ;

(*b*) The judge who has previously expressed a personal opinion on the matter in dispute unfavourable to this party ;

. . . . . .

Any judge would have the right to withdraw from a case when he sees in one way or another that his participation would weaken the confidence due to judicial authority.

[1] Ibid., p. 1033, *annexe* 77.

ANNEX 4 [1]

PROPOSAL OF THE HAITIAN DELEGATION

AMENDMENTS TO THE PROPOSALS OF THE UNITED STATES OF AMERICA AND RUSSIA

1

When accepting his appointment every member of the Permanent Court of Arbitration shall take an oath to discharge his duties fearlessly and with perfect impartiality; he shall engage moreover neither to solicit nor to accept, so long as he is in office, any declaration or any recompense from a Government other than his own.

2

A general list shall be prepared of all the persons designated by the several signatory Powers.

Such of these persons as shall have been delegated for that purpose by their respective Governments shall meet in general assembly and proceed to the election from the general list of members of the Permanent Court.

The Permanent Court thus composed shall be renewed by thirds and shall itself choose the members who are to supersede those whose appointments expire.

3

The members of the permanent commission are charged with preparing or causing to be prepared under their high control a codification of the principal rules of public and private international law.

ANNEX 5 [2]

DRAFT OF A CONVENTION PRESENTED BY THE DELEGATIONS OF GERMANY, THE UNITED STATES OF AMERICA, AND GREAT BRITAIN

PART I

CONSTITUTION OF THE INTERNATIONAL HIGH COURT OF JUSTICE

ARTICLE 1

With a view to promoting the cause of arbitration the signatory Powers agree to constitute, alongside of the Permanent Court of Arbitration, an International High Court of Justice, of easy and gratuitous access, composed of judges representing the various juridical systems of the world and capable of ensuring continuity in arbitral jurisprudence.

ARTICLE 2

The International High Court of Justice is composed of judges and deputy judges all fulfilling conditions qualifying them, in their respective countries, to occupy high legal posts or to be jurists of recognized competence in matters of international law.

The judges and deputy judges of the Court shall be named by the signatory Powers that select them, so far as possible, from the members of the Permanent Court of Arbitration.

The appointment shall be made within the six months following the ratification of the present Convention.

[1] *Actes et documents*, vol. ii, p. 1034, *annexe* 78.
[2] Ibid., p. 1035, *annexe* 80.

Article 3

The judges and deputy judges are appointed for a period of . . . years, counting from the date on which the appointment is notified to the administrative council of the Permanent Court of Arbitration. Their appointments can be renewed.

Should a judge or deputy judge die or retire, the vacancy is filled in the manner in which his appointment was made. In this case the appointment is made for a fresh period of . . . years.

Article 4

The judges of the International High Court of Justice are equal, and rank according to the date on which their appointment was notified (Article 3, paragraph 1), and, if they sit by rota (Article 5, paragraph 8), according to the date on which they entered upon their duties. The judge who is senior in point of age takes precedence when the date is the same.

They enjoy diplomatic privileges and immunities in the exercise of their functions, outside of their own country.

Before entering upon their duties, the judges must swear before the Administrative Council, or make a solemn affirmation, to exercise their duties impartially and conscientiously.

Article 5

The Court is composed of seventeen judges; nine judges constitute a quorum.

The judges appointed by the following signatory Powers: . . . are always summoned to sit.

The judges and deputy judges appointed by the other Powers shall sit by rota as shown in the table hereto annexed.

A judge who is absent or prevented from sitting is replaced by the deputy judge.

Article 6

The High Court shall annually nominate three judges, who shall form a special committee during the year, and three more to replace them should the necessity arise.

Only judges who are called upon to sit can be appointed to these duties. A member of the committee cannot exercise his functions when the Power which appointed him is one of the parties.

The members of the committee shall conclude all matters submitted to them, even if the period for which they have been appointed judges has expired.

Article 7

Proposition of the Delegations of the United States and Great Britain

In no case, unless with the express consent of the parties in dispute, can a judge participate in the examination or discussion of a case pending before the International High Court of Justice when the Power which has appointed him is one of the parties.

A judge may not exercise his judicial functions in any case in which he has, in any way whatever, taken part in the decision of a national tribunal, or of a tribunal of arbitration, or of a commission of inquiry, or has figured in the suit as counsel or advocate for one of the parties.

A judge cannot act as agent or advocate before the High Court, the Permanent Court of Arbitration, a special tribunal of arbitration, or a commission of inquiry, nor act there in any capacity whatsoever so long as his appointment lasts.

ARTICLE 8

Every three years the Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority and, in case the votes are even, by lot.

ARTICLE 9

The judges of the International High Court of Justice shall receive during the years when they are called upon to sit an annual salary of . . . Netherland florins. This salary shall be paid at the end of each half-year, reckoned from the date on which the Court meets for the first time.

While the Court is sitting, or while they are carrying out the duties conferred upon them by this Convention, they shall be entitled to receive a monthly sum of . . . florins; they shall further receive a travelling allowance fixed in accordance with regulations existing in their own country.

The emoluments indicated above shall be paid through the International Bureau and borne by the signatory Powers in the appropriation established for the Bureau of the Universal Postal Union.

ARTICLE 10

The judges may not accept from their own Government or from that of any other Power any reimbursement for services connected with their duties in their capacity of members of the Court.

ARTICLE 11

The seat of the International High Court of Justice is at The Hague, and cannot be transferred, unless absolutely obliged by circumstances, elsewhere.

The special committee (Article 6) may choose, with the assent of the parties concerned, another site for its meetings, if special circumstances render such a step necessary.

ARTICLE 12

The Administrative Council is charged, with regard to the International High Court of Justice, with the same functions that it fulfils under the Convention of July 29, 1899, as to the Permanent Court of Arbitration.

ARTICLE 13

The International Bureau of the Permanent Court of Arbitration acts as registry to the International High Court of Justice. It has charge of the archives and carries out the administrative work.

ARTICLE 14

The High Court shall meet in session once and, if necessary, twice a year. The sessions shall open the third Wednesday in July and the third Wednesday in January, and shall last until all the business on the agenda has been transacted.

The sessions shall not take place if the special committee decides that business does not require it.

ARTICLE 15

(Provisions respecting the relations of the International High Court of Justice with the International Prize Court, especially as regards holding office as judge in both Courts.)

Part II

COMPETENCY AND PROCEDURE

Article 16

The International High Court of Justice shall be competent

1. To deal with all cases of arbitration which, by virtue of a general treaty concluded before the ratification of this Convention, would be submitted to the Permanent Court of Arbitration unless one of the parties objects thereto.

2. To deal with all cases of arbitration which, in virtue of a general treaty or special agreement, are submitted to it.

Proposal of the Delegations of Germany and the United States

3. To revise awards of tribunals of arbitration and reports of commissions of inquiry, as well as to fix the rights and duties flowing therefrom, in all cases where, in virtue of a general treaty or special agreement, the parties address the High Court for this purpose.

Article 17

The special committee (Article 6) shall be competent:

1. To decide the arbitrations referred to in paragraphs 1 and 2 of the preceding article, if the parties concerned are agreed in seeking summary procedure and judgement.

2. To discharge the duties assigned to commissions of inquiry by the Convention of July 29, 1899, so far as the High Court shall have been entrusted with such inquiry by the parties in dispute acting in common agreement.

Article 18

The special committee is also competent to settle the *compromis* (Article 31 of the Convention of July 29, 1899), if the parties are agreed to leave it to the Court.

It is equally competent to do so, even when the request is only made by one of the parties concerned, if all attempts have failed to reach a diplomatic agreement in the case of:

1. A dispute arising from contract debts claimed as due to the *ressortissants* of one country by the Government of another country, and for the settlement of which an offer of arbitration has been accepted.

Proposal of the German Delegation

2. A dispute covered by a general treaty of arbitration providing for a *compromis* in all disputes and containing no stipulation to the contrary. Recourse cannot, however, be had to the High Court if the Government of the other country declares that in its opinion the dispute does not come within the category of questions to be submitted to obligatory arbitration.

Article 19

The parties concerned may each nominate a judge of the High Court to take part, with power to vote, in the examination of the case which they have submitted to the committee. If the committee acts as a commission of inquiry, this task may be entrusted to persons other than the judges of the High Court.

ARTICLE 20

The International High Court of Justice shall follow the rules of procedure set forth in Part IV, Chapter 3 of the Convention of July 29, 1899, except in so far as the procedure is laid down in the present Convention.

ARTICLE 21

All decisions of the High Court shall be arrived at by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge, in the order of precedence laid down in Article 4 paragraph 1, is not counted.

ARTICLE 22

For all notices to be served, in part on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requisitions addressed for this purpose can only be rejected when the Power applied to considers them likely to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

ARTICLE 23

The High Court itself draws up its own rules of procedure, which must be communicated to the signatory Powers.

Within a year from the ratification of the present Convention it shall meet in order to elaborate these rules.

ARTICLE 24

The High Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated through the Netherland Government to the signatory Powers, which will consider together as to the measures to be taken.

PART III

FINAL PROVISIONS

ARTICLE 25

The present Convention shall be ratified as soon as possible.

The ratification shall be deposited at The Hague.

The *procès-verbal* of the deposit of each ratification shall be drawn up, of which a duly certified copy shall be sent through the diplomatic channel to all the signatory Powers.

ARTICLE 26

The Convention shall go into force six months after its ratification.

It shall remain in force for . . . years, and shall be tacitly renewed for . . . years, unless denounced

The denouncement must be notified, at least two years before the expiration of each period, to the Netherland Government, which will inform the other Powers.

The denouncement shall only have effect in regard to the notifying Power. The Convention shall continue in force so far as the other Powers are concerned.

ANNEX 6[1]

SUGGESTIONS OFFERED BY THE GERMAN, AMERICAN, AND BRITISH DELEGATIONS RESPECTING THE COMPOSITION OF AN INTERNATIONAL COURT OF JUSTICE

DISTRIBUTION OF JUDGES AND DEPUTY JUDGES BY COUNTRIES FOR EACH YEAR OF THE PERIOD OF TWELVE YEARS

	Judges	Deputy Judges
	First Year	
1	Argentine Republic	
2	Belgium	
3	Bolivia	
4	China	
5	Spain	
6	Netherlands	
7	Roumania	
8	Sweden	
9	Turkey	
	Second Year	
1	Argentine Republic	
2	Belgium	
3	China	
4	Columbia	
5	Spain	
6	Netherlands	
7	Roumania	
8	Sweden	
9	Turkey	
	Third Year	
1	Brazil	
2	Chile	
3	Costa Rica	
4	Denmark	
5	Spain	
6	Greece	
7	Netherlands	
8	Portugal	
9	Turkey	
	Fourth Year	
1	Brazil	
2	Chile	
3	Cuba	
4	Denmark	
5	Greece	
6	Netherlands	
7	Portugal	
8	Siam	
9	Turkey	
	Fifth Year	
1	Dominican Republic	
2	Ecuador	
3	Spain	
4	Mexico	
5	Norway	
6	Netherlands	
7	Serbia	
8	Switzerland	
9	Turkey	
	Sixth Year	
1	Bulgaria	
2	Spain	
3	Guatemala	
4	Haiti	
5	Luxemburg	
6	Mexico	
7	Norway	
8	Persia	
9	Switzerland	

	Judges	Deputy Judges
	Seventh Year	
	Argentine Republic	
	Belgium	
	China	
	Spain	
	Honduras	
	Netherlands	
	Roumania	
	Sweden	
	Turkey	
	Eighth Year	
	Argentine Republic	
	Belgium	
	China	
	Spain	
	Nicaragua	
	Netherlands	
	Roumania	
	Sweden	
	Turkey	
	Ninth Year	
	Brazil	
	Chile	
	Denmark	
	Spain	
	Greece	
	Panama	
	Netherlands	
	Portugal	
	Turkey	
	Tenth Year	
	Brazil	
	Chile	
	Denmark	
	Greece	
	Paraguay	
	Netherlands	
	Portugal	
	Siam	
	Turkey	
	Eleventh Year	
	Spain	
	Mexico	
	Norway	
	Netherlands	
	Peru	
	Salvador	
	Serbia	
	Switzerland	
	Turkey	
	Twelfth Year	
	Bulgaria	
	Spain	
	Mexico	
	Montenegro	
	Norway	
	Persia	
	Switzerland	
	Uruguay	
	Venezuela	

[1] *Actes et documents*, vol. II, p. 1040, *annexe* 81. See footnote 1 on the following page.

TABLE[1] SHOWING THE NUMBER OF YEARS IN EACH PERIOD OF TWELVE YEARS

Countries	Years		Countries	Years	
	Judges	*Deputies*		*Judges*	*Deputies*
Spain	10	10	Bolivia	1	1
Netherlands	10	10	Colombia	1	1
Turkey	10	10	Costa Rica	1	1
Argentine	4	4	Cuba	1	1
Belgium	4	4	Dominican Republic	1	1
Brazil	4	4	Ecuador	1	1
Chile	4	4	Guatemala	1	1
China	4	4	Haiti	1	1
Denmark	4	4	Honduras	1	1
Greece	4	4	Luxemburg	1	1
Mexico	4	4	Montenegro	1	1
Norway	4	4	Nicaragua	1	1
Portugal	4	4	Panama	1	1
Roumania	4	4	Paraguay	1	1
Sweden	4	4	Peru	1	1
Switzerland	4	4	Salvador	1	1
Bulgaria	2	2	Uruguay	1	1
Persia	2	2	Venezuela	1	1
Serbia	2	2			
Siam	2	2			
	90	90		18	18

ANNEX 7[2]

PROPOSAL OF THE DELEGATION OF BRAZIL

PROVISIONAL SUGGESTIONS FOR USE IN THE DISCUSSION OF THE COMPOSITION OF A PERMANENT COURT

Considering that to fix at the outset upon an arbitrary number of judges for the Permanent Court of Arbitration, according to a certain idea assumed *a priori* as the magnitude of this number, in order to attempt to accommodate to it thereafter the representation of all the States, is to reverse the necessary and inevitable terms of the question; considering that this inversion is the less justifiable when the precise number of States to be represented in the Court is known and a different number less than that is adopted for their representation;

Considering that by transposing in this manner the unalterable terms of the problem it is presumed arbitrarily to assign to the different States unequal representations in this international Court;

Considering that in the Convention for the pacific settlement of international disputes celebrated at The Hague, July 29, 1899, the signatory Powers, among which were all those of Europe as well as the United States of America, Mexico, China, and Japan, agreed that the contracting States, without regard to their importance, should all have an equal representation in the Permanent Court of Arbitration;

Considering that in the adoption of this basis they have not only performed a voluntary act but also admitted a principle which it was not possible for them to overlook in the composition of an international body created for the purpose of deciding the differences between independent and sovereign States;

Considering therefore that this principle, inevitably in every other organization of a like nature, with greater reason imposes itself in a manner especially imperative when

[1] As Germany, United States, Austria-Hungary, France, Great Britain, Italy, Japan and Russia were to sit permanently in the Court, they are omitted from these tables.

[2] *Actes et documents*, vol. ii, p. 1045, *annexe* 83.

the question is that of establishing the definitive institution in which States place their highest confidence for the judicial settlement of their disputes ;

Considering, consequently, that in the projected Court the quality of all the signatory States cannot be passed over which would be created by assigning to each the right to an entire and permanent representation in the body ;

Considering that no Government could, even if it wished, renounce this right, which touches the sovereignty and consequently the independence of the States in their mutual relations ;

Considering that this principle is not observed by permitting each State to appoint a member for the Court if he is to sit only for a certain number of years, scattered variously among the different States according to a scale of importance which has nothing to do with the subject and which, noticeably partial in favour of certain European countries, does not correspond to the obvious reality of the facts ;

Considering that it is clearly sophistical to pretend that in this way the quality of States as sovereign units in public international law is satisfied, and that there is no attack upon this right by subjecting it to mere conditions of exercise ;

Considering that a right equal among all those possessing it is not subjected to simple conditions of exercise when some are restricted to periods more or less limited while others have the privilege of a continuous exercise thereof ;

Considering therefore that it is necessary to maintain, for the Court in question, the same rule of continuous equality of representation of States consecrated in the Convention of 1899;

Considering that if the States excluded from the First Peace Conference have been invited to the second, it is not with a view to having them solemnly sign an act derogatory to their sovereignty by reducing them to a scale of classification which the more powerful nations would like to have recognized ;

Considering that the interests of peace are not served by creating among States through a contractual stipulation categories of sovereignty that humiliate some to the profit of others, by sapping the bases of the existence of all, and by proclaiming with a strange lack of logic the legal predominance of might over right ;

Considering that if the new Court is to be set upon such foundations it is better not to create it, the more so because for the pacific settlement of international disputes the nations have at their disposal the present Court as well as the right which this Conference recognizes in them, and which it could not deny them, to have recourse to other arbitrators ;

Considering that with this right admitted there is no advantage in having two courts alongside of each other and equally considered as permanent ;

Considering that if the capital difficulty complained of in the present Court is a lack of true permanence, it would be much more practical and useful to give it permanence by correcting this curable imperfection than to undertake this duplication of the arbitral Court ;

Considering that it is not possible to reach such a desideratum by utilizing the elements of the present Court so to submit it to a reform which gives it a different consistence and at the same time a real permanence ;

Considering that in order to procure for it permanence it is by no means necessary that all its members reside at the seat of the Court, at whose plenary sessions a quorum should rather be very small, for example, a quarter of the whole number of judges appointed ; by stipulating for this number of members, by rota, the duty of residing at any point in Europe whence they can arrive at The Hague in twenty-four hours when summoned ;

Considering that on this basis we should decide on the number of fifteen judges or even less, it would be still preferable if the total number of judges were inferior to that of the number of signatory States ;

Considering, in short, conformably to the rules accepted in the first Convention of 1899, that the signatory Powers should be recognized as having the power to come to an understanding for a common designation of one or more members, and besides, of permitting the representative already appointed by one State to be chosen by others ;

Considering, moreover, that the right of representation on the Court would be voluntary, like all rights in their exercise, that certain States probably would abstain therefrom, and

tu... besides in order to exercise it, it would be necessary previously to offer secure pledges for the accomplishment of the duty of paying the expenses of the judge appointed ;

Considering that in this way we might arrive, for the plenary sessions of the Court, at an actual body less numerous even than that resulting from the combination provided by the Anglo-German-American draft ;

Considering that by this reduction in the ordinary quorum the functions of the Court would gain, not only in facility and dispatch, but also in completeness and efficiency, for in judicial bodies that are too numerous in their membership there is always a sad tendency among their members to rely upon one another, which fact results in reducing to a very small minority those who work, study, and do their duty with full information of the case ;

Considering, furthermore, that even this quorum would only have to act in certain cases, when the interested parties required it, or when there might be certain difficulties to solve, for, in pursuance of the very essence of arbitration, whose character should not be denatured, it would be necessary to assure to the parties engaged in the dispute the right of electing from the number of the Court the judge or the judges to whom they agree to submit the settlement of their controversy ;

The delegation of Brazil, in accordance with the most precise instructions of its Government, cannot acquiesce in the proposal under discussion, and permits itself to offer the following bases for the organization of another project :

1

For the constitution of the new Permanent Court of Arbitration each Power shall designate, under the conditions stipulated in the Convention of 1899, a person able to discharge worthily as a member of that institution the duties of arbitrator.

It shall also have the right to appoint a deputy.

Two or more Powers may agree upon the designation in common of their representatives on the Court.

The same person may be designated by different Powers.

The signatory Powers shall choose, so far as they can, their representatives in the new Court from those composing the existing Court.

2

When the new Court is organized the present Court shall cease to exist.

3

The persons appointed shall serve for nine years, and cannot be displaced save in cases where, according to the legislation of the respective country, permanent magistrates lose office.

4

A Power may exercise its right of appointment only by engaging to pay the honorarium of the judge that it is to designate, and by making the deposit thereof every year in advance on the conditions fixed by the Convention.

5

In order that the Court may deliberate in plenary session, at least a quarter of the members appointed must be present.

In order to ensure this possibility the members appointed shall be divided into three groups according to the alphabetical order of the signatures to the Convention.

The judges included in each of these groups shall sit in rotation for three years, during which they shall be obliged to fix their residence at a point whence they can reach The Hague within twenty-four hours on telegraphic summons.

However, all members of the Court have the right, if they wish it, of sitting always in the plenary sessions, even though they do not belong to the group especially called to sit.

6

The parties in dispute are free either to submit their controversy to the full Court or to choose from the Court, to settle their difference, the number of judges that they agree upon.

7

The Court will be convened in plenary session when it has to pass judgement on disputes the settlement of which has been entrusted to them by the parties, or, a matter submitted to them by a smaller number of arbitrators, when the latter appealed to the full Court for the purpose of settling a question arising among them during the trial of the case.

8

In order to complete the organization of the Court on these bases everything in the provisions of the draft of England, Germany, and the United States shall be adopted that is consistent therewith and seems proper to adopt.

ANNEX 8[1]

ARTICLES OF CONFEDERATION OF THE UNITED STATES OF AMERICA, 1777

ARTICLE 9

. . . The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination. and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the secretary of Congress shall strike in behalf of such party absent or refusing, and the judgement and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive: and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement, without favour, affection or hope of reward': provided also that no state shall be deprived of territory for the benefit of the United States. . . .

[1] *Actes et documents*, vol. i, p. 398, *annexe* C; *Revised Statutes of the United States*, 1878, p. 9.

CONVENTION (I) FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES[1]

His Majesty the German Emperor, King of Prussia ; the President of the United States of America ; the President of the Argentine Republic ; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary ; His Majesty the King of the Belgians ; the President of the Republic of Bolivia ; the President of the Republic of the United States of Brazil ; His Royal Highness the Prince of Bulgaria ; the President of the Republic of Chile ; His Majesty the Emperor of China ; the President of the Republic of Colombia ; the Provisional Governor of the Republic of Cuba ; His Majesty the King of Denmark ; the President of the Dominican Republic ; the President of the Republic of Ecuador ; His Majesty the King of Spain ; the President of the French Republic ; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India ; His Majesty the King of the Hellenes ; the President of the Republic of Guatemala ; the President of the Republic of Haiti ; His Majesty the King of Italy ; His Majesty the Emperor of Japan ; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau ; the President of the United States of Mexico ; His Royal Highness the Prince of Montenegro ; His Majesty the King of Norway ; the President of the Republic of Panama ; the President of the Republic of Paraguay ; Her Majesty the Queen of the Netherlands ; the President of the Republic of Peru ; His Imperial Majesty the Shah of Persia ; His Majesty the King of Portugal and of the Algarves. etc. ; His Majesty the King of Roumania ; His Majesty the Emperor of All the Russias ; the President of the Republic of Salvador ; His Majesty the King of Serbia ; His Majesty the King of Siam ; His Majesty the King of Sweden ; the Swiss Federal Council ; His Majesty the Emperor of the Ottomans ; the President of the Oriental Republic of Uruguay ; the President of the United States of Venezuela :

Animated by a strong desire to work for the maintenance of general peace ;

Resolved to promote by their best efforts the friendly settlement of international disputes ;

Recognizing the solidarity uniting the members of the society of civilized nations ;

Desirous of extending the empire of law and of strengthening the appreciation of international justice ;

Convinced that the permanent institution of a tribunal of arbitration accessible to all, in the midst of the independent Powers, will contribute effectively to this result ;

[1] *Actes et documents*, vol. I, p. 604. For the corresponding Convention (I) of 1899, see *ante*, p. 32

Having regard to the advantages attending the general and regular organization of the procedure of arbitration ;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples ;

Being desirous, with this object, of ensuring the better working in practice of commissions of inquiry and tribunals of arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure ;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes ;

The high contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their plenipotentiaries :

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following :

PART I.—THE MAINTENANCE OF GENERAL PEACE

ARTICLE 1

With a view to obviating as far as possible recourse to force in the relations between States, the contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

PART II.—GOOD OFFICES AND MEDIATION

ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE 3

Independently of this recourse, the contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice and never have binding force.

ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted unless there be an agreement to the contrary.

ARTICLE 8

The contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form :

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

PART III INTERNATIONAL COMMISSIONS OF INQUIRY

ARTICLE 9

In disputes of an international nature involving neither honour nor essential interests, and arising from a difference of opinion on points of fact, the contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 10

International commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined ; it determines the mode and time in which the commission is to be formed and the extent of the powers of the commissioners.

It also determines, if there is need, where the commission is to sit, and whether it may remove to another place, the language the commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint assessors, the inquiry convention shall determine the mode of their selection and the extent of their powers.

ARTICLE 11

If the inquiry convention has not determined where the commission is to sit, it shall sit at The Hague.

The place of sitting, once fixed, cannot be altered by the commission except with the assent of the parties.

If the inquiry convention has not determined the languages to be employed, the question is decided by the commission.

ARTICLE 12

Unless otherwise stipulated, commissions of inquiry are formed in the manner determined by Articles 45 and 57 of the present Convention.

ARTICLE 13

In case of the death, retirement, or disability from any cause of one of the commissioners or one of the assessors, should there be any, his place is filled in the same way as he was appointed.

ARTICLE 14

The parties are entitled to appoint special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the commission.

ARTICLE 15

The International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and shall place its offices and staff at the disposal of the contracting Powers for the use of the commission of inquiry.

ARTICLE 16

If the commission meets elsewhere than at The Hague, it appoints a secretary general, whose office serves as registry.

It is the function of the registry, under the control of the president, to make the

necessary arrangements for the sittings of the commission, the preparation of the minutes, and, while the inquiry lasts, for the custody of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

ARTICLE 17

In order to facilitate the constitution and working of commissions of inquiry, the contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

ARTICLE 18

The commission shall settle the details of the procedure not covered by the special inquiry convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

ARTICLE 19

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

ARTICLE 20

The commission is entitled, with the assent of the parties, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send thither one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

ARTICLE 21

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ARTICLE 22

The commission is entitled to ask either party for such explanations and information as it deems expedient.

ARTICLE 23

The parties undertake to supply the commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

They undertake to make use of the means at their disposal under their municipal law, to ensure the appearance of the witnesses or experts who are in their territory and have been summoned before the commission.

If the witnesses or experts are unable to appear before the commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

ARTICLE 24

For all notifications which the commission has to make in the territory of a third contracting Power, the commission shall apply direct to the Government of that Power. The same rule shall apply in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed in accordance with the means at the disposal of the requested Power under its municipal law. They cannot be rejected unless this Power considers them of a nature to impair its sovereign rights or its safety.

The commission will also be always entitled to act through the Power in whose territory it sits.

ARTICLE 25

The witnesses and experts are summoned on the request of the parties or by the commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the commission.

ARTICLE 26

The examination of witnesses is conducted by the president.

The members of the commission may however put to each witness the questions that they consider proper in order to throw light on or complete his evidence, or in order to inform themselves on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the president to put such additional questions to the witness as they think expedient.

ARTICLE 27

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the president to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 28

A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks well, which shall be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to sign it.

ARTICLE 29

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

ARTICLE 30

The commission considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the commission.

If a member declines to vote, the fact must be recorded in the minutes.

ARTICLE 31

The sittings of the commission are not public, nor are the minutes and documents connected with the inquiry published, except in virtue of a decision of the commission taken with the consent of the parties.

ARTICLE 32

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the president declares the inquiry terminated, and the commission adjourns to deliberate and to draw up its report.

ARTICLE 33

The report is signed by all the members of the commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the report is not affected.

ARTICLE 34

The report of the commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the report is delivered to each party.

ARTICLE 35

The report of the commission is limited to a finding of facts, and has in no way the character of an award. It leaves to the parties entire freedom as to the effect to be given to this finding.

ARTICLE 36

Each party pays its own expenses and an equal share of the expenses of the commission.

PART IV.—INTERNATIONAL ARBITRATION

CHAPTER I.—*The System of Arbitration*

ARTICLE 37

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the award.

ARTICLE 38

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the contracting Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the contracting Powers, if the case arise, have recourse to arbitration, in so far as circumstances permit.

ARTICLE 39

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 40

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the contracting Powers, these Powers reserve to themselves the right of concluding new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—*The Permanent Court of Arbitration*

ARTICLE 41

With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

ARTICLE 42

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special tribunal.

ARTICLE 43

The Permanent Court has its seat at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has the custody of the archives and conducts all the administrative business.

The contracting Powers undertake to communicate to the Bureau, as soon as possible, a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

ARTICLE 44

Each contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the contracting Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the contracting Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers. The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed, and for a fresh period of six years.

ARTICLE 45

When the contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by agreement of the parties the following course is pursued :

Each party appoints two arbitrators, of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court. These arbitrators together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not nationals of either of them. Which of the candidates thus presented shall be umpire is determined by lot.

ARTICLE 46

As soon as the tribunal is composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their *compromis*, and the names of the arbitrators.

The Bureau communicates without delay to each arbitrator the *compromis*, and the names of the other members of the tribunal.

The tribunal assembles on the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the tribunal, in the performance of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 47

The Bureau is authorized to place its premises and staff at the disposal of the contracting Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-contracting Powers or between contracting Powers and non-contracting Powers, if the parties are agreed to have recourse to this tribunal.

ARTICLE 48

The contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

In case of dispute between two Powers, one of them may always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

ARTICLE 49

The Permanent Administrative Council, composed of the diplomatic representatives of the contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who acts as president, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the contracting Powers without delay the regulations adopted by it. It presents to them an annual report on the labours of the Court, the working of the administration, and the expenditure. The report likewise contains a *résumé* of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

ARTICLE 50

The expenses of the Bureau shall be borne by the contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

CHAPTER III.—*Arbitration Procedure*

ARTICLE 51

With a view to encouraging the development of arbitration, the contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

ARTICLE 52

The Powers which have recourse to arbitration sign a *compromis*, in which are defined the subject of the dispute, the time allowed for appointing arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The *compromis* likewise defines, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

ARTICLE 53

The Permanent Court is competent to settle the *compromis*, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of :

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, and providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to obligatory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This provision is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

ARTICLE 54

In the cases contemplated in the preceding article, the *compromis* shall be settled by a commission consisting of five members selected in the manner laid down in Article 45, paragraphs 3 to 6.

The fifth member is *ex officio* president of the commission.

ARTICLE 55

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the composition of the tribunal by agreement of the parties, the course referred to in Article 45, paragraphs 3 to 6, is pursued.

ARTICLE 56

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

ARTICLE 57

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

ARTICLE 58

When the *compromis* is settled by a commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the commission itself shall form the arbitration tribunal.

ARTICLE 59

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

ARTICLE 60

The tribunal sits at The Hague, unless some other place is selected by the parties.

The tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the tribunal, without the assent of the parties.

ARTICLE 61

If the question as to what languages are to be used has not been settled by the *compromis*, it shall be decided by the tribunal.

ARTICLE 62

The parties are entitled to appoint special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defence of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

ARTICLE 63

As a general rule, arbitration procedure comprises two distinct phases: written pleadings and oral discussions.

The written pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents relied on in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the *compromis*.

The time fixed by the *compromis* may be extended by mutual agreement by the parties, or by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

ARTICLE 64

Every document produced by one party must be communicated to the other party in the form of a duly certified copy.

ARTICLE 65

Unless special circumstances arise, the tribunal does not meet until the pleadings are closed.

ARTICLE 66

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes are signed by the president and by one of the secretaries and alone have an authentic character.

ARTICLE 67

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

ARTICLE 68

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 69

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the tribunal takes note of it.

ARTICLE 70

The agents and the counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE 71

They are entitled to raise objections and points. The decisions of the tribunal on these points are final and cannot form the subject of any subsequent discussion.

ARTICLE 72

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions, can be regarded as an expression of opinion by the tribunal in general or by its members in particular.

ARTICLE 73

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other papers and documents which may be invoked in the case, and in applying the principles of law.

ARTICLE 74

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its final arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 75

The parties undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the dispute.

ARTICLE 76

For all notifications which the tribunal has to make in the territory of a third contracting Power, the tribunal shall apply direct to the Government of that Power. The same rule shall apply in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed in accordance with the means at the disposal of the requested Power under its municipal law. They cannot be rejected unless this Power considers them of a nature to impair its sovereign rights or its safety.

The tribunal will also be always entitled to act through the Power in whose territory it sits.

ARTICLE 77

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the president declares the discussion closed.

ARTICLE 78

The deliberations of the tribunal take place in private and remain secret.

All questions are decided by a majority of its members.

ARTICLE 79

The award must state the reasons on which it is based. It contains the names of the arbitrators; it is signed by the president and by the registrar or the secretary acting as registrar.

ARTICLE 80

The award is read out at a public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE 81

The award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

ARTICLE 82

Any dispute arising between the parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the decision of the tribunal which pronounced it.

ARTICLE 83

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case and unless there be a stipulation to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

ARTICLE 84

The award is binding only on the parties in dispute.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter inform all the signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 85

Each party pays its own expenses and an equal share of the expenses of the tribunal.

CHAPTER IV.—*Arbitration by Summary Procedure*

ARTICLE 86

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

ARTICLE 87

Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them ; which of the candidates thus proposed shall be the umpire is determined by lot.

The umpire presides over the tribunal, which gives its decisions by a majority of votes.

ARTICLE 88

In the absence of any previous agreement, the tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ARTICLE 89

Each party is represented before the tribunal by an agent, who serves as intermediary between the tribunal and the Government which appointed him.

ARTICLE 90

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts be called. The tribunal has, on its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

PART V.—FINAL PROVISIONS

ARTICLE 91

The present Convention, duly ratified, shall replace, as between the contracting Powers, the Convention for the pacific settlement of international disputes of July 29, 1899.

ARTICLE 92

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which shall have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 93

Non-signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 94

The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

ARTICLE 95

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 96

In the event of one of the contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall have effect only in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 97

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4.

as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent, through the diplomatic channel, to the contracting Powers.

[Here follow signatures.]

Report to the Conference from the First Commission on the Revision of the Convention of 1899 for the Pacific Settlement of International Disputes [1]

(Reporter, Baron Guillaume)

Gentlemen:

The First Commission, of which I have the honour to be the reporter, has continued the work of the Conference of 1899; and, like it, we flatter ourselves that we have contributed to the development of the principles of peace and conciliation which we have perseveringly and earnestly followed.

We believe that we interpret your thoughts when we proclaim that the Convention of July 29 for the pacific settlement of international disputes marked a great and decisive step along that pathway whose glorious end is the triumph of law. Let us render sympathetic homage to those who, in the closing hours of the last century, laid the foundations of the temple of peace, under the presidency of that eminent statesman who again this year, with the same spirit and the same authority, has guided the work of the First Commission.

He has already recalled to you the memory of those who were then his principal collaborators: Sir Julian Pauncefote, Mr. Holls, and Count Nigra, whom death has taken from us; Mr. Asser, Baron d'Estournelles de Constant, Messrs. Lammasch, Martens, Odier, and Zorn. You will agree, without doubt, that the ties of friendship which bind me to Baron Descamps do not prevent me from mentioning the distinguished assistance which he gave the Commission as reporter.

At the beginning of the Conference of 1899, we seemed to be still very far from a satisfactory solution of the great cause of arbitration; we did not have sufficient faith in this method—so simple, so natural—of declaring law; our eyes were fixed, rather, upon the conflicts, happily very rare, where recourse to arbitration seemed to be powerless, instead of upon that extended field in which it might exercise its beneficial influence. We do not

[1] *Actes et documents*, vol. 1, p. 309, *annexe* D.

sufficiently appreciate the results to be secured by the development of that peaceful institution in international usage, by its systematic organization and by making its forms of procedure more flexible.

Until 1899, arbitration, the conception of which is too natural, too humane, not to have been considered at all times as a valuable means of settlement, was still difficult of application among nations, because its rules, insufficiently defined, uncertain and changeable, aroused fears of complications and delays.

It became necessary, then, to call the attention of peoples and Governments to this implement of peace by making its use easy; it was necessary to sink more deeply into the universal conscience the necessity for recourse to law every time that the nature of the disputes made peaceful solution possible.

In creating a high international court, of which the name alone—'Permanent Court of Arbitration'—is a complete outline and is self-explanatory, in establishing upon solid bases the procedure of the Court which is called upon to decide disputes between nations, the First Conference took a great step in the work of peace.

The establishment of international commissions of inquiry, too, in 1899, raised certain fears, which were soon dissipated, thanks to the wise provisions of the Convention of July 29. In giving them a purely voluntary character, in excepting disputes regarding the vital interests of nations, in limiting the field of action of commissions of inquiry to questions of fact, the Convention for the pacific settlement of international disputes conferred upon them a character the usefulness of which no one dreams of contesting.

Two of the most powerful nations of the world, in the course of a period of great disturbance, still within the memory of all of us, found these commissions a sure, honourable, and expeditious method of settling a dispute the consequences of which might have been disastrous, if direct and immediate resort to the exact provisions already ratified by public opinion had not been able to calm popular emotion, and thereby prevent situations which could not be relieved, and deeds beyond recall.

The Government of His Majesty the Emperor of all the Russias, the august initiator of the Peace Conferences, understood, however, that the work of 1899 still demanded to be completed and bettered; it was necessary to extend the field for arbitration; it was necessary to endow the institution of international commissions of inquiry with a set of rules of procedure which would make their use surer and more expeditious.

The circular addressed to the Powers by the Cabinet of St. Petersburg, April 3, 1906, contained at the head of the programme for the Second Peace Conference:

> Improvements to be made in the provisions of the Convention for the pacific settlement of international disputes as regards the Court of Arbitration and international commissions of inquiry.[1]

The accomplishment of this task was confided to the First Commission, assisted by the work of two committees of examination.[2]

[1] *Ante*, p. 186.

[2] The first committee, designated as committee A, under the presidency of his Excellency Mr. Léon Bourgeois, was composed of his Excellency Baron Marschall von Bieberstein and Mr Kriege, for Germany; his Excellency General Porter and Mr. Scott, for the United States of America; his Excellency Mr. Drago for the Argentine Republic; his Excellency Mr. Mérey von Kapos-Mére and Mr. Lammasch, for Austria-Hungary; his Excellency Baron Guillaume, reporter, for Belgium; his Excellency Mr. Ruy Barbosa, for Brazil; his Excellency Baron d'Estournelles de Constant and

I am going to try to report their labours to you, telling you first that by unanimous agreement the Convention worked out by the First Peace Conference remains in force, and that only those articles modified by your decrees must be submitted to further approval.

The first two articles of the Convention of July 29 gave rise to no discussion; the amendment presented by the delegation from the United States of America providing for the insertion in Article 3 of the words 'and desirable' after the word 'expedient' was unanimously approved.

The first three articles of the Convention are therefore drawn up as follows:

PART I.—THE MAINTENANCE OF GENERAL PEACE

ARTICLE 1

With a view to obviating as far as possible recourse to force in the relations between States, the signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences.

PART II GOOD OFFICES AND MEDIATION

ARTICLE 2

In case of serious disagreement or dispute, before an appeal to arms, the signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE 3

Independently of this recourse, the signatory Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

Articles 4, 5, 6, and 7 of the Convention did not arouse any remarks.

The Haitian delegation [1] had proposed to modify Article 8 with the purpose of no longer confiding the rôle of mediation to the two Powers chosen directly by the States in controversy, but instead to empower those States to name a mediator authorized to prevent a breach of peaceful relations.

The Commission would have viewed with regret any change in the text of Article 8, which establishes an ingenious system of mediation; it felt also that if two Powers are in

Mr. Fromageot, for France; his Excellency Sir Edward Fry, for Great Britain; Mr. Streit, for Greece; his Excellency Count Tornielli, his Excellency Mr. Pompilj, and Mr. Fusinato, for Italy; his Excellency Mr. Esteva and his Excellency Mr. de la Barra, for Mexico; Mr. Lange, for Norway; his Excellency Mr. Asser, for the Netherlands; his Excellency Mr. d'Oliveira, for Portugal; his Excellency Mr. Martens, for Russia; his Excellency Mr. Milovanovitch, for Serbia; his Excellency Mr. Hammarskjöld, for Sweden; his Excellency Mr. Carlin, for Switzerland.

The second committee, designated as committee C, under the presidency of Mr. Fusinato, was composed of Mr. Kriege, Mr. Scott, Mr. Lammasch, his Excellency Baron Guillaume, reporter, Mr. Fromageot, his Excellency Sir Edward Fry, Mr. Crowe, Mr. Lange, and his Excellency Mr. d'Oliveira.

[1] *Post*, p. 462.

dispute, the States to which they have confided the defence of their interests would have difficulty in agreeing upon the choice of a mediator; the proposed modification was therefore unanimously rejected.

These five articles remain in the following form:

ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE 5

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6

Good offices and mediation, undertaken either at the request of the parties in dispute, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

ARTICLE 7

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted, unless there be an agreement to the contrary.

ARTICLE 8

The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY

Article 9 gave rise to a minute examination and profound deliberation.

The amendment proposed by the Haitian delegation [1] was rejected from the very fact that its provisions regarding Article 8 had not been adopted. The discussion thereafter dealt exclusively with the draft worked out by the Russian delegation.[2]

The scope of these provisions was twofold: to substitute the term 'agree' for the words 'deem it expedient', which was also asked by the Netherland delegation, and to

[1] *Post*, p. 463.

[2] *Post*, p. 458.

give to commissions of inquiry, together with their right to determine questions of fact, the duty to determine the question of responsibility if the occasion arose.

The discussion, in truth, covered Article 9 in its entirety.

His Excellency Mr. Martens declared that the end sought by the Russian delegation in proposing modifications of the text adopted by the First Peace Conference was to give it more flexibility and make its application easier and more frequent. He was in a position to assert, as was every one, the usefulness of this prompt and easy method of obtaining a peaceful solution of conflicts which might disturb peace among nations; he was convinced that it was most important to preserve the institution of commissions of inquiry in the exact form given it, which distinguishes it from the idea of arbitration; he understood that recourse to this legal method remained absolutely voluntary; but he wished to invite nations more strongly to resort to this peaceful method of settling their differences every time that circumstances would permit.

He did not urge the introduction of the word 'responsibility', which perhaps went beyond his thought because—as I have already said—he did not intend to trespass upon the well-defined field of arbitration; he had in view only the statement of the facts asserted by each of the States in dispute, and forming the basis of their responsibility.

This eminent jurisconsult, however, did not at all desire to introduce something new in this connexion; but he asserted that the phraseology of Article 9 was neither clear nor in sufficiently legal form. He simply intended to have the fact recognized that two Powers which agreed upon resorting to an international commission of inquiry with broader provisions than those provided in Article 9, were always free to conclude a convention for that purpose.

This right cannot be disputed; the provisions of Article 9 are not restrictive; the committee has recognized that; but it has not forgotten that the very establishment of international inquiry in 1899 raised very keen apprehensions which were only dissipated by the introduction of various elements into the phraseology of this article.

He did not think it desirable to modify the framework which was established for commissions of inquiry by the Convention of July 29; he rejected every modification of the text which might lead one to believe that the rules established by the first Conference had been altered.

The text of Article 9 has therefore been retained except for the addition of the words 'and desirable' after the word 'expedient', proposed by the delegation of the United States.

This modification was unanimously adopted; it accords with that which had already been agreed to in Article 3.

In the plenary session of the Commission His Excellency Mr. Beldiman recalled the fact that in 1899 it was due to the opposition of Roumania, Greece, and Serbia, that recourse to commissions of inquiry was not made obligatory. In the Conference of 1907 no one has thought of reconsidering this decision, and of contesting the point of view lately defended by the first delegate of Roumania and his colleagues.

His Excellency Mr. Martens called attention to the fact that in spite of the reservations provided in Article 9 concerning recourse to commissions of inquiry, Great Britain and Russia did not hesitate in the Hull incident, where vital interest and the honour of two countries were certainly concerned, to appeal to this valuable, peaceful method of

settling the difference which had arisen between them. It should be understood that it is always left to the Powers to invoke the reservations of Article 9 or to ignore them.

Article 9 will therefore be drawn up in the following manner :

ARTICLE 9

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Several amendments were proposed to Articles 10–14 of the Convention of July 29; these came from the delegations of Russia,[1] Italy,[2] the Netherlands,[3] France,[4] and Great Britain.[5]

The proposals of the last two Powers were, it is true, combined and formed but one proposition.[5]

The first paragraph of Article 10 has undergone no modification.

The committee of examination was unanimous in maintaining the principle contained in the Convention of 1899; the exact statement of the facts to be examined and the extent of the powers of the commissioners shall be left to the special conventions entered into by the parties in dispute to establish the international commissions of inquiry; it thought it useful to add that these conventions should also determine the methods by which and per[illegible] within which the commission should be formed. This provision was also implied in [illegible] Convention of July 29 which, while indicating the method of forming the commission, provided for a different stipulation.

Such are the provisions w[illegible]ch should be contained in the inquiry convention; there are others which the committee would like to have inserted. It believes it would be useful for the parties in dispute to agree also, if necessary, upon the place where the commission shall meet, upon the power to change this meeting-place, upon the languages to be used, and upon the date for the filing of the statements of fact by the parties.

It seemed that it would generally be easier for the Governments than for the commissioners to agree upon the language which should be used. This view, however, was not unanimously held in the committee, and the States have been left free to give the decision on this point to the commissioners.

The draft which we have the honour to propose to you, says, in short, that the convention shall determine, if necessary, the choice of languages, but it adds that if this selection is not made, the commission shall itself decide.

The committee has provided an alternative of a similar but not identical character, for the designation of the meeting-place of the commission. The convention is to determine this point; if it does not, the commission shall sit at The Hague.

The value and extent of the functions of assessors claimed our attention for a long time. The committee supported the proposal not to mention their presence, except hypothetically.

The remark has been made that their function depends generally upon the kind of persons from whom the selection is made. If the commission is composed of jurisconsults,

[1] *Post*, p. 458. [2] *Post*, p. 459. [3] *Post*, p. 455. [4] *Post*, p. 460. [5] *Post*, p. 464.

the assessors shall be real experts ; if, on the contrary, the commission is composed of specialists the assessors shall generally be jurisconsults. In the latter case, though without responsibility, they will certainly be called upon to exercise a fairly strong influence.

Without deciding in advance the question as to whether it would not sometimes be expeditious to give them a vote, the committee proposes that you say that if the parties deem it necessary to name assessors, the convention providing for the inquiry shall determine the method of their designation and the extent of their powers.

Article 10 therefore will be drawn up as follows :

ARTICLE 10

International commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined ; it determines the mode and time in which the commission is to be formed and the extent of the powers of the commissioners.

It also determines, if there is need, where the commission is to sit, and whether it may remove to another place, the language the commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint assessors, the inquiry convention shall determine the mode of their selection and the extent of their powers.

Supposing that the inquiry convention has not provided for this, the committee proposes that you decide that the place of meeting of the commissions shall be at The Hague ; it goes without saying that the meeting-place once fixed should not be changed without an agreement between the parties.

It is the duty of the commission—as we have already said—to choose the languages the use of which is authorized before it, if the inquiry convention does not do so.

Such are the rules which inspired the following draft of Article 11.

ARTICLE 11

If the inquiry convention has not determined where the commission is to sit, it shall sit at The Hague.

The place of sitting, once fixed, cannot be altered by the commission except with the assent of the parties.

If the inquiry convention has not determined the languages to be employed, the question is decided by the commission.

Article 12 reproduces almost textually Article 11 of the Convention of July 29, 1899 ; a simple addition has been made thereto, because it appeared useful to mention also the rules to be followed in choosing the president ; these provisions are contained in Article 34 of the said Convention.

It is therefore redrawn as follows :

ARTICLE 12

Unless otherwise stipulated, international commissions of inquiry are formed in the manner determined by Articles 32 and 34 of the present Convention.

Article 13, as submitted by us for your approval, is a reproduction of Article 35 of the Convention of 1899 ; it seemed necessary to adopt the same provisions regarding the

death, retirement, or disability of members of commissions of inquiry as apply to members of an arbitral court.

Here is the form which we have given to this provision :

ARTICLE 13

In case of the death, retirement or disability from any cause of one of the commissioners or one of the assessors, should there be any, his place is filled in the same way as he was appointed.

Article 14 of our draft was inspired by Article 37 of the Convention of July 29, 1899; it practically reproduces its terms, considering, however, the necessary distinction between the duties of arbitral tribunals and commissions of inquiry. Care in maintaining this distinction has led the committee to modify slightly the draft proposed by the delegations from France and Great Britain.

Instead of providing that the parties[1] shall be authorized to name counsel or lawyers to have charge of the defence of the rights or interests of the parties before the commission, it is proposed that you provide that the counsel and lawyers shall be authorized to present and maintain the interests of the parties.

Our draft of Article 14 clearly indicates the voluntary character of the designation of counsel and lawyers by the parties. Although agents, being the representatives of their Governments, have an essential and necessary place before the commission, this is not equally true in the case of counsel and lawyers whose employment is not indispensable and should be freely left to the decision of the parties.

These considerations have prompted the following terminology :

ARTICLE 14

The parties are entitled to appoint special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the commission.

The proposition presented by the Russian delegation provided in Article 13 that ' the commission shall be formed within two weeks after the date of the incident which caused its formation '.[2]

While recognizing the purpose of this provision, and appreciating how important it is to hasten the meeting of commissions of inquiry as much as possible, the committee thought it difficult to provide in the present Convention for a fixed period ; this determination might discourage the Powers who found it too short ; it would again raise the question as to what would be the consequences if the term indicated should expire without the formation of the commission.

It is important not to state any rule which may be of such a nature as to prevent the parties from resorting to commissions of inquiry ; it should be noted, too, that Article 9 of the present Convention does not recommend the establishment of an international

[1] By evident misprints in the original French report, substituting ' *commissions* ' for ' *parties* ' and ' *elle* ' for ' *elles* ', the text is made to read : ' Instead of providing that the *commissions* shall be authorized to give the defence of their rights or interests to counsel or lawyers named by the *commission*, it is proposed,' &c., &c. This phraseology is manifestly incorrect when read in the light of the French and British proposals, the text of the Convention of 1899, and the text finally adopted in 1907.—TRANSLATOR.

[2] *Post*, p. 458.

commission except when the parties shall have stated that they cannot agree by diplomatic means.

Article 12 of the Convention provided that the International Bureau established at The Hague should serve as registry for the arbitral court. The committee thought it wise to reproduce this provision with respect to commissions of inquiry which may sit at The Hague; it has added that the Bureau should put its offices and staff at the disposition of the signatory Powers in the operation of commissions of inquiry; this also being inspired by a rule agreed upon by the First Peace Conference; Article 26 of the Convention for the pacific settlement of international disputes says in fact that the International Bureau at The Hague is authorized to place its offices and staff at the disposal of the signatory Powers in the operation of any special arbitral tribunal.

Article 15 will provide therefore:

ARTICLE 15

The International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and shall place its offices and staff at the disposal of the signatory Powers for the use of the commission of inquiry.

Experience has proved the necessity of taking measures regarding the secretarial staff and registry of commissions of inquiry in case they do not sit at The Hague. Such is the purpose of Article 16.

It was deemed desirable to have the records of all commissiens of inquiry, wherever they may sit, brought together at The Hague; they shall be placed in the International Bureau as soon as any inquiry which did not take place in this city has been concluded.

The proposals of the French and British delegations also assigned to the registry the duty of securing the necessary stenographers and translators.

While recognizing the fact that such appointments, made through the efforts of the registry of the commission, would be of such a character as to give valuable assurances of the impartiality of the stenographers and translators, the committee did not think it should adopt this proposal, believing it more in accord with equity to permit the agents and parties to choose these assistants themselves.

If their notes and translations do not agree, the commission shall decide in regard thereto.

The article is therefore drawn up in the following manner:

ARTICLE 16

If the commission meets elsewhere than at The Hague, it appoints a secretary general, whose office serves as registry.

It is the function of the registry, under the control of the president, to make the necessary arrangements for the sittings of the commission, the preparation of the minutes, and, while the inquiry lasts, for the custody of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

The committee were unanimous in regretting the almost complete absence of rules of procedure in the Convention of 1899, and in recognizing the necessity of filling this lack; but several divergent views appeared as to the number of rules which it would be proper to embody in the present Convention. Should it limit itself to the enunciation of general provisions, or was it preferable to set them forth with more precision and detail?

We must recognize that the partisans of both of these divergent views were inspired by the same idea which dominated all of our deliberations. We must make the resort to international commissions of inquiry simple and prompt. If States which intend to employ this pacific method of settling their differences do not find in the Convention which we are working out a clear and practicable guide to facilitate the preliminary steps, and to the immediate commencement of the investigation itself, it is to be feared that they will give up the use of this instrument of peace. The facts which are to be determined may have aroused national passions difficult to allay, or critical situations which it would be dangerous to continue. An instrument sufficiently well fashioned and of sufficiently simple use to be employed without loss of time, must be placed in the hands of these Governments.

If a profusion of rules may, on the one hand, arouse apprehension, despite their purely voluntary character, because the parties still have the power to provide in the inquiry conventions rules of procedure which they intend to follow, others were moved by the idea that working out rules of procedure is a long and laborious task, and that in the greater number of cases States which have differences to adjust and which desire to solve them as soon as possible will highly appreciate the advantage of finding in the Convention exact rules, easy of application, which they may adopt in such cases without delay.

Experience has proved how difficult it is to agree upon the smallest details of procedure; the more complete the rules which this Convention places at the disposition of the parties, the more prompt, effective, and frequent will be the beneficent operation of international commissions of inquiry.

The committee has endeavoured to take into account these different considerations by writing into the draft which it has the honour to submit to you, only those rules of procedure which it believes it is really useful to recommend to the States, clearly specifying, too, their purely voluntary character, which I mentioned above, in order to avoid every fear that one of the parties may attack the report of the commission as void, because of the violation of one or other of the said rules.

Such are the considerations which have led the committee to adopt the draft which follows; it reproduces a provision proposed by the delegations of France and Great Britain.[1] A single noticeable modification has been introduced; it was inspired by the considerations above stated. Instead of saying that the signatory Powers *have agreed* upon the rules applicable to the procedure in the case of an inquiry, provided the parties do not adopt others, our draft contents itself with a *recommendation*.

The article, whose text we give below, combined with the provisions set forth above, also satisfies the considerations that led the delegations of Italy[2] and the Netherlands[3] to present amendments to Article 10 of the Russian proposal and to Article 2 of the French proposal.

ARTICLE 17

In order to facilitate the constitution and working of international commissions of inquiry, the signatory Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

The provisions which appear in our draft under No. 18 were borrowed word for word from the Franco-British proposals; they gave rise to no remarks or discussion in the committee.

[1] *Post*, p. 464. [2] *Post*, p. 459. [3] *Post*, p. 460.

ARTICLE 18

The commission shall settle the details of the procedure not covered by the special inquiry convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

Article 19, as submitted to you by the committee, reproduces the provision in No. 13 of the Franco-British proposals, with a simple modification of phraseology intended to render the text clearer.

No objection was raised to this article in the committee. Here is the form which clearly announces that the 'statements of facts' are not necessary but voluntary; they may sometimes be advantageous, and they may not be.

ARTICLE 19

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

Article 10 provides that the inquiry convention shall determine, if necessary, the power of the commission to change its place of meeting.

This power will be indispensable for the statement of the facts in dispute, but the committee believed it important to appear very prudent in this delicate matter.

It might sometimes be dangerous for a commission of inquiry to go rashly to the very spot where a dispute might have occurred a short time before.

Intense feeling may perhaps still exist for several weeks after the occurrence of the facts which it is the duty of the commission to determine, and the appearance of the commissioners—who might only too easily be taken by public opinion to be judges—might be of such a nature as to occasion over-excitement of popular sentiment.

It is therefore necessary to subordinate the exercise of this power to change the meeting-place to one prime factor: the prior consent of the parties in dispute. The State upon the territory of which the disputed facts should be established will generally be able, in short, to furnish useful suggestions as to the opportune time for changing the place of meeting.

The committee was led to condition this power to change the place of meeting upon a second consideration. If the commission wishes to go upon the territory of a third Power, respect for the sovereignty of the latter imposes an obligation to ask its consent in advance.

After a minute examination of the question, the committee has concluded that we should recognize that the commission has the power to apply directly to the Government of the third Power in question to obtain this authorization without being obliged to ask for the interposition of the States in dispute.

In case of the refusal of one of the States in interest, the commission will be obliged to give up the proposed change of meeting-place.

With these ideas in mind, the committee drew up the following article:

ARTICLE 20

The commission is entitled, with the assent of the parties in dispute, and with the permission of the State in which the territory in dispute is located, to move

temporarily to this territory, if it is not already there, or to send thither one or more of its members.

Article 21, borrowed from the Franco-British draft, gave rise to no observation. It is drawn up as follows :

ARTICLE 21

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

'Article 15 of the Franco-British proposal granted to the commission the right to ask one or the other of the parties for necessary explanations or information, and provides for the case of a refusal to do so.

This provision permits the commission to ask the States in litigation, if it deems it desirable, for certain supplemental proofs ; on this point the first part of the article was adopted by the committee. But it seemed useless to provide for the case of a refusal by the parties ; it also seemed important to avoid every appearance of contradiction between this provision for a possible refusal and the terms of the following article, which provides that the parties have agreed to furnish the international commission of inquiry, to the greatest possible extent, with all things necessary for it to learn the truth.

With these ideas in mind the committee proposes that you adopt the following text.

ARTICLE 22

The commission is entitled to ask either party for such explanations and information as it deems expedient.

Article 16 of the Franco-British proposal, which raises some delicate questions, held the attention of the committee for a long time.

It cannot be denied that parties to an inquiry convention have bound themselves by that very fact to furnish the commission with the means of arriving at the truth.

This obligation was already set forth in a general manner by an article in the Convention of July 29, 1899, stating that ' the Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question '.

In recommending this provision for the approval of the First Peace Conference, the eminent reporter of the Third Commission called attention to the fact that the agreement provided in this article did not comprise an obligation on the part of a Power to furnish information which might be injurious to its own security, and it made this idea a matter of law by modifying the general agreement with this reservation: ' as fully as they may think it possible '.

We have retained these terms ; whatever may be our desire to see litigant States throw full light upon the inquiry, we do not think we should impose an absolute obligation upon the Governments to furnish all their means of proof. A commission might abuse this obligation and push its curiosity beyond the necessary limits ; this is an abuse and danger to be guarded against. The committee therefore retained the reservations inserted in the act of 1899.

The determination of the means to be placed at the disposal of the commissions to ensure the appearance of witnesses was more complex.

We should state, first, that the commission itself has no means of coercion or threat at its disposal to assure the summoning of a witness. It can do no more than to ask the State, upon whose territory this witness is found, for his appearance.

What then will be the duty of States ?

The committee was of the unanimous opinion that whatever might be his nationality, if the witness called for was upon the territory of one of the litigant States but signatory to the *compromis*, even if simply a resident, the Governments were under the moral and legal obligation to ensure his appearance.

They should be held to this within the limit of the means at their disposition according to their internal legislation. The situation is the same with regard to experts, and for the same reasons.

This agreement for the litigant Powers is express, but we must admit the possibility that the witnesses may not be able to appear before the commission ; these States shall then proceed to take their depositions before competent authorities.

We shall examine later the case where the witnesses are found on the territory of a third Power ; Article 23, the text of which we examine below, contains only the provision of Article 16 of the Franco-British proposal : an affirmation of the agreement imposed upon the litigant States to aid the commission of inquiry in its search for the truth, and the determination of the means which they will employ to assure the appearance of the witnesses when they are upon their territory.

The committee did not fail to examine questions which may arise with regard to professional secrets. It has considered the point as to whether litigant States should feel themselves obliged to release their employees therefrom.

It did not seem to us opportune to adopt any provision in this regard, because we believe that Governments may enjoy the same liberty of judgement before commissions of inquiry as before their own tribunals.

In plenary session of the Commission, his Excellency Mr. Hagerup asked that it be expressly stated that the States signatory to the Convention, the laws of which do not contain measures providing for the appearance of witnesses, should not be required to modify their laws in this respect.

The Commission was unanimous in declaring that it believed that the Governments have no other obligation than to use such means as they find in their own laws.

We therefore propose to phrase Article 23 in the following manner :

ARTICLE 23

The Powers in litigation undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

They undertake to make use of the means at their disposal under their municipal law, to ensure the appearance of the witnesses or experts who are in their territory and have been summoned before the commission.

If the witnesses or experts are unable to appear before the commission, the parties shall arrange for their evidence to be taken before the qualified officials of their own country.

If the witnesses which the commission desires to hear are on the territory of a third Power, which is a signatory to this Convention, formal obligation on the part of this State to assure their appearance is no longer possible.

The first case, which is the subject of the provisions of Article 23, deals with Powers which have signed the inquiry convention. They knew, when they accepted this method of settling their dispute, the obligations to which they were submitting; they were able to estimate the consequences in advance.

The second case, with which we are now dealing, concerns a State not a party to the inquiry convention; it has made no promise. While we believed it possible to recognize an obligation on its part to lend its assistance to the commission, in order to ensure the appearance of witnesses, it seemed to us, however, necessary to adopt a qualification. the power to refuse this if it believes that this appearance would threaten its security or its sovereignty.

It will be its own judge in the exercise of the power of invoking this qualification.

This rule, which we have expressed in exactly the terms which are employed for letters rogatory in treaties in private international law, was adopted by the committee in case of all notices which the commission might have to make upon the territory of a third Power, a signatory to the present Convention.

It is to be the same, Article 24 provides, when it is a question of proceeding at once to the establishment of all methods of proof.

Article 16 of the Franco-British draft served as the original basis for the discussions of the committee upon the points covered by the articles which now bear the numbers 23 and 24.

The Netherland delegation had asked that the second part of Article 16 be omitted, fearing the difficulties which its application might produce.

The committee, while modifying the terms of this provision, and establishing the distinctions which we have just had the honour to explain to you, did not believe it could accept the Netherland proposition and avoid, through certain reservations, any affirmation of the duty of the contracting parties to lend their assistance in order to ensure the summoning of witnesses and experts, and in case they could not appear before the commission, to proceed to take their depositions before competent authorities.

We still had to determine the manner by which notifications addressed to a third Power should be made by the commission; it was our duty to determine who was to ask for the intervention of this State in order to take steps to secure all the evidence on the spot.

Should this duty be left to the parties or to their agents? The committee considered that this method might give rise to inconvenience; it might happen, in fact, that one of the litigant States would be interested in preventing the giving of a deposition by a witness. We preferred to give to the commission of inquiry itself the right to address directly the Government of the Power whose assistance might be asked.

We also believed it might sometimes be advantageous to have at its disposal another method of notifying the third party to the controversy. The intercession of the Power upon whose territory the commission may be sitting, will in certain cases facilitate matters and furnish valuable assurances.

The form given to Article 24 which we submit for your approval, wherein we preferred the use of the word 'notification' instead of 'summons'—the latter being stronger and seeming to imply the exercise of a sovereign authority—provides clearly that the commission shall always have a choice between two methods, if it does not hold its sessions upon the territory of a litigant State: it can directly address the third Power, from which it asks assistance

in establishing proofs; it will also be able to resort to the intercession of the Power whose hospitality it is enjoying.

Here are the terms of this article:

ARTICLE 24

For all notifications which the commission has to make in the territory of a third Power signatory to this Convention, the commission shall apply direct to the Government of that Power. The same rule shall apply in the case of steps being taken to procure evidence on the spot.

These requests cannot be refused unless the Power in question considers them of a nature to impair its sovereign rights or its safety.

The commission will also be always entitled to act through the Power in whose territory it sits.

The provisions contained in Article 25 which we submit for your consideration reproduce with slight modification the first two paragraphs of Article 18 of the Franco-British proposition. The committee was unanimously of the opinion that all summonses to witnesses should be made through the Government upon the territory of which they were found. This provision, which is in harmony with the provisions of the preceding articles, is justified by the law of the sovereignty of States, and by the necessity of putting them in a position to invoke the reservations which the present Convention allows them in certain cases. It would be imprudent to leave to every witness called the power to testify without the authorization of his Government, but the latter could not refuse this authorization without basing such refusal upon its right of sovereignty or interest in its security.

The propositions filed by the delegations of France and Great Britain do not mention experts in Article 18. It seemed to us necessary to provide for their appearance as well as for all witnesses.

We finally decided that the word 'called' was more in keeping with the provisions set forth by the present Convention than 'summoned'.

The committee, prompted by the amendment proposed by the Netherland delegation, did not judge it wise to defend the idea of having several hearings of the same witness upon the same facts, as proposed by the Franco-British proposition, unless it was for the purpose of confronting the witness with another whose testimony would contradict his.

The committee believes that it is the commission's right to decide upon these hearings; too absolute a rule might in certain cases cause difficulties.

Article 25, as we propose it to you, is therefore drawn up as follows:

ARTICLE 25

The witnesses and experts are summoned on the request of the parties or by the commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and their counsel, and in the order fixed by the commission.

Article 19 of the Franco-British proposition which determines the hearings of witnesses, was adopted without modification. It seems to require no comment and bears the number 26 in the present Convention.

His Excellency the first delegate from Great Britain, however, indicated certain

preferences for the adoption of the English system, which permits of direct questioning of the witnesses by the agents and counsel themselves.

The committee feared that this system would present difficulties to the subjects of countries where this method of questioning is not permitted and who are not prepared for ' cross-examination '. It might discountenance the witnesses and affect the clearness, even the accuracy, of their testimony.

His Excellency Sir Edward Fry said he did not insist upon it.

Here, therefore, is the text of Article 26 :

ARTICLE 26

The examination of witnesses is conducted by the president.

The members of the commission may, however, put to the witnesses the questions that they consider proper in order to throw light on or complete their evidence, or in order to inform themselves on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the president to put such additional questions to the witness as they think expedient.

The following provisions which form Articles 27 and 28 of the Convention, also taken from the proposition of the delegations of France and Great Britain, brought forth no observation in the committee ; they are dictated by experience and agree with sane judicial practices.

ARTICLE 27

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the president to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 28

A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks well, which shall be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to sign it.

Article 17 of the project presented by the delegations from France and Great Britain provides that the agents shall be authorized during or at the close of the inquiry, to present in writing to the commission and to the other party such statements, demands, or conclusions as they judge useful for the purpose of revealing the truth.

This article was adopted ; a single modification was made ; the word ' conclusions ' was replaced by the expression ' summaries of facts ' to avoid the appearance of trespassing upon the field of arbitration by the commissions of inquiry.

The committee, without wishing to go so far as to prevent any argument before commissions of inquiry, as provided in the Russian proposition, agreed in stating that the procedure of commissions of inquiry did not necessarily require arguments. The version which is submitted to you notes this distinction between the procedure of commissions of inquiry and arbitral procedure.

ARTICLE 29

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

Article 30, relating to the deliberations of the commission, is taken from the Franco-British plan; it aroused no discussion in the committee, which confined itself to inserting therein a reference to the secrecy of the deliberations. Here is the text:

ARTICLE 30

The commission considers its decisions in private and the proceedings remain secret.
All questions are decided by a majority of the members of the commission.
If a member declines to vote, the fact must be recorded in the minutes.

The committee had to examine the question of the public character of the sessions of the commission, of the minutes, and of the documents connected with the inquiry.

Publicity is not always possible; it sometimes causes difficulties, and even danger; under some circumstances it might embarrass the witnesses called upon to testify before the commission.

Was it necessary to lay down as a rule the public nature of the above, leaving it to the commissioners and the parties to ask for secrecy?

The committee did not think so; it preferred, on the contrary, to provide that publicity should not be allowed except on the decision of the commission and with the consent of the parties. It believed that prudence demands the assertion of the principle of secrecy; it is a useful precaution. It will always be easier for a commission when it deems it possible to declare that the debates shall be open to the public, than it would be to order the doors closed; it would be difficult to take such a measure; it would run the risk of being misunderstood by the public.

With these ideas in mind, we adopted the following article, presented by the delegations of France and Great Britain:

ARTICLE 31

The sittings of the commission are not public, nor are the minutes and documents connected with the inquiry published, except in virtue of a decision of the commission taken with the consent of the parties.

Article 22 of the British proposition relating to the conclusion of the inquiry gave rise to no observation.

The committee confined itself to the insertion of a reference to the hearing of all witnesses in order to indicate clearly that no testimony should be permitted after the closing of the inquiry.

Here are the terms in which Article 32 of the convention is therefore drawn:

ARTICLE 32

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the president declares the inquiry terminated, and the commission adjourns to deliberate and to draw up its report.

Articles bearing numbers 33 and 34 in the present Convention were borrowed verbatim from the Franco-British proposition. They brought forth no discussion.

Article 13 of the Convention of 1899 said:

> The international commission of inquiry communicates its report to the Powers in dispute, signed by all the members of the commission.

The committee did not think it necessary to reproduce the reference to the presentation of the report to the Powers; but it maintained the character of the article which clearly indicates, as the report of the Third Commission in 1899 stated, the nature of the work which is within the jurisdiction of the commission.

The commission is to limit itself to stating in its report the positive results of its investigation of the facts.

The provisions of Article 33 of the present Convention provide, too, for the passage of the report by a majority vote, and provid[illegible] or the occasion when one of the members of the commission refuses to sign the [illegible]. They agree with the thought which prompted the amendment proposed by the [illegible]an delegation.

The text of these articles is as follows:

[illegible]

> The report of the int[illegible] is adopted by a majority vote and signed by all of [illegible].
> If one of the member[illegible] ioned; but the validity of the report is not affecte[illegible]

[illegible]

> The report of the comm[illegible] ng, the agents and counsel of the parties being present o[illegible].
> A copy of the report is delivered [illegible].

We did not feel obliged to modify [illegible] Article 14 of the Convention of 1899 for the pacific settlement of international disputes, which after affirming that the report of the commission should be limited to a statement of the facts, without the character of an arbitral award, leaves to the litigant Powers complete freedom in determining the effect to be given to this statement.

In accord with the authors of the Franco-British proposition, we retained this text verbatim.

The Russian delegation proposed to modify the article in the following manner:[1]

> The Powers in litigation, having taken note of the statement of facts and responsibility pronounced by the international commission of inquiry, are free either to conclude a friendly settlement, or to resort to the Permanent Court of Arbitration at The Hague.

The purpose of this revision, however humanitarian, was certain to exclude from the field of investigation the case of settling a difference by violent methods, by war. It was based upon this consideration – that if two Powers have been able to agree to form a commission of inquiry, they will be able to go farther in manifesting their desire for peace.

While acknowledging the generous idea which inspired this proposition, the committee did not think it could defend a text which, by implying that obligatory arbitration was a necessary consequence of resort to commissions of inquiry, might be of such a character as to diminish the number of cases where appeal would be had to this beneficent method for the peaceful settlement of international differences.

[1] *Post*, p. 459, Article 17.

Your committee fears that the Powers between which a difference might arise, would, at times when it is desirable to act with great prudence and without restraint, draw back in the face of the obligation to decide to resort to arbitration even before the facts were accurately determined. This legal obligation might constitute an obstacle, and might be found weaker than the moral obligation resulting from the simple fact of the formation of a commission of inquiry.

The Netherland delegation proposed to insert after Article 24 of the [illegible] proposition, Article 35 of the present convention, an amendment providing :[1]

> It is of course understood that Articles 8–13 and 15–21 are applicable to procedure before the commission of inquiry only in so far as the parties have not agreed upon other rules in the special inquiry convention.

The purpose set forth by this amendment having been attained by the provisions inserted in the above-mentioned articles, the Netherland delegation did not urge its amendment.

Article 35 of the present Convention therefore reproduces without modification—I repeat it—Article 14 of the Convention of July 29, 1899. It provides :

ARTICLE 35

> The report of the commission is limited to a finding of facts, and has in no way the character of an award. It leaves to the parties entire freedom as to the effect to be given to this finding.

Finally, the committee adopted without discussion the text of Article 27 of the Franco-British proposition. The tenor thereof is as follows :

ARTICLE 30

> Each party pays its own expenses and an equal share of the expenses of the commission.

PART IV.—INTERNATIONAL ARBITRATION

CHAPTER I.—*The System of Arbitration*

Article 15 gave rise to no discussion ; but the committee thought it desirable to proclaim at the beginning of this chapter that recourse to arbitration implies an obligation to submit in good faith to the arbitral award ; we have inserted as the second paragraph of Article 37 the text, slightly modified, of Article 19 of the Convention of 1899 ; the latter therefore is omitted.

The Swedish delegation also proposed to combine Articles 15 and 18 of the Convention of July 29 ; it thereby preserved the present Article 16 with an addition sanctioning the principle of obligatory arbitration, the special provisions with regard to this subject being retained in Articles 17 to 19.

ARTICLE 37

> International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.
>
> Recourse to arbitration implies an engagement to submit in good faith to the award.

Around Article 16 of the Convention of 1899 [illegible] grouped the various propositions concerning the establishment of obligatory arbitration, the discussion of which I shall have the honour of setting forth.

[1] *Post*, p. 4[illegible].

I confine myself here to stating that his Excellency the first delegate from Great Britain having observed that this Article 16 formed the corner stone of the Convention of July 29, and that it seemed desirable to respect its existence and provisions, the committee was unanimously in favour of its retention. We also adopted without opposition the proposition of his Excellency Mr. Mérey, asking for the addition to this article of a paragraph recommending recourse to arbitration so far as circumstances permit.

Under these conditions, here is the text which we submit for your approval:

ARTICLE 38

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the signatory Powers, if the case arise, have recourse to arbitration, in so far as circumstances permit.

Articles 17 and 19 of the Convention of 1899 did not themselves cause any observation or amendment. We therefore propose that they be retained.

As for Article 18, that has been stricken out, as I stated above.

ARTICLE 39

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 40

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or afterwards, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—*The Permanent Court of Arbitration*

Articles 20 and 21 of the Convention of July 29, 1899, gave rise to no remarks before the committee. They therefore retain their present form.

ARTICLE 41

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

ARTICLE 42

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

Article 22 underwent several modifications.

We have stated that Articles 25 and 36 of the Convention of 1899 were to some extent

duplicates. While one provided that the tribunal ordinarily sits at The Hague, the other decided that the choice of meeting-place of the tribunal was to be made by the parties, but that this meeting-place should be at The Hague in default of such choice. Both added that except in case of *force majeure* the seat of the tribunal could not be changed except with the consent of the parties.

I shall have the honour of indicating to you later the new form which we propose for Article 36 ; it will permit of the omission of Article 25.

But it did not seem superfluous to the committee to state at the beginning of Article 22 that the seat of the Permanent Court of Arbitration is also at The Hague ; there will be found, not only its material equipment, but its International Bureau and the Administrative Council.

To meet the desire expressed by the members of the arbitral tribunal formed in 1902 by the United States and the United Mexican States, to settle their difference relating to the ' Pious Fund of California ', the German delegation proposed the addition of the words ' as soon as possible ' after the words ' at The Hague ' in the next to the last paragraph of said Article 22. This proposal was accepted.

I add that I am here to act as the bearer of the wish expressed by the members of the committee who desire to see the Powers which sign this Convention always give the notices provided for in this article to the International Bureau at The Hague regularly and without delay.

Article 43 which replaces Article 22 of the Convention of 1899 is therefore redrafted in the following manner :

ARTICLE 43

The Permanent Court has its seat at The Hague.

An International Bureau serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the Bureau, as soon as possible, a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents, eventually showing the execution of the awards given by the Court.

Article 23 received only a slight addition, intended to set forth exactly the period covered by the commission of every member of the Permanent Court appointed to replace another member, in case of the death or retirement of the latter.

The provisions of the Convention of 1899 were not sufficiently explicit in this regard, and did not state whether the commission of the person recently admitted should, like every other, be for six years, or could not exceed the term of the commission of the person who was replaced.

The committee voted for the first of these two systems and proposed the following text :

ARTICLE 44

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

The persons thus selected shall be inscribed as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place is filled in the same way as he was appointed, and for a fresh period of six years.

Article 24 of the Convention of 1899 left to the parties absolute freedom in the choice of arbitrators. We thought it important to limit this power in order to give the arbitral tribunal the impartial character which accords with its fundamental principles. While recognizing that it may be necessary, or at least useful, for the parties under certain circumstances to have a judge of their nationality on the tribunal, the committee thought it suitable to provide that all the judges need not be nationals of the litigant States or designated by them as members of the Permanent Court of Arbitration.

Mr. Lammasch proposed the introduction of the following rules into the article

Each party shall name an equal number of arbitrators.

No national judge shall be named in case the tribunal is not composed of more than three members.

The eminent jurisconsult admits national judges in cases involving summary procedure. This procedure, as against that treated in Article 24, is called upon to settle differences of a technical rather than legal nature; it does not require either counter-cases or reply arguments. The nationals are referred to simply as useful in furnishing the necessary explanations for the presentation and equitable determination of the affair.

But he believes that in the case of regular procedure, it is preferable to exclude nationals from membership on the tribunal when it is composed of but three members.

This opinion was not shared by the committee. It seemed better to it to leave the duty of determining this question to the parties and to preserve as a typical tribunal that of five members as was done in the Convention of 1899.

With this in mind, we have adopted the following provision:

Each party appoints two arbitrators, of whom only one can be its national (*ressortissant*) or chosen from among the persons selected by it as members of the Permanent Court.

It has been stated that the text of Article 24 revealed a real defect, and did not provide for the case where the two Powers called upon to choose the umpire failed to agree; if we do not adopt a clear and sure means of always securing the designation of an umpire it might be easy for a Government to choose a Power disposed to save it, upon occasion, from recourse to arbitration.

In this situation should we agree to the drawing of lots by the two Powers for the designation of the arbitrator? The committee did not think so. If the friendly Powers named by the parties, cannot agree upon the choice of the umpire and the drawing of lots should indicate which one should make the selection, the very result of the arbitration would seem to be already decided. In fact, one might easily be led to believe that the

Powers chosen by the litigant parties would each represent the claims of the State which selected it, and that they would endeavour to justify themselves by choosing an umpire who might support them.

After a somewhat long discussion, the committee decided to propose that the present provisions be retained; but with the addition of a provision stating that in case of continued disagreement between the Powers, they should each name two candidates chosen from the list of the members of the Permanent Court of Arbitration, and that one of these four persons should be chosen by lot as umpire. In thus dividing the choice by lot among four persons, the difficulties which this system might present would appear no longer to exist.

The drawing of lots may be carried out through the International Bureau of the Permanent Court at The Hague.

The word 'direct' was considered useless in the second paragraph of the article and we have omitted it.

Finally, the committee proposes to make the last three paragraphs of Article 24 a new article, to follow after it.

Here is the version which we propose to you:

ARTICLE 45

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by agreement of the parties, the following course shall be pursued:

Each party appoints two arbitrators, of whom one only can be its *ressortissant* or chosen from among the persons selected by it as members of the Permanent Court. These arbitrators together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the litigant parties and not *ressortissants* of either of them. Which of the candidates thus presented shall be umpire is determined by lot.

The new Article 46 which we propose would therefore comprise the last three paragraphs of Article 24.

For the reasons mentioned in the examination of Article 22, the committee thought it wise to insert, in accordance with the proposition of the German delegation,[1] the words 'as soon as possible' in the first paragraph after the words 'to the Bureau'.

We have also thought we ought to say, at the beginning of the last paragraph of this article: 'The members of the tribunal' instead of 'the members of the Court'. This modification is not really an innovation; it renders exactly, we believe, the thought of the authors of the Convention of 1899, who evidently did not intend to accord diplomatic privileges and immunities to all of the members of the Permanent Court of Arbitration,

[1] *Post*, p. 470.

but only to those who, having been chosen by the parties, are called upon to compose an arbitral tribunal.

Under these conditions the article will be drawn up as follows :

ARTICLE 46

The tribunal being composed as provided in the preceding article, the parties notify to the International Bureau as soon as possible their determination to have recourse to the Court, the text of their *compromis*, and the names of the arbitrators.

The Bureau communicates without delay to each arbitrator the *compromis*, and the names of the other members of the tribunal.

The tribunal assembles on the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the tribunal, in the performance of their duties, and out of their own country, enjoy diplomatic privileges and immunities.

I have already indicated under what conditions we propose to omit Article 25 of the Convention of July 29, 1899.

Article 26 gave rise to no observations ; it therefore retains its present form :

ARTICLE 47

The International Bureau is authorized to place its premises and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

Article 27 of the Convention of 1899 was the subject of two amendments.

The Peruvian delegation [1] proposed that in case of a dispute between two Powers, one of them could always, by addressing a note to the International Bureau at The Hague declare that it was disposed to submit its difference to arbitration. This note should make known in a summary way the view the Power writing the note takes of the dispute and what it claims is its right in the matter. The International Bureau should bring the declaration it has received to the attention of the other Power, and place itself at the disposition of both Powers to facilitate an exchange of views between them which might terminate in the conclusion of a *compromis*.

The Peruvian delegation, very much in sympathy with the principle of obligatory arbitration, called attention in the session of the first subcommission on August 13, to the fact that up to the present time permanent treaties of arbitration apply only to difficulties of a legal nature or relating to the interpretation of treaties already in existence between the contracting parties ; in this way they do not foresee the possibility of arbitration except in disputes of a secondary character. That is not sufficient ; we must think of more threatening disputes and leap the barrier which prevents the arbitration of questions which concern the essential interests or honour of States. The object of the Peruvian proposition is not to create an obligation to arbitrate serious disputes, but only to make it possible. In such cases it is important to offer new facilities to the States. The way opened to the parties by the amendment of the Peruvian delegation would consist in

[1] *Post*, p. 471.

calling forth from the Power more disposed to arbitrate, an unequivocal manifestation of its good-will.

By a declaration made to the International Bureau at The Hague the Power is to manifest its conciliatory spirit, and this organization is to bring the declaration to the notice of the other State, serving as an intermediary between them for the exchange of views which may lead to the conclusion of a *compromis*.

The Chilean delegation proposed,[1] on the other hand, that in disputes arising from facts which did not exist prior to the present Convention, and which should not be settled between two Powers, one of them could always address to the International Bureau at The Hague, and if necessary by telegraph, a declaration making known that it is disposed to submit the dispute to arbitration.

The International Bureau should then notify the interested Government at once of this declaration. It should also make it known, as well as the reasons which may have been given therefor, to the Governments signatory to the present Convention.

This proposition is inspired by the same ideas as are revealed by the amendment submitted to the Commission by the Peruvian delegation, but it concerns only questions and differences which may arise from some future cause.

The Peruvian proposition, the Chilean delegation told us, would tend to give the International Bureau the character of a compulsory mediator, a function which does not at all accord with the articles of the Convention of 1899 relating to its creation and its powers; while the Chilean amendment seeks to maintain the part which the act of July 29 confided to the said International Bureau.

In the subcommission, the French delegation declared itself very much in sympathy with the purpose sought by the Peruvian and Chilean amendments. It cannot be denied that Article 27 of the Convention of 1899, which tends to facilitate resort to arbitration, remained to date almost a dead letter. The new propositions are of a character to complete this provision, by making it easier for the parties themselves to appeal to arbitration without being halted by a consideration of honour, and by inviting them to address themselves, in case of necessity, to the International Bureau at The Hague.

A simple declaration will be sufficient to establish the fact that one of the parties, having confidence in the rightfulness of its cause, is ready to refer it to courts of justice. Desiring to simplify as much as possible the function of the International Bureau, and to reduce it to that of a messenger, the French delegation prefers the Chilean amendment.

'It seems to us equally fortunate', said his Excellency Baron d'Estournelles de Constant, 'that the Bureau should bring the declaration in its possession to the attention of the signatory Powers, so that they may be able to utilize their power to effect conciliations, so far as they deem it proper; that will be the occasion for them to fulfil the duty which they assumed in signing Article 27. It is natural, then, that the Bureau, having communicated the declaration which it is charged to transmit, should be also authorized to transmit the reply.'

The French delegation also believes it important to cover only disputes which do not arise out of facts existing before the convention. There exists among all the nations of the world a considerable number of old disputes which arbitration could not settle any more than could war, and which are not noticed except with the consent of the parties.

The delegation of the United States of America shares the view expressed by the

[1] Ibid.

French delegation and gives its support to the Peruvian proposition amended by the Chilean delegation.

The power given by Article 27 of the Convention of 1899 to third Powers was already of great importance, and by a fortunate application of its principle President Roosevelt succeeded, several times in preventing, or at least shortening, war which threatened to break out between several of the South American States. The article proposed to-day seems still more practical, offering the litigant parties themselves an easy method, the only practicable one perhaps, of resorting to arbitration at very embarrassing times.

The delegations of Great Britain, Russia, and Brazil expressed the same feeling.

His Excellency Mr. Martens asks that it be well understood that the Bureau shall confine itself to transmitting propositions sent to it, and shall not exercise any diplomatic function.

His Excellency Mr. Ruy Barbosa maintains that the proposition cannot have any retroactive effect, and recalls the fact that the Brazilian delegation made a formal statement along this line in the session of July 9 relative to all the provisions adopted at this Conference.

The two propositions had a sympathetic reception from the majority of the members of the committee.

Emphasis was laid upon the advantage of finding a method of bringing into direct communication, without injuring their susceptibilities or self-respect, the two Powers in dispute which might desire to resort to arbitration without, however, being willing to take the initiative by direct action.

Several delegations, however, thought it necessary to provide that this duty to act as an intermediary should be the only function possessed by the International Bureau, as a purely administrative institution without political or diplomatic character.

To satisfy this view the Peruvian delegation modified the text of its proposition, and omitted the paragraph stating that 'the International Bureau shall place itself at the disposition of the Powers to facilitate any exchange of views between them which may lead to the conclusion of a *compromis*'.

Attention was called to the fact that as now altered, the provision presented by the Peruvian delegation was no longer of any value; but the majority of the committee did not share this opinion, and while appreciating the views which dictated the amendment of the Chilean delegation, it adopted the Peruvian proposition, modified as I have had the honour to indicate; it forms the third and fourth paragraphs of Article 27.

In the plenary session of the First Commission, the Japanese delegation expressed the opinion that the intervention of a third State in a dispute between two States is not of a nature to relieve the tension of their relations.

The Turkish delegation made reservations with regard to the form of Article 27 as submitted.

Mr. Scott renewed a declaration made in 1899 with regard to Article 27, now Article 27:

> The delegation of the United States of America on signing the Convention for the pacific settlement of international disputes, as proposed by the International Peace Conference, makes the following declaration:
>
> Nothing contained in this convention shall be so construed as to require the

United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

The Austro-Hungarian delegation adopted in their entirety the reservations made by the Japanese delegation with regard to the amendment proposed by the Peruvian delegation.

His Excellency Mr. Mérey states that Article 27 of the Convention of 1899 has never up to this time been used, and yet occasions therefor have certainly not been lacking.

There have been litigations, disputes, and even great wars between States, and the article has never been resorted to. It therefore seems an inopportune time to enlarge it. The Peruvian amendment might indeed incline one or the other of the two litigant Powers to grant to the other recourse to arbitration.

His Excellency Baron d'Estournelles de Constant defended the new provision inserted in the text of Article 48.

When disputes arise there sometimes exist periods of stress which make it almost impossible for a diplomat to seek the Minister of Foreign Affairs and say to him frankly: 'Let us end it, and resort to arbitration.'

If we wish to make the Court of Arbitration accessible, it must also at least be open.

Instead of requiring the conflicting States to offer each other their hands, which is a very difficult thing, let us say to them: Simply apply to the neutral Bureau at The Hague which is, by its nature, an intermediary.

The rôle of the Bureau shall not be political. It is to be an agent, an international letter-box.

The Chilean delegation called attention to the amendment to the Peruvian proposition which it had proposed. Committee A adopted a compromise form which his Excellency Mr. Matte stated he would support, because it has been understood that no convention should have a retroactive effect, unless a contrary provision is made; it is useless now to introduce into Article 48 a categorical assertion.

The last two paragraphs of Article 48 were put to vote and the Commission adopted them by a vote of 34 for, 7 against, and 3 not voting.

Voting for: United States of America, Argentine Republic, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, San Domingo, Ecuador, France, Great Britain, Guatemala, Haiti, Italy, Mexico, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Portugal, Russia, Salvador, Serbia, Siam, Spain, Switzerland, Uruguay, Venezuela.

Voting against: Austria-Hungary, Belgium, Germany, Japan, Roumania, Sweden, Turkey.

Abstaining: Greece, Luxemburg, Montenegro.

ARTICLE 48

The signatory Powers consider it their duty if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest

interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

In case of dispute between two Powers, one of them may always address to the International Bureau at The Hague a note containing a declaration that it would be ready to submit the dispute to arbitration.

The International Bureau must at once inform the other Power of the declaration.

We propose that you retain Article 28 with very slight modifications. The Convention of 1899 had provided, as a proper standard, that the presence of five members at meetings duly called would be sufficient to permit the Administrative Bureau to deliberate legally.

In view of the great number of States which have recently adhered to the Convention for the pacific settlement of international disputes, the number of members of the Administrative Council is going to be considerably enlarged, and we believe that under these conditions the necessary quorum for meetings should be increased from five to nine.

We propose also to add to this Article 28 the following words: 'as well as a *résumé* of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 5 and 6'.

This addition conveys the thought of the committee which, having appreciated the value of the many pieces of information with regard to arbitration which appear in the last report published by the secretary general in the name of the Administrative Council, desires that this example should be followed.

We have left it to the Drafting Committee to determine what modification the text of the first paragraph of this article shall undergo.

The new Article 49 is therefore drawn up in the following manner:

ARTICLE 49

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It shall present to them an annual report on the labours of the Court, the working of the administration, and the expenditure. The report likewise shall contain a *résumé* of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 5 and 6.

Article 20 of the Convention of 1899 had to be modified by reason of the adhesion to this international act, on June 14, 1907, of a great number of Powers which did not take part in the First Hague Conference.

The States signatory to the Convention have all been obliged to contribute to the expenses of the Bureau since its creation, whatever the date upon which they ratified the said Convention. It seemed equitable to establish a similar rule for adhering Powers; their contribution shall date from the day of their adhesion—that is, June 14 1907.

The article is therefore revised in the following manner:

ARTICLE 50

The expenses of the Bureau shall be borne by the contracting and adhering Powers in the proportion fixed for the international Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

CHAPTER III.—*Arbitration Procedure*

The form of Article 30 brought forth no remarks.

ARTICLE 51

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

Article 31 of the Convention of 1899 underwent a complete revision. It seemed, in short, desirable to group in two distinct lists matters which should be contained in the *compromis* and form its essential elements, as well as those which the committee believes it desirable to have written therein.

In the first list we have mentioned:

The subject of the dispute.
The period provided for the selection of the arbitrators.
The form and period in which the exchange of cases, counter-cases, and replies, all printed or written documents, and all documents containing the proofs relied upon in the cause, should be exchanged.
The amount which each party shall deposit in advance for expenses.

It seemed superfluous to mention the determination of the extent of the powers of the arbitrators.

In the second list we have placed:

The method of selecting the arbitrators.
The mention of any special powers to be granted eventually to the tribunal.
The selection of the meeting place of the tribunal.
Statement of the language which the tribunal shall use and languages the use of which shall be authorized before it.
Other conditions upon which the parties may be agreed.

The committee also proposes that you omit the last phrase of Article 31, which it considers superfluous, since Article 37, without distinguishing between general and special

conventions of arbitration, already provides the agreement to submit in good faith to the arbitral award.

Here is the draft of this article :

ARTICLE 52

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are defined the subject of the dispute, the time allowed for appointing arbitrators, the form, order, and time in which the communication referred to in Article 63 of the present Convention must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The *compromis* shall likewise define, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

The Russian delegation proposed[1] a provision stating :

The litigant Powers which have agreed to submit their dispute to the Permanent Court of Arbitration agree to communicate this act immediately after the signature of the *compromis* to the International Bureau, asking the latter to take the necessary measures for the establishment of the arbitral tribunal.

After the choice of the arbitrators these same Powers shall communicate their names without delay to the International Bureau which, for its part, is obliged to communicate without delay to the arbitrators named the *compromis* which has been signed and the names of the members of the arbitral tribunal which has been established

The committee recognized the usefulness of these provisions.

The agreement to be made by the litigant Powers who have agreed to submit their dispute to the Permanent Court of Arbitration to communicate the *compromis* immediately after its signature to the International Bureau, appears in Article 46 of the present Convention.

Article 46 provides for the establishment of the tribunal by the International Bureau the obligation of the parties to communicate to the said Bureau the names of the arbitrators as soon as the tribunal is formed.

The German delegation had proposed the adoption of three articles to be inserted in the Convention concerning the settlement of international disputes in order to introduce under certain circumstances the principle of the obligatory *compromis*.

Here is the draft :[2]

ARTICLE 31 *a*

If the signatory Powers have agreed among themselves upon obligatory arbitration which contemplates a *compromis* for each dispute, each one of them shall, in default of contrary stipulations, resort to the intervention of the Permanent Court of Arbitration at The Hague with a view to establishing such a *compromis* in case it has not succeeded in bringing about an agreement upon this subject.

Such recourse will not take place, if the other Power declares that in its opinion the dispute is not included within the category of questions to be submitted to obligatory arbitration.

[1] *Post*, p. 469.
[2] *Actes et documents*, vol. II, p. 875, *annexe* 8

ARTICLE 31 *b*

In case of a resort to the Permanent Court at The Hague (see Article 31 *a*) the *compromis* shall be settled by a commission composed of five members designated in the following manner :

During the four weeks which follow the recourse, each of the two parties shall select one of the members of the Permanent Court and also approach one of the disinterested Powers so that the latter may, in its turn, choose another member within the four remaining weeks, from among the members of the Permanent Court which have been appointed by it. Within a further period of four weeks the two disinterested Powers shall jointly approach a third disinterested Power, which shall be designated, if necessary, by lot, so that it may choose, within the following four weeks, the fifth member from among the members of the Permanent Court which were named by it.

The commission shall elect its president by an absolute majority of votes among the members chosen by the disinterested Powers. If necessary, they shall cast ballots.

ARTICLE 34 *a*

In case of the establishment of a *compromis* by a commission, such as is provided for in Articles 31 *a* and 31 *b*, the members of the commission chosen by the three disinterested Powers shall form the arbitral tribunal.

Similar provisions were inserted at the suggestion of the German delegation in the draft Convention regarding the establishment of an International Court of Justice ; their purpose is to make the special delegation, formed from the Court, competent to establish the *compromis*, if a demand therefor is made by one of the parties, in cases dealing with a difference which comes within a special treaty of arbitration, concluded or renewed after the Convention goes into effect, and providing for a *compromis* for each difference. Recourse to the Court shall not, however, take place if the other party declares that, in its opinion, the difference does not come within the list of disputes capable of submission to obligatory arbitration, or if the treaty explicitly or impliedly excludes the intervention of the Court for the purpose of making the *compromis*.

This provision (Mr. Kriege told us) was adopted by the committee of examination B. However, the fact that it may have also received the approval of the Conference would not render superfluous the articles above-mentioned which we proposed to insert in the chapter of the Convention of 1899 relating to arbitral procedure. In effect, the provision of the draft concerning the International Court of Justice contemplates only general treaties of arbitration which may be concluded or renewed after the foundation of the Court. Besides, it would be obligatory only upon the Powers who have signed the Convention concerning the International Court of Justice. To guarantee the general application of the principle which we have advanced to existing treaties and to the entire community of States, we therefore believed we should maintain our original proposition.

At the session of the sub-commission on August 13 I had the honour to set forth the reasons upon which it is based. The proposition then formed the subject of a speech by Baron Marschall in committee B. I do not wish to waste your time repeating what has already been said. I believe, however, that it will be permissible to tell you again how much importance we attach to the principle of ' obligatory *compromis* '. It is a question, on the one hand, of placing a practicable and effective means of reaching an agreement at the disposition of the litigant Powers, which, animated by the same good-will, find difficulty in agreeing upon the contents

of a *compromis*. It is true that to reach this end it would be sufficient to establish a procedure which would not be used unless the adversaries agree to resort to it. But there is something more. It may be that a Government will feel in spite of itself some hesitation in fulfilling the obligation which it has taken to submit a dispute to arbitration, either because it fears an unfavourable award or because it feels reluctant to see its course of action examined by an arbitral tribunal. In view of such cases, it is necessary to find a means to ensure respect for the first rule of the law of nations *pacta sunt servanda*. We believe that this method is set forth in our proposition. We believe that its acceptance by the Conference would contribute to strengthen and support confidence in the execution of the obligations which form the bases of international law, no less than of private law. We desire that the Conference should prove its devotion to the idea of obligatory arbitration by filling the gap which up to the present has made the *juris vinculum* coming from treaties of obligatory arbitration of doubtful strength.

This proposition caused a certain amount of criticism in the committee.

The British delegation believes that it does not agree with the fundamental principle of Chapter III of Part IV of the Convention of 1899 which gives to the parties complete freedom to arrange at their pleasure everything concerning the *compromis* and penal procedure.

The *compromis* should determine the subject of the dispute; its mission cannot be considered as being the simple execution of a treaty of arbitration, and only forming a matter of procedure. The manner in which the *compromis* is drawn may seriously prejudice the interests of the parties; and, often, to settle the question as to the form in which a case shall be submitted to arbitration is to decide the dispute itself.

This opinion is not shared by Mr. Lammasch, who cannot admit that the *compromis* should be considered as a new treaty. If we accepted the view-point of Mr. Crowe, treaties of obligatory arbitration would be only simple *pacta de contrahendo*, promises to complete real treaties of obligatory arbitration, that is to say, *compromis*.

Mr. Kriege believes that treaties of arbitration should be drawn clearly enough so that no discussion can arise upon cases to be submitted to arbitral jurisdiction; it is not for the *compromis* to determine the extent of the obligation assumed by the contracting parties.

His Excellency Mr. Fusinato believes that the German proposition would constitute real progress in arbitration, always ensuring the execution of a treaty of obligatory arbitration, because two States may be in agreement upon the applicability of a treaty of obligatory arbitration in a given case and still be unable to agree upon the conclusion of a *compromis*.

In the view of his Excellency Mr. d'Oliveira a distinction must be made. He does not doubt that in the case of treaties of obligatory arbitration without reservation the obligatory *compromis* marks great progress. But he questions whether the application of the clause in Article 31 *a* to treaties which contain customary reservations would not rather hinder than facilitate the extension of arbitration.

Any State, having concluded a treaty of obligatory arbitration with reservations would doubtless invoke them more frequently to avoid the possibility of the establishment without its consent of a *compromis* which might not sufficiently take into account the interests which it desired to safeguard.

Mr. Kriege believes that this objection might apply also to treaties of arbitration without reservations, as well as to those which contain them.

In the first case States might fear to leave to the arbitrators, by authorizing them to

make the *compromis*, the right to decide eventually the question of the exact scope of the treaty.

If the introduction of the obligatory *compromis* by agreement into the treaties of arbitration had the effect of making States more careful in drawing them up, that would still be an argument in favour of the German proposition.

At the request of the majority of the committee, the German delegation, however, modified the text of its propositions; the new draft no longer applies except to treaties to be concluded in the future and no longer at all concerns treaties already concluded. They have been accepted.

At the suggestion of the delegations from Germany and the United States the committee has also adopted a provision which establishes the principle of the obligatory *compromis* by agreement, if, in the cases covered by the proposition of the delegation of the United States relative to contractual debts, the offer of arbitration made by the creditor State was accepted by the debtor State. It seemed necessary, however, to recognize that the debtor State had the right to stipulate upon accepting arbitration that the *compromis* should be established in a different manner.

The provisions in question form Articles 53, 54, and 58 of the present draft.

ARTICLE 53

The Permanent Court is competent to settle the *compromis*, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, and providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to obligatory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question;

2. A dispute arising from contract debts claimed from one Power by another Power as due to its *ressortissants*, and for the settlement of which the offer of arbitration has been accepted. This provision is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

ARTICLE 54

In the cases contemplated in the preceding article, the *compromis* shall be settled by a commission consisting of five members selected in the manner laid down in Article 45, paragraphs 3–6.

The fifth member is *ex officio* president of the commission.

Certain provisions of Article 32 of the Hague Convention were duplicates of others contained in Article 24. The committee proposes that you omit them, referring back to paragraphs 3–6 of said Article 24.

The word 'direct' in the second paragraph of Article 32 seemed useless to us; we propose that it be omitted.

Here is the draft submitted for your approval.

ARTICLE 55

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by agreement of the parties, the course referred to in Article 45, paragraphs 3–6, is pursued.

The committee does not offer any modification of Article 33.

An amendment [1] had been presented by the delegation from the Argentine Republic; it expressed 'the *vœu* that the sovereigns or heads of States as well as the officials and scientific bodies of the countries which adhered to the Convention for the pacific settlement of international disputes should not accept the duties of arbitrator to settle differences between the signatory Powers until after a prior declaration by the interested parties that they have not been able to agree upon the organization of a tribunal formed by members of the Permanent Court of Arbitration'.

This amendment was neither seconded nor adopted.

The article therefore retains its previous form.

ARTICLE 56

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

The Russian delegation proposed [2] an amendment to Article 34 of the Convention of 1899, the object of which was to leave the parties free to choose the president of the tribunal as they may agree, without obliging them to confide these important functions to the umpire. The latter may possess all the desired qualities to cast the deciding vote among the judges upon a legal question, without possessing those which are necessary to make a successful president.

The committee did not adopt this point of view; it thought that the position of the umpire would be embarrassing if the presidency was not also confided to him, and that if called upon to vote for the election of a president, he would have no alternative than to vote for himself—which would not be possible—or to give his vote to one of the judges which would seem to indicate a preference for the latter's country, and even for his cause.

Article 34 therefore underwent no modification.

ARTICLE 57

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

The new Article 58 of the present draft reproduces the terms of Article 34 *a* of the German proposition, the reason for which I have already had the honour to set forth. I confine myself here to a statement of the text.

ARTICLE 58

When the *compromis* is settled by a commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the commission itself shall form the arbitration tribunal.

Article 35 gave rise to no remarks.

[1] *Actes et documents*, vol. ii, p. 878, *annexe* 13.

[2] *Post*, p. 409.

ARTICLE 59

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

The text of Article 36, slightly revised, also has the necessary addition thereto.

The committee considered the possibility that the arbitral tribunal might not sit either at The Hague or upon the territory of one of the parties, and it considered it well in these cases to reserve the right of the party upon whose territory it wished to establish its seat, to consent thereto. The version which we propose provides for this hypothesis and says:

ARTICLE 60

The tribunal sits at The Hague, unless some other place is selected by the parties.

The tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed, cannot be altered by the tribunal, without the assent of the parties.

Article 38, which the committee thought it reasonable to place before Article 37, claimed its attention for a long time; it gave the tribunal the power of deciding upon the choice of languages which it would use, and which would be authorized before it.

Our view is that it is desirable that this selection should be made by the parties rather than by the judges, and that the question be thus decided by the *compromis*.

But was it necessary to go so far as to exclude the power of the tribunal to determine upon the choice of languages, as requested by the German and Russian delegations which had drawn up amendments along this line,[1] or was it preferable to admit of a possible decision to be given by the judges?

After a long exchange of views the committee adopted a compromise solution which implies the right of the parties to choose the languages, but admits the possibility of another method.

We propose the following text, which is suggested by Article 11 of Part III of the present Convention relating to international commissions of inquiry.

ARTICLE 61

If the question as to what languages are to be used has not been settled by the *compromis*, it shall be decided by the tribunal.

Article 37 of the act of 1899 left to the parties absolute liberty in the choice of agents, counsel, or lawyers.

The members of the arbitral tribunal constituted by virtue of the protocols of Washington, May 7, 1903, for the Venezuelan affair, called the attention of the Governments to the possible difficulties of nominating members of the Permanent Court of Arbitration as delegates or counsel before the arbitral tribunal. They requested that the signatory Powers of the Hague Convention should take this question under serious consideration, noting, however, the great difference existing between the case where the functions of agent, counsel, or lawyer are combined with the duties of members of the Permanent Court of Arbitration to the benefit of the State which named him, and the other case where these duties of agent, counsel, and lawyer are accepted by a member of the Permanent Court to the profit of a foreign State.

[1] *Post*, pp. 469, 470.

Three solutions were possible. (1) The retention of the conditions established by the First Hague Peace Conference, which was preferred by the Belgian and French delegations; (2) the system defended by the British and American delegations and supported by the following amendment of the Russian delegation:

> The members of the Permanent Court of Arbitration have not the right to plead before the Court as counsel or advocates for States in dispute, nor to act as agents.

And (3) the amendment of the German delegation which excepted from this restriction the situation where the agents, counsel, or advocates might exercise their duties on behalf of the Power which nominated them, as members of the Court.

The compromise solution, proposed by the German delegation, was accepted with a slight textual modification.

But it was understood by the committee that the clauses concerning this disability set forth in the article with which we are dealing, could not deprive any member of the Permanent Court of Arbitration of the right to give legal advice which might be asked of him by the parties litigant.

The article is therefore revised as follows:

ARTICLE 62

> The parties are entitled to appoint special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.
>
> They are further authorized to commit the defence of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.
>
> The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

The German delegation proposed the addition of a clause to Article 39 providing that the *compromis* should determine the form and periods within which communication should be made to the members of the tribunal and to the opposing party of all printed or written acts and all documents containing the proofs relied upon in the cause.

This draft of a modification of the text of the Convention of 1899 caused a thorough examination to be made. The necessity of avoiding repeated meetings of the tribunal, merely to fix or increase periods to be followed in the course of the written presentation, was recognized. It should be noticed, however, that some very material circumstances might arise which would make it impossible to observe the period agreed upon.

If it is desirable to have the *compromis* fix the periods, is it not prudent to provide for the possible modification thereof?

The German delegation, to defend its amendment, relied upon the provisions of Articles 67 and 68 which already anticipated, possibly, in certain determined cases the production of new proofs in writing after the close of the inquiry, with the consent of the parties.

The committee, however, supported an amendment proposed by his Excellency Sir Edward Fry combined with a provision drawn up by Mr. Lammasch.

This is the text thereof:

> The time fixed by the *compromis* may be extended by mutual agreement by the parties, or by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

It was also agreed, in accordance with an amendment proposed by the Russian delegation, that the communication of the papers and documents to the members of the tribunal and the adverse party, should be made according to circumstances either directly by the parties, or through the Governments, or through the International Bureau at The Hague.

By inserting the words 'cases, counter-cases, and replies' in the provisions of Article 63, the committee intended to establish a distinction between the documents mentioned there and those for the communication of which provision is made in Articles 67 and 68. The production of the cases, counter-cases, and replies provided for in the *compromis* should be made before the close of the pleadings, and it is with reference to them that the times referred to in this article especially apply.

The version adopted by the committee provides for the form, order, and time determined by the *compromis* for the communication of the various documents mentioned in the present article to the members of the tribunal. It is a question here of the *form* in which the parties should present their respective claims to the tribunal, whether as cases, counter-cases, and replies, or in the form of statements of facts, arguments, and conclusions. It concerns the *order* in which cases, counter-cases, and replies shall be exchanged, whether alternately or at the same time.

The text of this article is as follows :

ARTICLE 63

As a general rule, arbitration procedure comprises two distinct phases : written pleadings and oral discussions.

The written pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies ; the parties annex thereto all papers and documents relied on in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the *compromis*.

The time fixed by the *compromis* may be extended by mutual agreement by the parties, or by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

Article 40 was slightly modified. The committee recognized that it would sometimes be difficult for the parties to communicate the original documents, as is the case before national courts. A requirement of this kind could not be applied because of the distance, often very great, which separates the parties. We have therefore, at the suggestion of Mr. Fromageot, modified the original text in the following manner :

ARTICLE 64

Every document produced by one party must be communicated to the other party in the form of a duly certified copy.

The German delegation proposed to insert here a new article stating that the tribunal is not to meet until after the close of the pleadings.

This proposition was accepted, but it was slightly modified to permit, as an exception, meetings of the tribunal which might be seen to be necessary in order to pass upon questions of procedure.

The article is drawn up as follows :

ARTICLE 65

Unless special circumstances arise, the tribunal does not meet until the pleadings are closed.

The Russian delegation had also proposed an amendment by a *vœu* expressed in 1902 by the arbitrators who passed upon the dispute known as the 'Pious Fund of California'. These *desiderata* were enacted into law by the form given to Article 39.

Article 41 has been retained with the modification that the minutes shall be signed by the president and one of the secretaries.

It is therefore drawn up in the following manner :

ARTICLE 66

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes are signed by the president and by one of the secretaries and alone have an authentic character.

The German delegation had suggested—I have already had the honour to state it incidentally—a new form for Articles 42 and 43 of the Convention of 1899.

This amendment brought forth a somewhat lengthy discussion which showed the desire of the committee not to issue rules of such a formal character that they could not cover all the circumstances which often arise in such a matter.

The reservations comprised in Articles 42 and 43 of the German proposal are applicable, except in the case of an agreement of the parties, only in cases of *force majeure* or unforeseen circumstances. Mr. Lammasch remarked that it might, however, be useful for one of the parties to have the power to produce documents with a view to denying the allegations made during the debates by the adverse party.

Mr. Kriege replied that the project of the German delegation was founded upon a desire expressed by eminent jurisconsults such as their Excellencies Sir Edward Fry, Messrs. Martens, Asser, etc. He believed that the reservations contained in this proposal were of such a nature as to provide for the majority of cases. The parties undoubtedly have the absolute right to complete orally the written explanations furnished by them in advance. It is not necessary to present written documents during the debates, because the oral statements are set forth in the protocols.

Once the pleadings have been closed, continued Mr. Kriege, it is preferable not to exchange further cases and counter-cases in order to avoid a useless continuation of the debates. Besides, nothing hinders the parties from replying to the last counter-cases. They may even send their statements in writing to the secretaries to aid in the preparation of the protocol.

The committee while appreciating the value of the reasons adduced by the German delegation thought it preferable to retain the form which the First Conference had given to Articles 42 and 43. It is proper, however, to call attention to the fact that the sense of these articles has undergone a certain modification by reason of the new provision introduced in paragraph 2 of Article 63. This provision establishes a distinction between the cases, counter-cases, and replies, on the one hand, and the papers and documents upon

which the parties rely in the cause, on the other hand. It follows that the term ' papers and documents ' used in Articles 42 and 43 no longer comprises cases, counter-cases, &c., but exclusively the papers and documents which the parties intend to use as a means of proof.

Articles 42 and 43 remain in the following form :

ARTICLE 67

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

ARTICLE 68

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

Articles 44, 45, 46, and 47 gave rise to no remarks ; we therefore propose that they be retained.

ARTICLE 69

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the tribunal takes note of it.

ARTICLE 70

The agents and the counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE 71

They are entitled to raise objections and points. The decisions of the tribunal on these points are final and cannot form the subject of any subsequent discussion.

ARTICLE 72

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions, can be regarded as an expression of opinion by the tribunal in general or by its members in particular.

Article 48 was subjected to a slight modification ; it appeared that the word ' international ' did not accord with the thought of the authors of the Convention of July 29, 1899 ; the tribunal is under obligation to apply legal principles ; this idea cannot be limited.

We propose therefore the retention of Article 48, with the omission of the word ' international ' and the substitution of the words ' papers and documents ' for the word ' treaties '.

ARTICLE 73

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other papers and documents which may be invoked in the case, and in applying the principles of law.

The committee did not find the text of Article 49 sufficiently clear and explicit. The French word '*conclusions*' may have various meanings, and the German delegation had proposed to omit the words 'to decide the forms and time in which each party must conclude its arguments';[1] this proposition intended to avoid all confusion in this regard.

We thought we could allay this apprehension by providing that it was a question of 'final' *conclusions*, that is to say, of an exact and concise summary of the claim of each of the parties and the reasons therefor. It was also understood that the tribunal should be at liberty either to permit the presentation of these *conclusions* or not to authorize it even in case of agreement between the parties; they are not necessary, either, except in long and complicated matters.

The new version, therefore, contains the additional word 'final'.

ARTICLE 74

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its final arguments,[1] and to arrange all the formalities required for dealing with the evidence.

I have had the honour to set forth above the reasons which led the committee to insert in Part III of the present Convention two articles, bearing the numbers 23 and 24, based upon Article 16 of the Franco-British project concerning commissions of inquiry.

It seems unnecessary for me to go back over those points and to show that similar considerations require the introduction of these rules in the matter of arbitration—while recognizing the vital character of each of these two valuable methods of peaceful settlement of international disputes.

Having this in mind the committee proposes the adoption of the following two articles: one defines the manner in which litigant Powers shall furnish the tribunal with the means necessary to the fulfilment of its task; the other provides for the occasion when requests and notices of the tribunal would be addressed to a third Power, a signatory of this Convention.

In accordance with a proposal of his Excellency Mr. Carlin, the Commission asked the drafting committee to make the text of Article 76, paragraph 2, and Article 24, paragraph 2 agree with that of Article 23, paragraph 2.

ARTICLE 75

The litigant Powers undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the dispute.

ARTICLE 76

For all notifications which the tribunal has to make in the territory of a third Power, signatory of the present Convention, the tribunal shall apply direct to the Government of that Power. The same rule shall apply in the case of steps being taken to procure evidence on the spot.

[1] *De déterminer les formes et délais dans lesquels chaque Partie devra prendre ses conclusions.*

These requests shall not be rejected unless the Power addressed considers them of a nature to impair its sovereign rights or its safety.

The tribunal will also be always entitled to act through the Power in whose territory it sits.

Article 50 caused no remarks; the committee therefore proposes that it be retained.

ARTICLE 77

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the president declares the discussion closed

The German delegation had proposed the insertion of an Article 51 *a* providing

If the decision requires some act in execution thereof, the arbitral sentence shall fix a period within which execution must be completed.

Its idea was to prevent the losing Power from nullifying the results of the arbitral award by postponing its execution improperly, or even by refusing to carry it out. The arbitrators will naturally appreciate the circumstances which may furnish grounds for more or less lengthy delays; unless there is a contrary provision in the *compromis*, it is desirable that some provision should guide the tribunal, because the parties may have neglected to provide for the limit within which the award must be carried out, or they may not have reached an agreement upon this point.

This opinion was not shared by the majority of the committee, who believed that a provision of this kind would go beyond the idea of arbitration. The arbitrators state the law, pronounce the award, but it is not within their province to regulate the execution, which is left to the good faith of the parties, and will be within the province of the Governments. By enlarging the rights of arbitrators, beyond measure, we should expose ourselves to a reduction in the number of cases of arbitration. Public interest also requires us to avoid new discussions after the close of the debates.

It is also noted that a provision presented by the Italian delegation, which I shall have the honour of stating to you later, provides that every difference which may arise between the parties concerning the interpretation and execution of the arbitral decision shall, so far as the *compromis* does not prohibit it, be submitted to the judgement of the same tribunal which rendered it.

Under these conditions the amendment proposed by the German delegation [illegible] be accepted by the committee.

Articles 51 and 52 of the Convention of 1899 were studied together by the commit

The Netherland delegation requested the omission of the second paragraph of Art. of the Convention of 1899.

Mr. Loeff set forth the reasons in favour of this modification, intended to prevent members of the tribunal from stating their dissent. This provision is, according to opposed to one of the great fundamental principles of arbitral procedure, which req that the award shall be a final decision, *omni sensu*, not only in the sense that there appeal, properly speaking, to a second tribunal, but also in the other sense that the awar shall not stir up further discussions outside the walls of the tribunal.

Arbitral procedure should have the absolute confidence of people and avoid everything which might undermine it. In permitting the minority members to set forth their dissent we revive outside the tribunal a dispute which should have been interred within its walls

we open the discussions anew, and expose ourselves to the danger of awakening suspicions as to the r ts of the award.

The committee did not fail to recognize the justice of these criticisms, while observing that it would perhaps be rather severe to require that the judges, whose ideas are not contained in the decision, should be obliged to sign the same without being able to set forth their disagreement.

We hoped to obviate these difficulties by the adoption of a provision which should no longer imply a signature of the award by all of the arbitrators. The president of the tribunal alone would sign the decision with the registrar, or the secretary acting as registrar.

The committee went even further, and it also proposes that you omit paragraph 2 of Article 51, stating that the refusal of a member of the tribunal to take part in the vote should be stated in the minutes. It wished to give the award a more anonymous character, and safeguard the responsibility of the majority members of the tribunal. The award shall mention the names of all the arbitrators without making any other reference to them.

It seemed equally desirable to provide that the deliberations of the tribunal should remain secret.

Here is the text which we propose for these two articles :

ARTICLE 78

The deliberations of the tribunal take place in private and remain secret.
All questions are decided by a majority of the members of the tribunal.

ARTICLE 79

The award rendered by a majority vote must state the reasons on which it is based. It contains the names of the arbitrators ; it is signed by the president and by the registrar or the secretary acting as registrar.

Articles 53 and 54 having given rise to no observations, we propose that they be retained

ARTICLE 80

The arbitral award is read out at a public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE 81

The arbitral award, duly pronounced and notified to the agents of the litigant parties, settles the dispute definitively and without appeal.

The Italian delegation proposed to insert an Article 54 *a*, the scope of which I have already had the honour to state to you. It is the duty of the tribunal which pronounced the award to pass upon disputes which may arise in the interpretation or application thereof.

The committee thought it necessary to except the case where the *compromis* excludes this recourse, and accept, on this point, an amendment proposed by Mr. Lammasch.

It was not, however unanimous in adopting this new proposition ; the British delegation expressed the opinion that if the question is not determined by the *compromis* it is

not within the scope of the arbitral tribunal to pass upon the application of the award which it has made.

Any difference upon this matter should be the subject of another arbitration.

The new article adopted by the committee would therefore be as follows :

ARTICLE 82

Any dispute arising between the parties as to the interpretation and execution of the arbitral award shall, so far as the *compromis* does not prevent it, be submitted to the decision of the tribunal which pronounced it.

The Russian delegation requested the omission of Article 55.

In 1907, as in 1899, his Excellency Mr. Martens was a decided opponent of the revision of arbitral awards as contrary to the very idea of arbitration. In support of his view he relied upon the *vœu* expressed by the members of the tribunal constituted by virtue of the treaty of Washington, May 22, 1902, who demanded ' that the least possible use of the power granted by Article 55 of the Hague Convention be made in the *compromis* '.

The eminent jurisconsult stated, in the first place, that arbitration had for its principal object the termination of a dispute. Revision would therefore run contrary to this purpose since it permitted the litigant Powers to perpetuate the dispute.

In the second place he called attention to the fact that none of the four decisions yet rendered by the Hague tribunal had given rise to a demand for revision.

You know, gentlemen, that this opinion has been objected to in the subcommission : it was said that the only purpose of arbitration is not to terminate a dispute ; it is above all a means of arranging, by agreement, a dispute left to the judgement of freely chosen arbitrators. Everything here depends upon the willingness of the parties. Why deprive them of recourse to revision ?

A tribunal may be deceived. New facts, unknown at the time the decision was rendered, may appear, and it would be regrettable not to be able to avail oneself of them to revise the award.

Far from being opposed to the nature of arbitration, revision is of its very essence. The fundamental principle of arbitration is freedom ; the omission, pure and simple, of Article 55, which was a compromise provision in 1899, would not deprive States of recourse to revision, because they will remain free to provide for it in the *compromis*.

The committee did not think it ought to renew this discussion ; it was unanimous in retaining Article 55 in its present form.

ARTICLE 83

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case and unless there be a stipulation to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

Article 56 was not modified essentially ; it was only slightly changed in matters of form, for the reason that there might be an arbitration without a *compromis*. It therefore appears in the following form :

ARTICLE 84

The award is binding only on the Parties in dispute.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter inform all the signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

Article 57 was not modified ; here is the text :

ARTICLE 85

Each party pays its own expenses and an equal share of the expenses of the tribunal.

CHAPTER IV.—*Arbitration by Summary Procedure*

The French delegation submitted to the Conference a plan complementary to the Hague Convention of July 29, 1899.[1]

This proposition, in the view of its authors, is not intended now to replace the Convention of 1899 generally, but to adapt the principles of this treaty to the settlement of difficulties of a technical nature, of a slightly different kind from those which the plenipotentiaries of the First Peace Conference really had in mind. Recourse to this form of procedure is naturally subject to the agreement of the parties.

It deals with disputes requiring a more simple, rapid, and less costly procedure than that which was organized by the Hague Convention.

It may also be necessary in the decision of certain disputes, to call upon people of different attainments from those which dictated the selection of arbitrators who appear upon the list of the Permanent Court of Arbitration. Recourse will then be had to specialists, who would not be thought of for the general list at The Hague, but who will have special or technical knowledge indispensable to an understanding of the dispute.

The committee highly appreciated the advantages which this plan presents for the quick solution of international disputes, and it proposes to you to make it the object of the fourth chapter of the Convention of 1899 entitled 'Arbitration by Summary Procedure'.

The text which was submitted to us had the form of a separate arrangement, to some extent complete in itself, and containing all the provisions necessary to regulate arbitration by summary procedure. Upon making this plan a chapter in the Convention for the pacific settlement of international disputes, certain provisions become unnecessary, being already contained in the Hague act. We therefore propose that you omit Articles 3, 7, 8.

Article 1 had to be revised by reason of the position which the plan took in the Convention. This is the new version :

ARTICLE 86

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the signatory Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

[1] *Post*, p. 467.

Article 2 of the French plan provided that the parties should select as arbitrators persons from among their own ***ressortissants***. This proposition was not agreed to by the committee, and complete liberty has been left to the parties in the choice of arbitrators.

Two methods appear for the designation of the umpire, in case there is disagreement between the parties.

The French delegation thought it simpler and more expeditious to give to each of the arbitrators the power to name a candidate, the umpire to be chosen from them by lot ; Mr. Lammasch, on the contrary, proposed the selection of three candidates, and considered this arrangement of a character to diminish the risks of a partial judgement.

The committee supported a measure between these two, providing for the nomination of two candidates.

The third paragraph of Article 1 was omitted, the number of three arbitrators appearing more appropriate than five in this summary procedure. The parties will also always have the right to take advantage of the provisions of Article 56 above.

This, therefore, is the text which we propose for this article of the French proposition :

ARTICLE 87

Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Court (Article 44), exclusive of the members designated by either of the parties and not being *ressortissants* of either of them ; which of the candidates thus proposed shall be the umpire is determined by lot.

The umpire presides over the tribunal, which gives its decisions by a majority of votes.

Article 4 of the plan for summary procedure was modified by the addition of the words ' in default of previous agreement ' to except the case where the *compromis* itself may have determined the time for the filing of cases.

In the minds of the authors of this plan we have only to consider the delivery of cases, the tribunal having the right to exclude counter-cases.

The article is therefore drawn up as follows :

ARTICLE 88

In the absence of any previous agreement, the tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

Articles 5 and 6 of the French proposition caused no objection. Here is the text :

ARTICLE 89

Each party is represented before the tribunal by an agent, who serves as intermediary between the tribunal and the Government which appointed him.

ARTICLE 90

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts be called. The tribunal has, on its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

Articles 58, 59, 60, and 61 of the Convention of July 29, 1899, were retained in their present form. We believed that the Drafting Committee should modify them as demanded by the provisions of the Final Act of the Conference.

GENERAL PROVISIONS

ARTICLE 91

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a duly certified copy shall be sent, through the diplomatic channel, to all the Powers which were represented at the International Peace Conference at The Hague.

ARTICLE 92

Non-signatory Powers which have been represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 93

The conditions on which the Powers which have not been represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

ARTICLE 94

In the event of one of the high contracting parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague, the . . . in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

When the Convention was voted upon as a whole, his Excellency Turkhan Pasha spoke as follows :

> The Ottoman delegation declares, in the name of its Government, that while it is not unmindful of the beneficent influence which good offices, mediation, commissions of inquiry and arbitration are able to exercise on the maintenance of the pacific relations between States, in giving its adhesion to the whole of the draft, it does so on the understanding that such methods remain, as before, purely optional; it could in no case recognize them as having an obligatory character rendering them susceptible of leading directly or indirectly to an intervention.
>
> The Imperial Government proposes to remain the sole judge of the occasions when it shall be necessary to have recourse to the different proceedings or to accept them without its determination on the point being liable to be viewed by the signatory States as an unfriendly act.
>
> It is unnecessary to add that such methods should never be applied in cases of internal order.

The entire Convention as revised was unanimously adopted.

We believe it useful to give, in tabular form, arranged in two columns, the changes made by the Commission in Part IV of the Convention of July 29, 1899, for the pacific settlement of international disputes.

PART IV.—INTERNATIONAL ARBITRATION

CONVENTION OF JULY 29, 1899

CHAPTER I.—*The System of Arbitration*

ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

ARTICLE 17

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 18

The arbitration convention implies an engagement to submit in good faith to the arbitral award.

ARTICLE 19

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present act or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

TEXT PROPOSED BY THE COMMISSION

CHAPTER I.—*The System of Arbitration*

ARTICLE 37

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the arbitral award.

ARTICLE 38

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the signatory Powers, if the case arise, have recourse to arbitration, in so far as circumstances will permit.

ARTICLE 39

(No change.)

ARTICLE 40

(No change.)

CHAPTER II.—*The Permanent Court of Arbitration*

ARTICLE 20

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the signatory Powers undertake to organ[illegible] Permanent Court of Arbitration, acces[illegible]ble at all times and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

ARTICLE 21

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal.

ARTICLE 22

An International Bureau, established at The Hague, serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

ARTICLE 23

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

CHAPTER II.—*The Permanent Court of Arbitration*

ARTICLE 41

(No change.)

ARTICLE 42

(No change.)

ARTICLE 43

The Permanent Court has its seat at The Hague.

An International Bureau serves as registry for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives and conducts all the administrative business.

The signatory Powers undertake to communicate to the Bureau, *as soon as possible*, a duly certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

ARTICLE 44

Within the three months following its ratification of the present act, each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified to all the signatory Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in the same way as he was appointed.

ARTICLE 24

When the signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the competent tribunal to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by direct agreement of the parties, the following course is pursued:

Each party appoints two arbitrators, and these together choose an umpire.

If the votes are equal, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the arbitrators.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in the same way as he was appointed, *and for a fresh period of six years.*

ARTICLE 45

When the signatory Powers wish to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the tribunal competent to decide this difference must be chosen from the general list of members of the Court.

Failing the composition of the arbitration tribunal by agreement of the parties, the following course is pursued:

Each party *appoints two arbitrators, of whom one only can be its ressortissant or chosen from among the persons selected by it as members of the Permanent Court. These arbitrators* together choose an umpire.

If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the litigant parties and not being ressortissants of either of them. Which of the candidates thus presented shall be umpire is determined by lot.

ARTICLE 46

The tribunal being composed as provided in the preceding article, the parties notify to the International Bureau *as soon as possible* their determination to have

recourse to the Court, *the text of the compromis*, and the names of the arbitrators.

The Bureau also communicates without delay to each arbitrator the compromis and the names of the other members of the tribunal.

The tribunal assembles on the date fixed by the parties. *The Bureau makes the necessary arrangements for the meeting.*

The members *of the tribunal*, in the exercise of their duties, and out of their own country, enjoy diplomatic privileges and immunities.

The tribunal of arbitration assembles on the date fixed by the parties.

The members of the Court, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 25

The tribunal of arbitration sits ordinarily at The Hague.

Except in cases of necessity, the place of session can only be altered by the tribunal with the assent of the parties.

ARTICLE 47

The International Bureau is authorized to place its offices and staff at the disposal of the signatory Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

ARTICLE 26

The International Bureau at The Hague is authorized to place its premises and its staff at the disposal of the signatory Powers for the operations of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers, or between signatory Powers and non-signatory Powers, if the parties are agreed to have recourse to this tribunal.

ARTICLE 48

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

In case of dispute between two Powers, one of them can always address to the International Bureau at The Hague a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

ARTICLE 27

The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as in the nature of good offices.

ARTICLE 28

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It addresses to them an annual report on the labours of the Court, the working of the administration, and the expenditure.

ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

ARTICLE 49

A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its rules of procedure and all other necessary regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of *nine* members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the signatory Powers without delay the regulations adopted by it. It *shall present* to them an annual report on the labours of the Court, the working of the administration, and the expenditure. *The report likewise shall contain a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article* 43, *paragraphs* 5 *and* 6.

ARTICLE 50

The expenses of the Bureau shall be borne by the contracting and adhering Powers in the proportion fixed for the International Bureau of the Universal Postal Union

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

CHAPTER III.—*Arbitration Procedure*

ARTICLE 30

With a view to encouraging the development of arbitration, the signatory Powers have agreed on the following rules, which shall be applicable to arbitration procedure, unless other rules have been agreed on by the parties.

ARTICLE 31

The Powers who have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute and the extent of the arbitrators' powers. This act implies an engagement of the parties to submit in good faith to the arbitral award.

CHAPTER III.—*Arbitration Procedure*

ARTICLE 51

(No change.)

ARTICLE 52

The Powers which have recourse to arbitration sign a special act (compromis), in which are defined the subject of the dispute, the time allowed for appointing arbitrators, the form, order, and time in which the communication referred to in Article 63 of the present Convention must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The compromis likewise shall define, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

ARTICLE 53

The Permanent Court is competent to settle the compromis, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. *A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, and providing for a compromis in all disputes and not either explicitly or implicitly excluding the settlement of the compromis from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to obligatory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question;*

ARTICLE 32

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by direct agreement of the parties, the following course is pursued :

Each party appoints two arbitrators, and these latter together choose an umpire.

If the votes are equally divided the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

ARTICLE 33

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

ARTICLE 34

The umpire is *ex officio* president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its ressortissants, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the compromis should be settled in some other way.

ARTICLE 54

In the cases contemplated in the preceding article, the compromis shall be settled by a commission consisting of five members selected in the manner arranged for in Article 45, *paragraphs* 3–6.

The fifth member is ex officio president of the commission.

ARTICLE 55

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act.

Failing the composition of the tribunal by agreement of the parties, the course *referred to in Article* 45, *paragraphs* 3–6, is pursued.

ARTICLE 56

(No change.)

ARTICLE 57

(No change.)

ARTICLE 58

When the compromis is settled by a commission, as contemplated in Article 54, *and in the absence of an agreement to the contrary, the commission itself shall form the arbitration tribunal.*

ARTICLE 35

In case of the death, retirement, or disability from any cause of one of the arbitrators, his place is filled in the same way as he was appointed.

ARTICLE 36

The tribunal's place of session is selected by the parties. Failing this selection the tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be altered by the tribunal without the assent of the parties.

ARTICLE 37

The parties are entitled to appoint delegates or special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defence of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

ARTICLE 38

The tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

ARTICLE 39

As a general rule arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and to the opposite party of all printed or written acts and of all documents containing the grounds relied on in the case. This communication shall be made in the form and within the time fixed by the tribunal in accordance with Article 49.

ARTICLE 59

(No change.)

ARTICLE 60

The tribunal sits at The Hague, unless some other place is selected *by the parties.*

The tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting *once fixed cannot be altered by the tribunal,* without the assent of the parties.

ARTICLE 62

The parties are entitled to appoint special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to commit the defence of their rights and interests before the tribunal to counsel or advocates appointed by them for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

ARTICLE 61

If the question as to what languages are to be used has not been settled by the *compromis,* it shall be decided by the tribunal.

ARTICLE 63

As a general rule, arbitration procedure comprises two distinct phases: written pleadings and oral discussions.

The *written* pleadings consist in the communication by the respective agents *to the members of the tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents relied on in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the compromis.*

The time fixed by the *compromis* may be extended by mutual agreement by the

The discussions consist in the oral development before the tribunal of the arguments of the parties.

ARTICLE 40

Every document produced by one party must be communicated to the other party.

ARTICLE 41

The discussions are under the direction of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in the minutes drawn up by the secretaries appointed by the president. These minutes alone have an authentic character.

ARTICLE 42

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

ARTICLE 43

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 44

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the tribunal takes note of it.

parties, or by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

ARTICLE 64

Every document produced by one party must be communicated to the other party in the form of a duly certified copy.

ARTICLE 65

Unless special circumstances arise, the tribunal shall not meet until the pleadings are closed.

ARTICLE 66

The discussions are under the control of the president.

They are only public it it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes *are signed by the president and by one of the secretaries* and alone have an authentic character.

ARTICLE [illegible]

(No change.)

ARTICLE 68

(No change.)

ARTICLE 69

(No change.)

ARTICLE 45

The agents and counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE 70

(No change.)

ARTICLE 46

They have the right to raise objections and points. The decisions of the tribunal on those points are final, and cannot form the subject of any subsequent discussion.

ARTICLE 71

(No change.)

ARTICLE 47

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions, can be regarded as an expression of opinion by the tribunal in general, or by its members in particular.

ARTICLE 72

(No change.)

ARTICLE 48

The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other treaties which may be invoked in the case, and in applying the principles of international law.

ARTICLE 73

The tribunal is authorized to declare its competence in interpreting the *compromis*, as well as the other *papers and documents* which may be invoked in the case, and in applying the principles of law.

ARTICLE 49

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 74

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, *order*, and time in which each party must conclude its *final* arguments and to arrange all the formalities required for dealing with the evidence.

ARTICLE 75

The litigant parties undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the case.

ARTICLE 76

For all notifications which the tribunal has to make in the territory of a third Power, signatory to the present Convention, the tribunal shall apply direct to the Government of that Power. The same rule shall apply in the case of steps being taken to procure evidence on the spot.

ARTICLE 50

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president pronounces the discussion closed.

ARTICLE 51

The deliberations of the tribunal take place in private. Every decision is taken by a majority of members of the tribunal.

The refusal of a member to vote must be recorded in the minutes.

ARTICLE 52

The award, given by a majority of votes, must state the reasons on which it is based. It is drawn up in writing and signed by each member of the tribunal.

Those members who are in the minority may record their dissent when signing.

ARTICLE 53

The award is read out at a public sitting of the tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

ARTICLE 54

The award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitively and without appeal.

ARTICLE 55

The parties can reserve in the *compromis* the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be

These requests cannot be rejected unless the Power in question considers them of a nature to impair its own sovereign rights or its safety.

The tribunal will also always be entitled to act through the Power in whose territory it sits.

ARTICLE 77

(No change.)

ARTICLE 78

The deliberations of the tribunal take place in private ***and remain secret.***

All questions are decided by a majority of the members of the tribunal.

ARTICLE 79

The award, adopted by a majority vote, must state the reasons on which it is based. It contains the names of the arbitrators; it is signed ***by the president and registrar*** or by the secretary acting as registrar.

ARTICLE 80

(No change.)

ARTICLE 81

(No change.)

ARTICLE 82

Any dispute arising between the parties as to the interpretation and execution of the arbitral award shall, so far as the compromis does not prevent it, be submitted to the decision of the same tribunal which pronounced it.

ARTICLE 83

(No change.)

addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact which is of a nature to exercise a decisive influence upon the award and which, at the time the discussion was closed, was unknown to the tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

ARTICLE 56

The award is only binding on the parties who concluded the *compromis*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 57

Each party pays its own expenses and an equal share of the expenses of the tribunal.

ARTICLE 84

The award is binding only on the parties *in dispute*.

When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter *shall inform all the signatory Powers in good time*. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

ARTICLE 85

(No change.)

CHAPTER IV.—*Arbitration by Summary Procedure*

ARTICLE 86

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

ARTICLE 87

Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members

of the Court (Article 44) *exclusive of the members appointed by either of the parties and not being ressortissants of either of them; which of the candidates thus proposed shall be the umpire is determined by lot.*

The umpire presides over the tribunal, which gives its decision by a majority of votes.

ARTICLE 88

In the absence of any previous agreement, the tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ARTICLE 89

Each party is represented before the tribunal by an agent, who serves as intermediary between the tribunal and the Government which appointed him.

ARTICLE 90

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts be called. The tribunal has, on its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

General Provisions

ARTICLE 58

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

ARTICLE 59

Non-signatory Powers who were represented at the International Peace Conference may adhere to the present Convention. For this purpose they must make known their adhesion to the contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

General Provisions

ARTICLE 91

(No change.)

ARTICLE 92

(No change.)

ARTICLE 60 The conditions on which the Powers who were not represented at the International Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.	ARTICLE 93 (No change.)
ARTICLE 61 In the event of one of the high contracting parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers. This denunciation shall have effect only in regard to the notifying Power. In faith of which the plenipotentiaries have signed the present Convention and have affixed their seals thereto. Done at The Hague, July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.	ARTICLE 94 (No change.)

OBLIGATORY ARBITRATION

The problem of obligatory arbitration forced itself upon the attention and study of the First Commission at the very beginning of the Conference. It was examined with care, studied with a sincerely progressive and friendly mind, and gave rise to deep and thoughtful discussion.

For this part of my report I ask especial indulgence on your part, because the length of the discussions, the great number of propositions which were grafted one upon the other, have made the formulation thereof very difficult.

The importance of the subject forces me not to omit any of the declarations of principle which were presented by the delegations of the different States represented at the Conference. Those which marked the beginning of our labours, as well as those which have, to some extent, summarized the results of our studies, should both figure, in brief form, in this statement.

To indicate the proper value of the statements of each State, it is important to set forth the circumstances under which they were produced; to accomplish this I have no other method than to follow the chronological order to a certain extent.

The question of obligatory arbitration was, first of all, submitted to the examination of the first subcommission, where it has already given rise to interesting discussions; the work of the committee itself covered several phases which I have thought it proper to respect; finally, the discussion in the First Commission was of great interest.

I have tried not to neglect any side of the brilliant debates which I am to report; I believe them to be so disinterested, marked by such eminent learning, and of such a high character, that it is important to retain at least the essence thereof.

My statement makes no other claim than that it has been conscientiously prepared; impartiality is the first duty of the reporter.

General Discussion in the Subcommission

The principle of obligatory arbitration gave rise to long and learned discussions in the First Commission. Even before the various propositions submitted for the consideration of the Conference had been turned over for the study of the committee of examination, a great number of the delegations hastened to assert their general views upon the principle of arbitration itself and upon the means for its application.

I am to have the honour of summarizing here these various declarations, all of which contain—and I take pleasure in stating it—the categorical assertion of a warm and formal acquiescence in the principle of obligatory arbitration; the delegations were unanimous in stating this.

You are acquainted with the statements presented at the commencement of our labours by the delegations from the United States of America,[1] Serbia,[2] Portugal,[3] Sweden,[4] and Brazil.[4] They were brilliantly set forth by their authors. The representatives of other countries, although they abstained from presenting propositions, were, however, anxious to assert their convictions as well.

Our eminent president, at the first meeting of the Commission indicated the path to be followed and invited us to consider in what measure and under what conditions the *obligation* to resort to arbitral procedure could be accepted.

Distinguishing between conventions concluded by two States and treaties of a universal character, he clearly set forth the impossibility of adopting, in the case of the latter, provisions which could without difficulty be the bases of an agreement between certain specific countries. A provision for obligatory arbitration, without restriction and in all cases, is not actually possible in a general treaty.

But this does not hold with regard to some carefully selected subjects for which *obligatory* resort to arbitration has already been very largely adopted in fact in international practice. The greater part of the States, if not all, acting individually, have accepted the obligation to resort to arbitration for a certain list of differences: would it not be of great moral effect to consolidate by common agreement all provisions already concluded separately between the various nations, and to sanction by a common signature the provisions to which we have for the most part already affixed our signatures two by two?

The Brazilian delegation called the attention of the Commission to the fact that whatever might be the formula adopted with a view to applying the principle of obligatory arbitration to conflicts of a legal character or concerning the interpretation of treaties, it will not agree that this principle may be extended to questions and disputes already existing.

The Belgian delegation declares that, making a reservation as to disputes which concern the vital interests of States, it accepts the principle of obligatory arbitration for all cases

[1] *Post*, p. 473. [2] *Post*, p. 471. [3] *Post*, p. 472. [4] *Post*, p. 474.

of disputes of a legal character, growing out of the interpretation and application of treaties already concluded or to be concluded, as well as for pecuniary claims for damages, provided that the principle of indemnity has been the subject of a previous agreement between the contracting parties.

Difficulties of interpretation or application of treaties in which more than two Powers have participated or to which they have adhered, cannot become the subject of resort to arbitral procedure except after prior consent given in each particular case by all the signatory and adhering Powers to these treaties.

The Peruvian delegation set forth the amendment which it proposed to Article 27 of the Convention of 1899.[1]

In case of a dispute between two Powers, one of them may always address a note to the International Bureau at The Hague containing the declaration that it would be disposed to submit the difference to arbitration.

The International Bureau shall bring the said declaration to the attention of the other Power; it shall be required to aid all exchange of views which may lead to the conclusion of a *compromis*.

The Netherland delegation is disposed to support propositions which would have for their purpose the conclusion of really obligatory arbitration treaties for certain categories of disputes.

It does not understand that, with regard to a dispute concerning the vital interests of a State, it is desired to exclude a settlement by arbitration, even if as a result there would be danger or necessity for a war. It is not to be admitted that instead of a decision based upon reason and given by a tribunal composed of impartial and respected judges, rendered after judicial discussion and conscientious examination, preference would be given to a settlement by the use of arms, by blind force, by the chances and mischances of the battlefield.

The Portuguese delegation defends the proposition which it submitted for the approval of the Conference. The first two articles of the draft Convention reproduce provisions already contained in a number of treaties. In the first place it is a question of revising Article 16 of the Convention of 1899. This article, which only expressed a *vœu*, evidently hinders our future agreements concerning arbitration. If we refuse to introduce into the text thereof such modification as will make it agree with the present state of international relations, public opinion will not fail to interpret this refusal as a step backward and a proof of the platonic and ineffective character of the obligations previously subscribed to. The third is a verbatim copy of Article 3 of the model treaty of arbitration adopted by the Interparliamentary Conference in London in 1906, and sanctions the principle of obligatory arbitration without restrictions, for certain determined cases.

The Portuguese delegation designedly did not set up a new list which would perhaps better consider its particular interests and convenience. It prefers to appropriate a formula which has already been the object of learned discussion in 1899, and which has continued to be the subject of examination since then, all the principles of which have been discussed, and which the Conference of London finally sanctioned as being the minimum demands of impartial public opinion.

It will be the duty of the Conference to decide whether it is necessary to restrict or extend it

[1] *Post*, p. 471.

The Portuguese delegation is of the opinion that if the cause of arbitration is a great cause, one must not hope to accomplish its purpose without consenting to the sacrifice of some temporary interests, the too-zealous protection of which might prevent the Conference from accomplishing anything.

The Swedish delegation also defends its propositions which consist in making arbitration **obligatory** in questions of a juridical nature, and in the first place in questions of the interpretation or application of international conventions, on condition that the differences to be adjusted do not concern vital interests or independence of the litigant parties.

But the draft provides that arbitration shall be **obligatory** without power to rely upon reservations :

1. In case of pecuniary claims for damages, when the principle of indemnity is recognized by the parties in litigation.

2. In case of pecuniary claims when it is a question of the interpretation or application of conventions of every kind between litigant parties.

3. In case of pecuniary claims arising from acts of war, or civil war, or so-called pacific blockade, of the arrest of foreigners or the seizure of their property.

It goes without saying that the proposed provisions do not detract from the effect of provisions for the entering into *compromis*, or from treaties of arbitration which submit other cases to arbitral decision.

The Serbian delegation supports its proposals with a certain number of explanations and illustrations. Inspired by the thought that the provisions which determine the rights and duties of sovereign States should be clear and precise, it proposed a positive formula which enumerates in a limited way the cases to which the application of obligatory arbitration extends. It rejects the negative formula of reservations covering cases where vital interests or the honour of States might be involved because it is too vague. Its proposals cover differences which might result from the interpretation or application of all international acts covering commercial, economic, administrative, and judicial relations between States, as well as the settlement of disputes of a pecuniary character between States, or between a State and the ***ressortissants*** of other States, provided that, in the case of the latter, the ordinary tribunals have not jurisdiction.

The delegation from Greece declares itself in favour of the retention of the provisions set forth in Article 16 of the Convention of July 29, 1899. Under the present law, we have seen arbitration rapidly gaining ground in international life ; we may ask whether treaties, entered into by two States with specific relation to interests peculiar to the two Powers in question, are not preferable to a general treaty, necessarily restricted in view of the great number of contracting parties.

In a similar manner, and in case the Conference deems it wise to take a step now and depart from the principles of the general existing law, the delegation from Greece recommends to the attention of the high assembly the provisions of Article 10 of the proposals of the committee of examination presented on July 5, 1899, to the Third Commission of the First Peace Conference. This plan would enumerate cases which, so far as they do not concern vital interests nor the national honour of States, should be submitted to arbitration. It comprises, outside of the cases of pecuniary claims for damages, when the principle of indemnity is recognized by the parties, disputes concerning the interpretation or application of numerous categories of ***general*** treaties.

It seems natural that, if we decide to make a general convention the first step on the

pathway to obligatory recourse to arbitration, we should begin with this extended group of conventions equally general or of a general character, and that we apply obligatory arbitration to those categories of treaties which express, always and necessarily, agreement as to identic and common interests, interests of international society.

The Norwegian delegation declares that it supports the proposals made by the Portuguese and Serbian delegations; it upholds the conclusion of a convention making arbitration obligatory in a certain class of disputes.

This delegation agrees that it would perhaps be premature to eliminate at present the reservation with regard to vital or essential interests, which appears in all of the formulas submitted to the Conference with the exception of the Serbian proposition; but it draws the attention of the assembly to the wisdom of adopting a clause which would permit the arbitral tribunal itself to decide whether the dispute comes within the field covered by the arbitration convention.

The Norwegian delegation believes, too, that the reservation as to *national honour* is too vague and consequently lends itself to interpretation to suit the nation availing itself thereof.

The delegation of the United States of America sets out the amendments which it proposed to Article 16 of the Convention of 1899 to introduce therein the principle of obligatory arbitration. It believes that its proposition, combined with the project intended to give a sounder foundation to the Permanent Court which already exists, will constitute real progress. It draws the attention of the assembly to the text of Article 3 of its plan which provides that in each particular case the signatory Powers shall enter into a special *compromis* in accordance with the constitution and laws of the high contracting parties, determining clearly the subject of the dispute, the extent of the powers of the arbitrators, the procedure and periods of time to be observed in forming the arbitral tribunal.

The form of this article was dictated by the constitutional provisions of certain States, according to which each *compromis* for arbitration, before it can be put into effect, must be accepted by a branch of the Government other than that which negotiated it.

The delegation from Uruguay adheres to the principle of obligatory arbitration in its broadest form. It believes in no exception other than that relating to the independence of States, because no country will ever submit its existence to the opinion of arbitrators; but it considers all other reservations as open gates to war.

The delegation from the Republic of Ecuador shares fully in the support of all propositions for the establishment of obligatory recourse to arbitral tribunals for the pacific settlement of international disputes.

The German delegation declares that it is favourable to the principle of obligatory arbitration, under certain conditions and with certain reservations.

It would be an error to believe that a general clause for the making of *compromis*, agreed upon between two specific States, could serve as a model for a universal treaty. The conditions are absolutely different.

In considering a general convention it is important to examine with care whether the lists of disputes, which it is desired to submit to universal obligatory arbitration, are really of such a nature as to be capable of settlement by that method.

Disputes of a political nature should be excluded; in the domain of law we may admit the principle of obligatory arbitration; but there are a certain number of

controversies in this category which are too small to permit of the delays and expenses of arbitral procedure; others, on the contrary, are of too great a scope to be settled in the field of arbitration, without reservation as to the honour and essential interests of nations.

As these reservations should be left to the estimation of the parties, we thus reserve the right to withdraw with one hand what has been given with the other; and it is preferable, under these conditions, to retain Article 16 of the Convention of 1899.

But there might be found, perhaps, a limited number of disputes where it would be possible to accept obligatory arbitration without any reservation. The German delegation is disposed to seek by common agreement the disputes which might be placed in this category.

The Persian delegation is disposed to vote in favour of the most extended and broadest propositions with regard to arbitration; it will endeavour to increase the chances for success of those propositions which, while tending to reach the ideal of this principle, would be at the same time of such a nature as to be accepted by the greatest number of the Powers represented at the Conference.

The Swiss delegation recalls the sympathy shown by its country for the cause of arbitration. It has no objection in principle to oppose to the spirit which inspired the propositions submitted to the Conference; but it indicates a preference for the project presented by the delegation of the United States of America, to which it adheres, except for several reservations touching especially the constitution of the Swiss confederation.

The delegation from Great Britain believes that the time has come to take a step in advance on the way to the conclusion of a general agreement for the settlement, by means of arbitration, of every question capable of such a solution. It supports the principles which inspired the plans set forth by the delegations of the United States of America and Portugal.

The delegation from Austria-Hungary is, in principle, favourable to the idea of obligatory arbitration. It recognizes that the insertion of reservations based upon honour and vital interests of States takes away from the agreements thus made by the Powers their legally obligatory character, properly speaking, and makes thereof a moral obligation. But the fact that this obligation has never failed to be recognized by States seems to speak in favour of the system.

The delegation, however, is ready to examine any proposition and suggestion regarding the application of obligatory arbitration without the said reservations, for certain lists of cases.

The delegation from Siam will support any proposition tending to confirm the principle of arbitration, and will vote for the propositions submitted to the Conference, having for their purpose the extension and a more general application of this principle.

Mexico, which has twice resorted to the Hague tribunal and has loyally fulfilled the obligations imposed upon her, will enthusiastically endorse any proposition which shall have for its object the glorification of the Permanent Court and the facilitating of resort thereto. It believes that in admitting the power to establish a special arbitral tribunal by the agreement of the parties practical and beneficial need will be met, resulting to the profit of arbitration, that is to say, of peace.

The Mexican delegation proposes to add to Article 1 of the plan of the United States of America, after the words: 'shall be submitted to the Permanent Court of Arbitration,

established at The Hague by the Convention of July 29, 1899', the following words: 'unless the parties prefer to organize a special court by common agreement'.

This amendment [1] received the support of the delegation from the United States of America.

Examination in the Committee

As you know, the propositions submitted for the approval of the Conference were confided to the examination of a special committee (committee A), which held sixteen sessions, and proceeded to a deep and conscientious study of the serious problems which it found before it. No question was left in the dark; all were considered, scrutinized, and analysed with equal care and friendliness.

The committee of examination found before it such a large number of plans regarding the introduction of the principle of obligatory arbitration that some arrangement of the work was necessary. A table,[2] skilfully drawn up by Mr. Fromageot, classified the various propositions in a systematic manner, beginning with those which gave the broadest scope to arbitral settlements, and terminating with those which had the narrowest character. This order of discussion adopted, it was understood that the proposition [3] of the United States of America regarding the limitation of the employment of force for the settlement of contract debts, as well as that of the delegation from Uruguay [4] tending to the future organization of arbitration for a number of States, should be separately classified.

If the American motion concerning the limitation of the use of armed force for the recovery of contract debts was not placed among the other propositions relating to obligatory arbitration, it was because the committee could not agree upon its real character.

At the beginning of its labours the committee took occasion to proclaim this rule that the adoption of a clause in favour of obligatory arbitration, whatever it might be, could never imply recourse to a certain arbitral court, to the exclusion of any other. Your committee unanimously insisted upon declaring that the parties should always be free in the settlement of their differences to approach either the Permanent Court organized in 1899, or the permanent tribunal which might eventually be created, or any other arbitrators appointed as they pleased.

The proposition of the delegation of the Dominican Republic [5] is the first which came before the committee by reason of its general character. It expressed a *vœu* in favour of international obligatory arbitration without restriction.

The delegation from Denmark [5] had also drawn the attention of the Conference to the text of the conventions concluded by its Government, in the course of the years 1904, 1905, and 1907, with the Netherlands, Italy, and Portugal. They provided also for obligatory arbitration without reservation.

The committee did not think it should stop to discuss these formulas, the defeat of which in the Conference would be certain; it declared that it could not accept the principle of general obligatory arbitration without reservations.

The proposition presented by the delegation from Brazil [6] provides for obligatory arbitration in all questions which do not affect the independence, territorial integrity,

[1] *Actes et documents*, vol. ii, p. 887, *annexe* 26.
[2] Ibid. p. 999, *annexe* 69.
[3] *Post*, p. 491.
[4] *Post*, p. 487.
[5] *Post*, p. 475.
[6] *Post*, p. 474.

or essential interests of States, or the internal institutions or laws, or the interests of third Powers. It adds that, in all differences relating to inhabited territories, resort to arbitration shall not be had without the previous consent of the population interested in the decision.

This proposition aroused a certain number of objections.

Mr. Lammasch states that the plan, which seems to be of a broader scope than the others since it accepts the principle of obligatory arbitration even in the settlement of disputes of a political nature, provides on the other hand more reservations than do the other propositions. It seems too that reference to mediation and good offices goes outside the province of an arbitral convention.

His Excellency Mr. Milovanovitch believes that the combination of Articles 1 and 4 of the Brazilian proposal reduces the field of obligatory arbitration to such a point that nothing remains but the name. The exception as to internal laws seems to him especially doubtful, arbitrary, and contrary to the principle which sets conventions between States above internal laws.

His Excellency Mr. Martens calls attention to the fact that the draft of Article 1 of the Brazilian proposition is couched in such restricted terms that it actually excludes the greater number of the questions which were the subject of the fifty-five arbitral decisions rendered in the course of the nineteenth century.

His Excellency, the first delegate from Brazil, in defending his plan, believes that the reservations therein contained are sufficient to prevent any danger with regard to disputes of a political nature; he believes that the exception concerning internal institutions and laws is necessary; furthermore he has in view only cases where the execution of the laws has been confided to the magistracy; we cannot take from it jurisdiction of pending cases, or cause the judgements of national courts to be revised by foreign courts. He admits, too, that the question of denials of justice should be settled by an agreement between the Governments, but it cannot form the subject of a treaty providing for general obligatory arbitration. He does not understand why we should renounce the use of mediation and good offices to settle questions of a juridical nature.

His Excellency Mr. Ruy Barbosa does not admit that a State may be forced to submit to arbitration questions which it believes concern its essential interests; it should itself be the judge of the existence of these interests. But it will always be free to accept arbitration for the settlement of controversies of this character.

His Excellency Mr. Drago expresses the opinon that it would be practical in the convention to be signed to enumerate by name the cases for obligatory arbitration, instead of making reservations in vague and indeterminate phrases. This is the opinion shared by his Excellency Mr. Léon Bourgeois.

The Brazilian proposal was not seconded.

The committee of examination then took up the discussion of the propositions presented by the delegations from Serbia, Portugal, and Sweden.[1] The delegations of these countries supported their plans with remarks of a general nature.

His Excellency Mr. Hamnarskjöld believes that, if the Conference wishes to establish the principle of obligatory arbitration without reservation, it should do so for certain defined cases which it should set forth. It is also necessary to have a formula which contains a general conditional obligation to resort to arbitration. A simple enumeration would impose too narrow limits upon this peaceful means of settling international disputes.

[1] *Post*, pp. 471, 472, 471

We should open the way for its development and permit the constant increase of the cases in which it is to be applied. In spite of the reservations which it contains, a general clause is not without practical value, and a State which has any self-respect, said his Excellency the first delegate of Sweden, will hold its honour too dear to rely thereon without reason.

His Excellency Mr. d'Oliveira is also favourable to the insertion of a general formula which will accustom States to the idea that in questions of a juridical nature arbitration is the rule, and that there must be serious grounds for not using it. Reservations do not make the clause ineffective; it is simply that a State which does not keep its obligations may abuse its right to rely on these reservations, and public opinion will pass judgement upon it. Small States should not forget that arbitration is a benefit to them especially.

His Excellency recalls the fact that Article 16 *b* of his plan is the work of the Russian delegation at the Peace Conference, combined with provisions adopted by the Interparliamentary Conference which met in 1906.

It was said that Article 16 of the Convention of 1899 contained a more effective provision than the corresponding article of the Portuguese proposition. His Excellency Mr. d'Oliveira does not think so, because Governments have since found it useful to conclude numerous treaties of arbitration, the purpose of which was precisely that of transforming into the form of an agreement the simple recommendation of the old Article 16.

The objection has been made to the form of these treaties that they were not suitable for a universal treaty; what is fitting for a treaty between two States is not so for a collective treaty. But do not let us forget that this formula was proposed in 1899 for a universal treaty, and if it must be criticized, we should rather say that it is too restricted for special treaties.

His Excellency Mr. Milovanovitch believes that the principal question is to know whether we accept a principle of obligatory arbitration for certain defined cases, of such a character that it will be sufficient for a Power to express the desire to resort thereto in order to bind the other party equally thereto.

If the Conference decides to accept this principle, the extent of its field of application should be defined, and in this case, a general formula, providing for obligatory arbitration with reservations, which would cover the cases not enumerated, might be complementary thereto.

But, if no agreement is possible upon this ground, it would doubtless be injurious to introduce into Article 16 of the Convention of 1899 purely superficial modifications; we should limit ourselves to a simple recommendation therein in favour of the principle of obligatory arbitration.

Beginning the examination of the cases of obligatory arbitration contained in the Portuguese proposition, his Excellency Mr. Asser calls attention to those conventions which concern the civil law and over which the national tribunals have jurisdiction.

An international tribunal cannot settle disputes of this character, if the States do not take up the cause of their subjects and thus give it an international character.

Replying to the ideas of his Excellency Mr. Asser, which he shares, Mr. Lammasch would be disposed to propose as an addition to Article 16 *b* of the Portuguese proposition a provision saying: 'It is well understood that in the cases enumerated in . . . the arbitral tribunal shall not be competent to reform and declare invalid decisions of the courts of the contracting Powers, but that its duty shall be strictly limited to the interpretation of the treaty provision in dispute. However, this interpretation shall guide the authorities

of the Powers between which the arbitration has arisen, in the application of that provision in the future.'

This solution only partly answers the remark made by Mr. Asser, because he believes that to give the decisions of an international court the character of rules for national courts regarding the application of the law, would be to give them an authority which the greater part of the States do not recognize in their own courts of appeal.

But the discussion soon assumed a broader character; it gave rise to important declarations and the examination of general questions which to some extent govern all the plans submitted to the Conference. I think I should group them here together.

The German delegation declares that it cannot adhere to any of the projects which tend to establish universal obligatory arbitration for all questions of a legal nature or relating to the interpretation of treaties. We are unanimous in recognizing that there are among disputes of a juridical nature certain controversies which must necessarily be withdrawn from arbitration. They are those which concern the honour, independence, and vital interests of States. We should also admit that the question of knowing whether a particular dispute comes within this category should be decided by each Power in the exercise of its complete and sovereign independence.

This set of conditions, which even in a treaty between two States threatens the obligatory character of arbitration, must necessarily be aggravated by reason of the number of contracting States. In a treaty signed by all the Powers, the element of uncertainty contained in the restrictive clause would be such that it would remain an obligation in name only.

The constitutional provisions of certain States may also take away from every treaty of obligatory arbitration the bilateral character of the obligation and bind only certain contracting Parties.

The German delegation is therefore convinced that, under these conditions, the acceptance of the plans submitted to the Conference would constitute only an apparent progress; resort to arbitration will be obligatory in form only; it will not be so in essence.

The delegation of Austria-Hungary believes that the difficulties which will be met in the elaboration of a formula for obligatory arbitration should oblige the Conference to retain Article 16 of the Convention of 1899; but his Excellency Mr. Mérey suggests the idea of following this article with a sort of recommendation, accentuating and reinforcing the idea of arbitration. One might say: 'Consequently, it would be desirable that in disputes upon the questions mentioned above, the signatory Powers should, on occasion, resort to arbitration so far as circumstances will permit.'

In case of failure to reach unanimous agreement the delegation from Austria-Hungary would also be disposed to accept a provision which would apply obligatory arbitration to certain specified cases.

The Russian delegation, faithful to its traditions in 1899, believes it desirable to agree upon the enumeration of certain cases for obligatory arbitration. It would be necessary first to enunciate the general principle of arbitration, and then States should themselves designate the cases in which reservations as to honour and vital interests shall not apply.

His Excellency Mr. Martens believes that such cases exist.

His Excellency Mr. Léon Bourgeois adheres absolutely to the terms of the declaration of the Russian delegation. He believes in 1907, as he did in 1899, that the essential

question is : are there cases in which States can say in advance that neither their honour nor their vital interests are concerned ?

His Excellency the first delegate from Germany raised a certain number of questions of a general character relating to arbitration, which long occupied the attention of the committee because of their importance.

What effect and what scope should be given to arbitral awards when the dispute concerns the interpretation of a treaty concluded by several States—a universal convention for example ?

They are of course binding upon the parties to the cause ; but being *res inter alios acta* as to other Powers signatory to the convention, can they be enforced as to them ? It is difficult, however, to accept a situation which would permit the same treaty to have a series of different and even contradictory interpretations leading surely to the dissolution of universal unions.

Could we reply that similar difficulties are already possible to-day with voluntary arbitration ? The argument would not be in point ; because, in this latter case recourse depends upon the agreement of the States. They exercise their sovereign freedom and are alone the judges of the expediency of their actions ; the Conference, on the contrary in imposing obligatory arbitration would make itself by that very fact responsible for the annoying consequences which might ensue ; it should find some means of settling the difficulties to which the principle may give rise.

Several solutions of this difficulty have been presented. Mr. Fusinato proposed that the arbitral award concerning the validity or interpretation of a convention should have the same force as the convention itself, and should be equally well observed, except with regard to rights already vested at the time it might be rendered. When the arbitral award concerns the validity or interpretation of a treaty among several States, the parties as to which the judgement is given shall be required to communicate immediately to the contracting parties the text thereof

If three-fourths of the contracting States declare that they accept the interpretation of the point in dispute adopted by the arbitral award, this interpretation shall be binding upon all. In the contrary case, the judgement shall be of no value except between the litigant parties, and only as to the case which was the subject of dispute.

It is important to consider all of the signatory States of a convention as a sort of new organization, a special association ; it is proper for three-fourths of these States to have the power to make an arbitral award regarding interpretation binding upon all

His Excellency Baron Guillaume does not consider this solution sufficient answer to the ideas set forth by the German delegation, since it still permits one-fourth of the signatory States to interpret differently a clause of an international treaty. He proposes the following formula :

> Difficulties of interpretation or application of treaties to which more than two Powers have adhered, cannot form the subject of arbitral procedure without previous consent of all the Powers signatory or adhering to these treaties, to be given in each case.

His Excellency Sir Edward Fry finds a solution of the difficulties mentioned by his Excellency Baron Marschall in the text itself of the eighteen treaties of obligatory arbitration which are mentioned in the last report of the secretary general of the Permanent Court.

They all exclude from the field of obligatory arbitration differences which concern the interests of third Powers.

His Excellency Mr. Asser calls attention to Article 56 of the Convention of July 29 1899, which proves that the members of the First Peace Conference had already considered the question. This article says :

> The arbitral award is binding only on the parties who concluded the *compromis*.
> When there is a question as to the interpretation of a convention to which Powers other than those in dispute are parties, the latter notify to the former the *compromis* they have concluded. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

He believes that by combining this provision with the proposition of Mr. Fusinato we might find an equitable and juridical solution of the difficulties mentioned.

His Excellency Mr. Martens, for his part, believes this question should remain open, and that the award can bind only the parties who resort to arbitration, being limited to a moral influence upon the foreign offices. His Excellency the first delegate from Austria-Hungary would like to see these two principles adopted : restriction of effect of the arbitral award to the two litigant States, and an express provision that arbitral awards are not an interpretation and do not make the award binding except for the very case in dispute.

This opinion is not shared by his Excellency Mr. Milovanovitch, who requests a previous notice to all the signatory States of the intention to resort to arbitration ; but he insists that the arbitral award shall be an interpretation, not only as between the litigant States, but also generally in the sense that it shall be applied in the future in relations between the litigant States and all other States.

His Excellency Mr. Carlin does not admit that the Conference is competent to change conventions already in existence by inserting arbitration clauses therein or by changing those which already appear therein.

Several members of the committee, discussing the point of view of his Excellency the first delegate from Germany, dispute the statement that the difficulty raised with regard to treaties concluded by a certain number of Powers is peculiar to obligatory arbitration ; the same problems may arise when States are bound by voluntary arbitration clauses. The Universal Postal Convention itself contains a clause providing for obligatory arbitration without ever having caused any difficulty up to this time. His Excellency Mr. d'Oliveira is of the opinion that the differences of opinion which are feared may arise under the provisions of Article 16 of the Convention of 1899. The introduction of the principle of obligatory arbitration will, on the contrary, have the effect of giving Powers a guarantee of greater justice and of uniform interpretation. It will substitute for the many accepted methods of to-day, in settling differences of interpretation, the single remedy of arbitration. If the first award is open to attack, the second will correct it.

Such is the opinion of Messrs. Renault and Hammarskjöld, who, with Mr. d'Oliveira, maintain also that no principle of law is opposed to the modification of the scope of a universal convention upon specified points by the signatory Powers ; some could even agree between themselves to modify an arbitration clause and give it an obligatory character when it was only voluntary, reserving the vested rights of other States.

His Excellency Mr. Léon Bourgeois believes that this question is one more of form than of substance. The obligatory arbitration clause is either written into a

convention, and then the question is clear; or the convention contains only a provision for voluntary arbitration; two situations are then possible: if the Peace Conference is unanimous in saying that recourse to arbitration must be made obligatory nothing seems to prevent the signatory Powers here represented from accepting it. There will then be only the question of form to be decided, that is, the insertion in the convention of the decision reached by the Powers. If, on the contrary, the Conference is not unanimous, a certain number of States only agreeing upon the new principle, those States may act with complete freedom and may conclude a special supplementary convention.

The committee recognized the importance of the question presented, and discussed it for a long time; it charged some of its members to work out a formula which would satisfy all the interests involved.

This is what was worked out by a subcommittee:

> If all the signatory States of one of the Conventions enumerated herein are parties to a litigation concerning the interpretation of the Convention, the arbitral award shall have the same force as the Convention itself and shall be equally well observed.
>
> If, on the contrary, the dispute arises between some only of the signatory States, the parties in litigation shall notify the signatory Powers within a reasonable time, and they have the right to intervene in the suit.
>
> The arbitral award, as soon as it is pronounced, shall be communicated by the litigant parties to the signatory States which have not taken part in the suit. If the latter unanimously declare that they will accept the interpretation of the point in dispute, adopted by the arbitral award, this interpretation shall be binding upon all and shall have the same force as the Convention itself. In the contrary case, the judgement shall be valid only as regards the matter which formed the subject of the case between the litigant parties.
>
> It is well understood that the present Convention does not in any way attack the arbitration clauses already contained in existing treaties.

Another question, no less serious, was also brought to the attention of the committee by his Excellency Baron Marschall.

Treaties often contain provisions which oblige one party or the other to take certain administrative or legislative action. There is relatively no difficulty with regard to the former; but it is not so with regard to the latter. A State may find itself in a very delicate situation if the arbitral award, condemning the manner in which it has fulfilled its obligations, requires a change in its legislation rendered impossible by the opposition of a parliament. The responsibility of the Conference would be great if it created such inextricable difficulties; it cannot impose obligatory arbitration without solving first the problems to which it might give rise.

Here again, may we not ask whether voluntary arbitration does not cause the same difficulties?

Such is the opinion of their Excellencies Messrs. Bourgeois, de Beaufort, and Renault. At the time when the *compromis* is signed, they say, arbitration becomes obligatory upon the parties, although none of them can discount the decisions of the legislative power or promise the necessary ratification.

In such a case could the refusal of a parliament to pass a bill in accordance with the provisions of an arbitral award be considered as a case of *force majeure*? This opinion was defended by his Excellency Mr. Martens and by Mr. Lammasch, who believe that a State is not bound, any more than an individual, to perform the impossible, and that

it will have performed its duty when it has done what is within its power to obtain a modification of its legislation.

This legal thesis was rejected by Mr. Renault who does not admit that there is any case of *force majeure* permitting a State to break its international obligations. The distinctions between the different branches of the government of a country concern the internal organization of the State, but disappear before a foreign State. The Governments might also sometimes become accomplices of the legislative power, causing it to reject provisions which an arbitral award requires them to enact. Their Excellencies Baron Marschall, Messrs. Drago and Fusinato, shared that point of view, believing that a State cannot escape an international obligation by relying upon some internal obstacle ; the delegate plenipotentiary from Italy expressed the opinion also that in order to answer completely the objection raised by his Excellency Baron Marschall, the only way would be, in certain cases, to limit obligatory arbitration to treaties to be concluded in the future ; the Governments could thus be assured of the humour of the legislative power before the exchange of ratifications of the said treaties.

Such was the opinion of the British delegation which had formerly proposed to omit reference to treaties already concluded in the text of the first paragraph of Article 10 *b* of the Portuguese proposition ; but his Excellency Sir Edward Fry withdrew this motion later ; and then, after the adoption by the committee of a provision safeguarding the authority of decisions previously rendered by national tribunals, his Excellency the first British delegate joined the majority in favour of the principle of obligatory arbitration for treaty provisions, whether already in force or to be entered into in the future.

The legal problem raised by his Excellency Baron Marschall again appeared in almost the same way in two different forms : first, the interpretation of treaties which require one party or the other to take administrative or legislative measures ; secondly, the interpretation of conventions raising questions as to the competence of national tribunals.

What shall be the relations, in such a case, between the decisions of these national courts and the awards rendered by an arbitral tribunal ? The latter not being a court of appeal from decisions rendered by the national courts, the action of the legislatures is necessary to give legal force to the arbitral award.

In the eyes of his Excellency the first delegate from Germany this difficulty is great ; we cannot hope for the acceptance by parliaments of a clause providing in a general way that arbitral awards, whatever they may be, shall always have the same force as law in the country ; this would really be going beyond its powers ; then the problem will still be the same : may the State argue on the basis of the opposition which it meets in its legislature and rely upon a case of *force majeure* to avoid its international obligations, for failing to execute an international award ? He does not think so ; this rule would be of a nature to create great disturbance in international relations, and might even sometimes encourage legislatures intentionally to set up the case of *force majeure* above-mentioned.

Mr. Lammasch does not think the problem so difficult to settle as it seems at first sight. The arbitral award will have no retroactive effect ; it will not modify the private interests in controversy ; the arbitral award will interpret the convention only for the future. The decision will have the force of law from the very fact that the parties have signed a *compromis* ; and so long as they have not denounced the convention, the action of legislatures will not be necessary.

Besides, he could not see any difficulty in inserting in international acts a clause providing

that the States recognize in advance the binding character of interpretations made by arbitral awards. It will rarely happen, furthermore, that the awards will have the effect of modifying the laws contained in the codes of the States.

This opinion is shared by Mr. Fusinato.

His Excellency Mr. Milovanovitch, taking the same point of view, called attention to the fact that States will always have as a last resort the right to denounce conventions the interpretation of which will give rise to conflicts between their executive and legislative powers. But he believes that public opinion, the supreme judge of this matter, is not so unfavourable to the idea of arbitration as to justify the fear that this necessity will frequently present itself.

Their Excellencies Messrs. Hammarskjöld and d'Oliveira find the same difficulties in this question as exist in all international law. Its laws are incomplete because they lack sanction. Obligatory arbitration, far from adding a new difficulty, will have the effect of weakening those already existing.

His Excellency Mr. Ruy Barbosa believes that States cannot sign treaties which would provide international obligations in contradiction to the fundamental principles of national law. That is what would happen if we had in the International Court a revision of certain decisions of national courts. We cannot admit that the decisions of national courts are not final. There would no longer be any *res judicata*; a claim might arise at any time and thus open up the case for revision.

On the other hand, can we admit that arbitral awards make law for the future only, by establishing rules which would be binding upon the national courts in cases of the same kind to be decided in the future?

> Up to the present time [he said] we have seen in arbitration only a means of settling pending cases. If a dispute arose which could not be settled, the interested parties sought by arbitral award to arrive at an agreement in a friendly way. Arbitration was considered only as a final remedy to settle a disputed question, never to decide in advance questions which might arise in the future. We may perceive there the impassable abyss which separates the present idea of arbitration from that which seems to imply the recognition of further results from an arbitral award.

Arbitral courts would not render judgements then; they would really enact laws for the countries in the case.

Mr. Renault recognizes that the question is one of extreme gravity in international relations. He compares international justice with national justice. It might be that a system of law might become established in some country which the Government would consider contrary to the spirit of the law. What will be its action? It will have an interpretative law passed which would be binding upon the courts. There should be in international matters similar means to prevent an objectionable interpretation of treaties.

It has been said that a Government which was not satisfied with the interpretation given to a convention had only to denounce that convention. This radical solution would be especially inimical in the case of universal treaties, because a State would be forced to the alternative of accepting an objectionable interpretation or of withdrawing from the convention.

Neither does Mr. Renault think that a Government can set up the refusal of the legislature as a case of *force majeure*. If a judgement is rendered against a State there is an international obligation, and this falls upon all its powers.

He does not admit that the assistance of the legislature is always necessary to give legal force to an arbitral award. If the legislative power has approved the convention providing for obligatory arbitration, that is sufficient to compel it to accept the interpretations which may be given by arbitral courts.

A subcommittee, composed of Messrs. Fusinato, Asser and Mérey, was authorized to seek a formula which would avoid the objections set forth; it proposed to limit cases of obligatory arbitration to 'disputes concerning the interpretation or application of conventions concluded or to be concluded and enumerated below, so far as they refer to agreements which should be directly executed by the Governments or by their administrative departments'.

This subcommittee, which had not taken sides on the question of principle, asked that the minutes should state that the restrictive formula added to section 1 of Article 16 *b* of the Portuguese proposition had been written in a conciliatory spirit, after an interchange of views in the committee of examination, and with the intention of excluding the conventions in question from obligatory arbitration, so far as they refer to provisions the interpretation or application of which, in case of dispute, is within the jurisdiction of national courts.

Would not this formula result in seriously modifying the propositions already presented? 'If we provide', said his Excellency Mr. Drago, 'that conventions subject to judicial interpretation shall not be the object of obligatory arbitration, only questions of an administrative character will be submitted to it, and these, most often, are of a political character.'

To his Excellency Mr. Hammarskjöld the proposed draft is wrong in not distinguishing between direct obligations between States and relations which international treaties may establish between individuals. The State which has assumed contractual obligations is responsible in all its powers, and should ensure the execution of the treaty by all of its departments.

The solution proposed by the subcommittee was supported by a communication which his Excellency Mr. Asser, in his individual capacity, addressed to the committee concerning the very nature of the international arbitration which it was proposed to make obligatory in certain cases.[1]

> According to some [said his Excellency], international arbitration is destined in cases between States to be what ordinary tribunals are in cases between individuals. According to this conception, international arbitration has for its purpose the application of law to a special case which has given rise to a dispute between two or more States. The arbitral award may have for its object the sentencing of the defendant to perform or permit a certain act, to pay a sum of money, etc., or perhaps the determination of frontiers between States or any other special regulation with regard to which a disagreement has arisen.
>
> If it is a question of the interpretation of a convention, this interpretation is given with reference to a special case; if the same difference arises later in another case the new arbitrators are at liberty to decide it according to their judicial ideas. The precedent does not bind them, unless there is ground for pleading *res judicata*.[2]
>
> In other words, the arbitral tribunal cannot render an award which is legally binding in the future, any more than can national tribunals (*arrêt de règlement*).
>
> According to this idea of arbitration, it could not be applied except in cases where

[1] *Post*, p. 480.

[2] See the arbitral decision in the case of the 'Pious Fund of the Californias'.

States themselves are litigant parties, and where it is a question of obtaining a judgement with regard to reciprocal obligations or to their rights as States, flowing either from treaties or from some other source of international law.

It is important, therefore, to distinguish between treaty provisions in which one State makes direct promises to another State or its *ressortissants*, and those in which it agrees only to give legal force to certain provisions contained in the Convention. With regard to the latter, the State (or its Government) has fulfilled the duty which falls upon it by virtue of the treaty, as soon as the provision in question has been given the force of law in the manner prescribed in the State's constitution (either by ratification of the treaty itself, after parliamentary [in the United States, congressional] approval where it is required, or by the insertion of the treaty provision in a national law).

The interpretation of these provisions, thus become an integral part of the national legislation, is within the jurisdiction of the national tribunals.

According to the other idea developed in the committee, international arbitration has for its definite purpose legislation for the future, in the sense that judgements are considered as the complement of the treaties themselves. Nothing then is against resort to arbitration with regard to a dispute in which a judgement has been entered, even in a court of last resort, under the national judicial system. While respecting this decision in the special case in question, the arbitrators in some measure take the place of the contracting parties themselves, completing the convention by their judgement, which, in truth, has the force of an additional protocol.

I do not in any way fail to recognize the usefulness of such an application of international arbitration; I believe especially that in the case of the *Unions* which have not yet introduced obligatory arbitration it would be marked progress.

But it seems to me clear that where it is a question of introducing *universal* obligatory arbitration into international law for the first time, without the reservation as to vital interests or national honour, we should be content with an arbitration of the more restricted scope, first above set forth.

This will not prevent States from concluding special conventions for the organization of a more effective and radical form of international arbitration. When the question arises of avoiding difficulties which may result from the differing interpretations of the same convention by the courts of the different contracting States, then especially can the new Permanent Court of Arbitration render great service as a court of appeals or a court of regulation.

There already exists an international court intended to ensure the uniform interpretation of a convention; that is, the Central Commission for the Navigation of the Rhine, established by the Acts of Navigation of 1831 and 1868. It passes as a court of last resort upon differences arising out of the general regulations concerning the navigation of the Rhine.

His Excellency Mr. Asser concluded by stating that the application proposed by the subcommittee to be inserted in the minutes, would avoid all doubts by making a slight modification, consisting in the statement, 'with the intention of excluding from the operation of obligatory arbitration treaty provisions intended to form part of national legislation of which the interpretation and application, consequently, in case of dispute are within the jurisdiction of national courts', instead of 'with the intention of excluding from the operation of obligatory arbitration the treaties in question so far as they refer to provisions of which the interpretation and application, in case of dispute are within the jurisdiction of national courts'.

This view was opposed by his Excellency Mr. Milovanovitch, who does not think that there is any legal reason or practical necessity for setting a limit to arbitration in these matters. We cannot admit that the legal bond created by a convention between sovereign States

shall stop where the authority of the judicial power begins. A State which may no longer be required to accept or execute an arbitral award because it is contrary to *res judicata* or to the interpretation accepted by the national courts, should, quite logically, be able to refuse to execute all of its contract agreements as soon as its courts place an obstacle in the way thereof. Would not this hark back to the statement that the judicial power, which is actually but one of the three essential divisions of sovereignty, has been placed above sovereignty itself, from which it comes and of which it is an integral part?

There remains the observation that a State, in which the principle of the separation of powers is established, if it accepts obligatory arbitration for questions of judicial jurisdiction will find it absolutely impossible to carry out its agreements, in the face of a conflict between arbitral awards and the decisions of national courts, and in the face of the more than probable prospect of a public opinion favourable to the national courts. There again is the result of an erroneous conception of the nature of international arbitration and of the arbitral award. We must recall above all that arbitration is complementary to the convention from which it springs and that the arbitral award is not pronounced on the basis of the validity or of the good reasoning of the decisions of the national courts, but solely and exclusively upon the meaning, scope, execution or violation of their reciprocal promises. The arbitral award against a State may require it either to repair injuries and damages, or to take measures so that in the future its agreements shall be executed in accordance with the meaning and the scope given to them by the decision. The judgements rendered by national courts are in no case and in no way affected by the arbitral award, and in the future the national courts must conform not only to the decision but to the laws, decrees, rules, or any other act by which the losing State carries out the award and conforms to its provisions.

The committee adopts proposal No. I of the subcommittee by a vote of nine to three. Proposal No. II after a separate vote upon the four paragraphs which compose it was passed by a vote of thirteen to three.

As I have already said, the sincere desire felt by the committee to find a formula which would bear witness, on the one hand, to a real sympathy for the principle of obligatory arbitration and which would receive, on the other hand, unanimous or almost unanimous support, aroused brilliant debates and brought forth many propositions and counterpropositions.

The delegations from Portugal, Serbia, and Sweden were the first to propose to the Conference a clause providing a certain number of cases of obligatory arbitration wherein the contracting Powers were agreed not to avail themselves of any reservation based upon the honour or vital interests of the States.

The British delegation called attention first of all to the fact that it would be extremely difficult for a state whether the many conventions appearing upon the Portuguese list, Article 36, did contain any provisions concerning honour or vital interests. It had not thought it possible to make investigations on this point in time to be of any value, but it soon changed its point of view and itself proposed a draft of a convention which was to be further modified somewhat, but which still preserved such a general resemblance to the Portuguese provision that his Excellency the Marquis de Soveral was soon able to support it.

The same thing happened in the case of the delegation from the United States of America, which began by making the following declaration :

> My Government is an ardent supporter of obligatory arbitration and it highly appreciates the relative merits of the many propositions submitted for our consideration. But it knows the difficulties of a practical application thereof, and it believes that every proposition containing a list of conventions which are excepted from the general article setting forth the reservations, instead of simplifying the question, would raise serious complications. It would be necessary, further, to take a relatively long time to study in a thorough manner the character and scope of each of these conventions.
>
> The American Government also prefers a formula more familiar to the nations than the one proposed, which is entirely unknown and a matter of experiment.
>
> Consequently, our Government, while being—I repeat it—an ardent supporter of obligatory arbitration, could not authorize us to vote in favour of a proposition containing a list of the conventions to be submitted to obligatory arbitration.

It then submitted on August 26 a proposal, also based upon the Portuguese draft leaving to the ratifications of the Convention the determination of the cases on which the States would be understood to agree.[1]

We were therefore confronted with five proposals, one Portuguese, one English, one American, one Serbian, and one Swedish, without counting the formulas presented for certain articles, notably texts proposed by the subcommittee presided over by Mr. Fusinato.

The first two articles of the American proposition, being considered a summary of similar provisions contained in the other plans, were discussed and adopted on the first reading.

The Belgian delegation had asked for the insertion in the first part of Article 1 of the word ' exclusively ' before the expression ' of a legal nature '. This amendment was not openly objected to, but was not accepted ; it was agreed, however, to substitute the words ' and especially those ' instead of the word ' or '.

The committee had stated, in fact, that the text submitted for its examination was open to question ; it was susceptible of the wrong interpretation that, as regards the interpretation of treaties, questions *of a judicial nature* are not the only ones which may come within the domain of arbitration. The exclusion of disputes of a ***political*** character was not sufficiently explicit.

With this in view, the committee introduced into the text of this article the modifications which I have just had the honour to note.

The single word ' arbitration ' was substituted for the words ' of the Permanent Court of Arbitration '.

As regards the statement of reservations contained in Article 1, the word ' honour ' was retained, in spite of the proposal of Mr. Lange, who asked that it be omitted ; the same fate befell ' interests of third persons ', which no longer figured in the second edition of the Portuguese proposition.

The article, thus adopted on the first reading, was drawn up as follows :

ARTICLE 1

> Differences of a legal nature, and especially those relating to the interpretation of treaties existing between two or more of the contracting States, which may arise

[1] *Post*, p. 482.

between them in the future, and which it may not have been possible to settle by diplomacy, shall be submitted to arbitration provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of any of the said States, and do not concern the interests of other States not involved in the dispute.

Article 2 of the American proposition brought forth no observation ; this is the draft thereof :

ARTICLE 2

Each signatory Power shall be the judge of whether the difference which may arise involves its vital interests, independence, or honour, and consequently is of such a nature as to be comprised among those cases which are excepted from obligatory arbitration, as provided in the preceding article.

Article 3 of the British and Portuguese propositions provided that disputes concerning the interpretation and application of a certain number of treaties and conventions, itemized therein, should be submitted to obligatory arbitration without reservation.

The detailed examination of this series of conventions was, in truth, limited to a very few cases only. At the beginning, the first number on the Portuguese list, ' treaties of commerce and navigation ', held the attention of the committee particularly.

Without dispute commercial conventions were recognized as the source of delicate problems—even important political questions—which it would be impossible to submit to obligatory arbitration.

Would it be necessary in order to avoid this difficulty to make certain reservations to exclude them from the sphere of obligatory arbitration ? This would change the very character of the list provided for in Article 16 *b* of the Portuguese proposition, the very object of which was to place a certain number of cases of arbitration beyond the reach of all reservations. Besides, it would not be easy to determine what conditions should determine the political character of a dispute. It was recognized that it would be more judicial to set forth exactly the clauses which, generally contained in commercial treaties, should be especially designated as proper bases for obligatory arbitration.

This distinction was sought by several members of the committee, and his Excellency Mr. Hammarskjöld reported the results of this investigation in the following terms :

Obligatory arbitration, rejected for ' treaties of commerce and navigation ', the scope of which is too broad and too complex, might be proposed *for the interpretation* :

Of treaty provisions concerning tariff duties ;

Of clauses granting foreigners the right to pursue commercial navigation personally under certain restrictions ;

Of clauses regarding taxes collected from vessels (dock charges, lighthouse dues, and pilot fees), salvage taxes and charges imposed in case of damage or shipwreck ;

Of clauses concerning the mooring of vessels ;

Of clauses providing for the equal treatment of foreigners and nationals as regards taxes and imposts ;

Of clauses relative to the right of foreigners to pursue commerce or industry, to practise the liberal professions, where it is a question of a direct grant, or of providing equal treatment of foreigners and nationals ;

Of clauses providing the right of foreigners to acquire and hold property.

Several observations were made also concerning certain numbers of the list contained in Article 16 *b* of the Portuguese proposition ; they concerned especially extradition conventions and those relating to matters of private international law. Other reservations were

also made. His Excellency Mr. Drago declared that he could not accept the submission to arbitration of laws against epizooty or other diseases of animals and plants. His Excellency Baron Marschall observed, for his part, that certain conventions concerning railroads are of such a nature as to present the character and scope of political or even military treaties, and hence go beyond the bounds of obligatory arbitration.

Exceptions of the same character were again presented concerning differences which concern the determination of boundaries, capitulations, diplomatic and consular privileges.

The lists contained in the various propositions were therefore worked over; some of the items were the same, while each list still retained some items peculiar to it.

The committee was still divided.

His Excellency the first delegate from Germany observed that the result of the discussion which had just taken place in the committee was that the question was immature, and that it would be imprudent to wish to solve it before the proper time. By voting prematurely for obligatory arbitration, we should only sow discord among nations.

His Excellency summarized his ideas and point of view by reading the following declaration at the time when the vote was about to be taken upon the Portuguese proposition as amended by the British delegation:

> Article 16 *b* provides that in the case of disputes concerning the interpretation and application of a series of international treaties and conventions, arbitration shall be obligatory without reservation. It has been impossible for the committee of examination to examine thoroughly the innumerable international provisions which are contained in the list. And yet such an examination would have been, in our opinion indispensable.
>
> We have noted certain serious objections which would not fail to appear:
>
> 1. Contradictory arbitral awards concerning the interpretation of universal treaties would menace the very existence of these treaties.
>
> 2. Arbitral awards in contradiction to the judicial decisions of national tribunals if called upon to interpret and apply the international treaties would create an impossible situation.
>
> 3. Arbitral awards requiring a State to modify its laws by virtue of an international treaty might provoke serious conflicts with legislative bodies.
>
> None of these questions could be solved by the drafting committee.
>
> The German Government is disposed to insert in international treaties a suitable obligatory *compromis* clause where the provisions are suited to it, but it could not undertake in a world treaty to assume obligations the scope and effect of which it is absolutely impossible to foresee.

His Excellency Mr. d'Oliveira, in the name of the Portuguese delegation, supports the propositions presented by the British delegation, and joins his Excellency Sir Edward Fry in asking that the committee be called upon to decide without delay the point as to what are the questions which do not concern in any way either the honour or essential interests of States, and which are of such a character that they may be submitted to obligatory arbitration. He agrees, furthermore, to accept all suggestions and all modifications concerning the ***application*** of arbitration, so that the difficulties noted in the course of the discussion concerning the execution of awards may be avoided.

The Belgian delegation believes that in no treaty is it possible to foresee whether its interpretation or application will not, under certain circumstances, raise questions of such a character as to involve the sovereignty and security of States. It states that this observation has already been made without being answered in a satisfactory manner.

> For those who do not share our opinion [said his Excellency Baron Guillaume] the reservation which we ask to have inserted will be inoperative; we do not understand how it can be injurious.

His Excellency Baron d'Estournelles de Constant, while recognizing the value of the observations made during the course of the discussion, believes that the committee should not stop there.

> Certainly he said, these difficulties are great, but that is precisely why we are gathered here, and that is also why we should be determined to solve them. The proof that these are not insurmountable has just been vividly shown us by his Excellency Sir Edward Fry. You recall the scruples and apprehensions which our eminent colleague from Great Britain had himself voiced, in our preceding sessions, concerning the establishment of a list; it seemed that it was impossible to agree upon it; we have agreed, nevertheless. In his double capacity of jurisconsult and statesman, his Excellency Sir Edward Fry, after having called attention to the difficulty, has found the means for overcoming it; and that within a few days. You have just listened to the reading of his list. What do you want of a more decisive character? After this experience and all of those which have come from our discussions, are we going to stop in the midst of our work, abandon the fruit of our endeavours and our efforts?

The committee in 1907, as in 1899, has undertaken a considerable work which cannot be without fruit. An agreement is possible; it is demanded by public opinion; it is important to realize it by following the example of the Powers, already so numerous, which have not feared to agree upon obligatory arbitration in formal treaties, without regard to possible objections. His Excellency Baron d'Estournelles de Constant cites the treaty between Italy and Denmark, signed December 16, 1905, which contains a clause going far beyond the provisions of the proposition submitted to the Second Peace Conference. This article says:

> The high contracting Parties agree to submit to the Permanent Court of Arbitration established at The Hague by the Convention of July 29, 1899, all differences of whatever nature which may arise between them, and which could not be adjusted through diplomatic channels, and even in the case where the differences may have originated in facts prior to the conclusion of the present Convention.

The American States provide us with a similar example, and have also signed among themselves numerous treaties of obligatory arbitration without reservation.

His Excellency Count Tornielli believes that in any condition of affairs it is important that the question as to whether we should accept the system proposed by Portugal and other States—consisting of accompanying the declaration of the principle of obligatory arbitration by a list—should not be prejudiced by the acceptance or refusal of the points which may be put to vote; the Italian delegation reserves the right to pass upon this question when the vote upon the items shall be concluded, and when it is possible to pass judgement upon the importance of the list resulting therefrom.

The refusal of the Italian delegation to accept certain items will not signify that the Cabinet of the Quirinal will not later accept some of them, perhaps even the same items. Its refusal simply establishes the fact that it does not believe itself authorized at present to bind the royal Government by voting for those without sufficient preparation.

The Italian delegation also calls attention to the fact that the application of the principle of obligatory arbitration to conventions establishing rules to be unanimously applied to individuals in the territory of each contracting State, gave rise to prolonged discussions

in the committee of examination. Upon going to the bottom of these discussions it must be recognized that the difficulties which may arise with regard to these conventions are of such a nature that they are rather to be settled by a real permanent international judicial Court, than by arbitration.

For these reasons the Italian delegation will abstain from voting on Nos. 9, 10, 11, 17 and 18 of the Portuguese proposition, and it expresses the hope that 'conferences at present existing for the codification of private international law will study the means of ensuring uniformity in the application and interpretation of uniform rules of private law, national or international'.

His Excellency Mr. Carlin declares that his Government does not consider at present that it is sufficiently informed upon the nature and extent of the differences which may arise with regard to matters enumerated under letter A of the proposition of the Portuguese delegation (revised edition).[1] His Excellency must therefore reserve his vote upon these matters as well as upon letter B of Article 16 *b*, the form of which has been modified.

As regards letters C and D, for which he has received an order to vote in the negative, he has the honour to refer to the declaration of the delegation made at the meeting of the First Commission, first subcommission, on July 8 last.

His Excellency the first delegate from Switzerland also presents a proposition[2] which to his mind offers two advantages:

1. It places the idea of obligatory arbitration in the Convention.
2. It will receive the unanimous support of all votes.

This system offers sufficient elasticity to allow those who wish to go far into the matter of arbitration mutually to agree upon a large number of cases chosen from the list.

As for the States which are less favourable to this procedure, they may limit themselves to a choice from the same list of a more restricted number of subjects.

States which do not think that they can at present bind themselves upon any subject will only abstain from any communication.

With the Swiss proposition there would be no reason for calling together a committee, the Governments would of themselves successively support items 1, 2, 3, 4, &c., without being obliged to call for another meeting.

Thus, during the period between two Peace Conferences, the idea of obligatory arbitration would automatically develop.

His Excellency Mr. Ruy Barbosa makes the following declaration:

> Before taking part in a vote upon the various subjects in the list of cases for obligatory arbitration, a great number of which it supports, the Brazilian delegation declares again, that whatever may be the provision adopted, such provision will not bind it to submit to arbitrate disputes upon which the national tribunals may have already passed.

Mr. Streit is not yet ready to declare whether the Grecian delegation will be able to accept any of the categories mentioned in the Portuguese project without the clause regarding vital interests and national honour, his instructions not authorizing him to do so. The Grecian delegation is therefore obliged to abstain from any vote in this connexion, although it is not unfavourable to the principle of obligatory arbitration, which it does not consider incompatible with the reservations mentioned, if they are interpreted in a strictly legal sense.

[1] *Post*, p. 479.

[2] *Post*, p. 476.

His Excellency the first delegate from Austria-Hungary, who supports the reservation made by Brazil, declares that he holds his vote subject to certain conditions, the purpose of which is to give to the result of the deliberations a serious and practical character.

> As we are called upon [said his Excellency Mr. Mérey] to prepare, to point out, as we might say, a decision to be reached by the First Commission and then by the Conference, and as it . . not a question here of reaching a restricted agreement, my vote is not given and will not be final except on condition that most, if not all, of our colleagues shall be disposed to make a similar agreement.
>
> As it is a question, too, to adopt a term used by our eminent president, of 'future experience', in the field of obligatory arbitration, it would seem to me necessary to limit the duration of the possible provision to five years at the most.

His Excellency had also previously announced that in case the result of the work of the committee should be negative or of too little consequence to be complete, he desired a form establishing :

> 1. That we are in accord upon the principle, that is to say, that obligatory arbitration may be applied to certain treaties.
>
> 2. That some difficulties exist in the discussion of certain cases on which it is not possible to agree.
>
> Consequently the Conference would invite the Governments to have the question studied and the results of this study would be then submitted to an international committee of limited powers.

His Excellency Mr. Mérey reserves the right to present this 'resolution' at the proper time

Finally our eminent president expressed himself in these words :

> Before voting, I think it useful to make three statements.
>
> The first is this. Whatever may have been the difficulties, the vigour and, at times, the warmth of our debates, a common sentiment which unites us has come from it all.
>
> We might say in short that the unanimous desire of the members of the committee of examination is that obligatory arbitration should come forth victorious from the Peace Conference. We have all in our turn expressed this desire and his Excellency Baron Marschall has done so in particularly happy terms. We are in accord upon the principle, and we should proudly proclaim it.
>
> In the second place, the discussion has produced this result, it has shown us the difficulties which we feared at the beginning. Thus, from the first meeting, vigorous criticism has been directed against the system of submitting to obligatory arbitration treaties as a *whole*. Thanks to the patient work of several of our colleagues, such as his Excellency Mr. Hammarskjöld and Mr. Fusinato, the questions submitted for your examination are all defined by the determination of their object. We are therefore in accord upon the second point : to clarify the problem and bring before us not treaties as a whole, but particular cases considered in their actual surroundings.
>
> Finally, our agreement is assured upon a third point. His Excellency Baron Marschall has told us that Germany was disposed, in the case of treaties to be concluded and when the subject-matter suited it, to make obligatory arbitration more all-pervading in international practice. This customary adoption of the *compromis* clause is for the future, gentlemen, a rule of conduct which will be morally imposed upon the international community.
>
> Our agreement upon these different problems being thus recognized, the question now is whether it is possible to form between us to-day a legal bond concerning specified cases of arbitration.
>
> I thank his Excellency Count Tornielli for having indicated to us what would be the best method of voting in order to arrive at an agreement upon the last point.

I think that we can, as he has suggested, take one after the other, the articles on the lists which have been submitted to us, and make known our opinion successively upon each of them without in any wise being bound because thereof in the final vote.

We will thus remain masters of our decisions upon the whole to the end of the discussion, and the results of these separate votes will enlighten us and guide us in our final decisions.

If you are willing, gentlemen, to agree to these various matters, the result will be a greater ease in debate. That will bring us to the end which we have in view, to reach an agreement.

The votes cast on the first reading of the various lists of clauses and conventions contained in Articles 16 *a*, 16 *b*, and 16 *c* of the British and Portuguese propositions, as well as in the Swedish and Serbian propositions, showed a serious disagreement in the committee. The largest majority obtained did not exceed two-thirds of the countries represented; furthermore, this majority was not reached in more than one case. It may be a question too, whether the delegations which formed part of the majorities attained, were in all cases the same.

It is to be observed, too, as to the result of these ballots, that the delegations of Austria-Hungary, Great Britain, and Sweden cast their votes with the reservation that at least half, or nearly all, of the whole number of votes must be cast as theirs were.

Here is the table of votes cast:

British and Portuguese Propositions[1]	*For*	*Against*	*Not Voting*
ARTICLE 16 *a*			
A. Interpretation and application of treaty provisions concerning the following subjects:			
1. Customs tariffs	9	2	
2. Measurement of vessels	11	4	
3. Wages and estates of deceased seamen	10	3	
4. Equality of foreigners and nationals as to taxes and imposts	10	4	4
5. Right of foreigners to acquire and hold property	9	5	4
6. International protection of workmen	11	2	5
7. Means of preventing collisions at sea	11	2	5
8. Protection of literary and artistic works	9	4	5
9. Regulation of commercial and industrial companies	9	4	5
10. *a*. Monetary systems	9	4	5
b. Weights and measures	11	3	4
11. Reciprocal free aid to the indigent sick	12	2	4
12. Sanitary regulations		7	5
13. Regulations concerning epizooty, phylloxera, and other similar pestilences		6	4
14. Private international law		8	4
15. Civil or commercial procedure		4	5
Portuguese Proposition			
ARTICLE 16 *b*			
2. Taxes against vessels (dock charges, lighthouse and pilotage dues, salvage charges and taxes imposed in case of damage or shipwreck)			
5. The right of foreigners to pursue commerce and business, to practise the liberal professions, whether it is a matter of [illegible] grant, or by being placed upon an equality with [illegible]		4	4
10. Patents, trade-marks, and trade name		9	5
12. Geodetic questions		7	5
13. *b*. Questions of repatriation		6	5
14. Emigration		7	5

[1] *Post*, pp. 478–479

British Proposition	*For*	*Against*	*Not Voting*
ARTICLE 16*a*			
B. Pecuniary claims for damages, when the principle of indemnity is recognized by the parties	11	4	3
Swedish Proposition[1]			
ARTICLE 18			
2. In case of pecuniary claims involving the interpretation or application of conventions of every kind between the parties in dispute .	9	6	5
3. In case of pecuniary claims arising from acts of war, civil war, or the arrest of foreigners, or seizure of their property	7	6	5
Serbian Proposition[2]			
ARTICLE 1			
11. Postal, telegraph, and telephone conventions	8	3	7

At the meeting following the balloting, his Excellency the first delegate from Austria-Hungary presented his plan to submit to the deliberations of the committee a form implying, on the one hand, an agreement upon the principle of obligatory arbitration, and on the other hand, inviting the Governments to proceed within a given time to a serious examination and deep study of the cases to which the obligation might be applied.

Here are the provisions of the resolution[3] of his Excellency Mr. Mérey:

RESOLUTION

After having conscientiously weighed the question of arbitration, the Conference has finally come to the conclusion that certain matters, carefully specified, are susceptible of submission to obligatory arbitration without any restriction, and that those which lend themselves particularly to this method of settlement are disputes regarding the interpretation or application of certain international conventions—or parts of conventions—appearing among those which are contained in the proposition of the Portuguese delegation.

Most of the matters in question being more or less technical in character, any decision as to the extent to which and the conditions under which obligatory recourse to arbitration might here be introduced, should, however, be preceded by such study as is beyond the competence of the Conference and can be entrusted only to experts, inasmuch as it requires special knowledge and experience. The Conference, therefore, invites the Governments after the close of the Hague meeting to submit the question of obligatory arbitration to a serious examination and profound study. This study must be completed by the . . ., at which time the Powers represented at the Second Hague Conference shall notify each other through the royal Netherland Government of the matters which they are willing to include in a stipulation regarding obligatory arbitration.

His Excellency summarized the contents of the resolution in these words:

After having considered this subject with all the attention which it deserves, the Conference can state that there exists within the limits which are still to be clearly and distinctly fixed, certain matters which, in case of dispute, may be required to be

[1] *Post*, p. 474.
[2] *Actes et documents*, vol. ii, p. 890, *annexe* 20.
[3] *Post*, p. 485.

submitted to arbitration without reserve. This method of settlement appears to recommend itself particularly for disputes arising from a difference of opinion as to the interpretation or application of certain international conventions—or parts of conventions—which might be taken from the list appearing in the proposition of the Portuguese delegation.

Now, the matters in question having for the greater part a more or less technical character, we could scarcely avoid a preliminary examination before determining which cases, upon occasion, might be included within the domain of obligatory arbitration in the future. It is evident that the Conference is not competent to go ahead in this matter with a full knowledge of all the details which it must consider; such a task should, on the contrary, be undertaken by experts versed in the matters in question.

Under these circumstances the Conference hands over to the Governments themselves the duty of taking in hand this preparatory work with a view to reaching an international agreement, sanctioning, within the limits which they consider wise, the principle recognized by the Conference.

The Austro-Hungarian delegation recalls, also, on this occasion, that at the very threshold of the discussion upon obligatory arbitration, it had proposed to Article 16 of the Convention of 1899, an amendment which had not yet been discussed, but which it did not intend to abandon.

It is only after having cast the votes above-indicated upon the various lists of clauses and conventions enumerated in the American, British, Portuguese, Serbian, and Swedish propositions, that the committee agreed upon the provisions of the article which should contain them.

The drafts deposited by the delegations of Great Britain and Portugal both provided:

> The high contracting Parties agree to submit to arbitration without reserve disputes concerning:

This form was accepted.

A discussion arose concerning the British proposition providing:

> It is understood that arbitral awards shall never have any but an interpretative force, without any retroactive effect upon prior judicial decisions.

His Excellency Mr. Milovanovitch, in the presence of this new plan, withdraws Article 4 of the Serbian proposition. He declares that this article was presented to provide for the very observations made by the British delegation; the Serbian delegation does not in any way oppose the retroactive effect of obligatory arbitration as to existing conventions.

So far as the new British proposition is concerned, its text is not satisfactory to him and he cannot vote for it if it is not made more definite; it must not be possible for any one to draw the deduction therefrom that the arbitral award shall always have an exclusively interpretative character.

The British delegation having insisted upon the terms of its proposition, it was rejected by an equally divided vote, while the committee adopted by a vote of nine to three, on the motion of the Fusinato subcommittee, the following draft:

> Disputes concerning the interpretation or application of the conventions concluded or to be concluded and enumerated below, so far as they relate to agreements which should be directly executed by the Governments or their administrative departments.

The proposition of the Fusinato subcommittee concerning the value of an arbitral award relating to the application or interpretation of a convention with regard to the signatory Powers not parties to the litigation, was then adopted with certain modifications.

The plan submitted to the committee provided in paragraph 3 thereof, *in fine*:

> In the contrary case, the award shall be valid only in a case which has been the subject of suit between the parties in litigation.

This draft is opposed by his Excellency Sir Edward Fry, who demands, on the principle of *res judicata*, that the judgement shall always be binding upon the litigant parties.

Without being hostile to this proposition, Mr. Fusinato shows that the following consequences will result therefrom:

> If we adopt the proposition of his Excellency Sir Edward Fry, the interpretation of a convention by an arbitral award will bind the parties, not only in the case at bar, but also in the future. And, as a result of this state of affairs, we shall create alongside of the general bond between all of the parties to a convention, several special bonds corresponding to the different arbitral awards rendered between certain Powers, the effect of which will always be limited to them alone.

The amendment of the British delegation was adopted by a vote of twelve to four, two not voting.

Here is the modified text of the proposition of the subcommittee:

> If all the States signatory to one of the conventions mentioned in Articles 16*c* and 16*d* are parties to a suit concerning the interpretation of the convention, the arbitral award shall have the same force as the convention itself and must be equally well observed.
>
> If, on the contrary, the dispute arises between only a few of the signatory States, the parties in dispute must notify the signatory Powers a reasonable time in advance, and the latter Powers have the right to intervene in the case.
>
> The arbitral award shall be communicated to the signatory States which have not taken part in the case. If the latter unanimously declare that they accept the interpretation of the point at issue adopted by the arbitral award, that interpretation shall be binding upon all and shall have the same force as the convention itself. In the contrary case, the decision shall be binding only upon the Powers in dispute.
>
> It is well understood that the present convention in no way concerns the arbitration clauses already found in existing treaties.

The first paragraph of this proposition was adopted without observation; paragraphs 2 and 3 were voted for by thirteen delegations and the fourth paragraph was accepted without a vote. The proposition as a whole was supported by thirteen votes against three.

The Serbian delegation had submitted to the committee another solution which was not seconded; here is the text:

> When there is a question of the interpretation or application of a general convention, the procedure shall be as follows, so far as it is not determined by the aforesaid conventions themselves, or by special agreements which may be attached thereto:
>
> The litigant parties shall notify all the contracting Powers of the *compromis* which they have signed, and the contracting Powers have a period of . . ., counting from the day of the notification, to declare whether and in what way they will take part in the litigation.
>
> The arbitral award is binding upon all the States taking part in the litigation, both in their mutual relations and in their relations to other contracting Powers.
>
> The States which have not taken part in the litigation may demand a new arbitration upon the same question, whether it concerns disputes which have arisen between them, or whether they do not agree to accept the award rendered with regard to States taking part in the first litigation.

If the second arbitral award is the same as the first, the question is finally settled and this decision, thus become an integral part of the convention, shall be binding upon all of the contracting parties. If, on the contrary, the second decision differs from the first, a third arbitration may be demanded by any contracting State and the third award shall then be generally binding.

Soon afterwards Mr. Fusinato proposed the addition of three new paragraphs to Article 2 of the proposition of the subcommittee presided over by him. I give the text thereof below:

The procedure to be followed in adhering to the principle established by the arbitral award as provided in Article . . . shall be as follows:

If a convention establishing a Union with a central office of its own is involved, the parties taking part in the case shall transmit the text of the award to the special office through the State in whose territory the office is located. The office shall draw up the text of the article of the convention to accord with the arbitral award and forward it through the same channel to the signatory Powers that have not taken part in the case. If the latter unanimously accept the text of the article the office shall make known their acceptance by means of a protocol, a true copy of which shall be transmitted to all the signatory States.

If a convention establishing a Union with its own special office is not involved, the functions of the special office shall be performed in this matter by the International Bureau at The Hague, through the Netherland Government.

This text was accepted by the committee.

The British delegation, which repeatedly modified its propositions, taking into account the deliberations of the committee and the provisions submitted by the various delegations, elaborated a new scheme[1] for the purpose of dividing into two categories the cases which the Powers might consider of a nature to be submitted to arbitration without reserve.

The first category would include those cases in regard to which it had been possible to reach a unanimous agreement, thus forming a reciprocal engagement.

The second category would include such other matters as might appear to admit of embodiment in a stipulation respecting arbitration without reserve, but upon which a unanimous agreement has not been reached. A protocol, annexed to the Convention, would enumerate all matters included in the second category and would mention the various States that were signatory to the Convention, as well as the conditions under which new matters might be added to the list.

Article 16 *d* of the British proposition, therefore, says:

The high contracting Parties also decide to annex to the present Convention a protocol enumerating:

1. Other matters which seem to them at present capable of submission to arbitration without reserve.

2. The Powers which from now on contract with one another to make this reciprocal agreement with regard to part or all of these subjects.

There were ten votes for, five against, and three abstentions.

We print below the text of the British proposition concerning the protocol:

ARTICLE 1

Each Power signatory to the present Convention accepts arbitration without reserve in controversies concerning the interpretation and application of conventional

[1] *Post*, p. 487, and footnote no. 2.

stipulations relating to such of the matters enumerated in the table hereto annexed as are indicated by the letter A in the column bearing its name. It declares that it contracts this engagement with each of the other signatory Powers, whose reciprocity in this respect is indicated in the same manner in the table.

ARTICLE 2

Each Power shall, however, have the right to notify its acceptance of matters enumerated in the table, with respect to which it may not already have accepted arbitration without reserve in the terms of the preceding article. For this purpose it shall address itself to the Netherland Government, which shall notify this acceptance to the International Bureau at The Hague. After having made proper notation in the table referred to in the preceding article, the International Bureau shall immediately forward true copies of the notification and of the table thus completed to the Governments of all the signatory Powers.

ARTICLE 3

Moreover, two or more of the signatory Powers, acting in concert, may address themselves to the Netherland Government and request it to insert in the table additional matters, with respect to which they are ready to accept arbitration without reserve in the terms of Article 1.

These additional matters shall be inserted in the table, and the notification as well as the corrected text of the table shall be transmitted to the signatory Powers in the manner prescribed by the preceding article.

ARTICLE 4

Non-signatory Powers are permitted to adhere to the present Protocol by notifying the Netherland Government of the matters in the table with respect to which they are ready to accept arbitration without reserve in the terms of Article 1.

On the first reading the articles relating to the protocol were adopted, with a few modifications in their wording, by twelve votes to four, with two abstentions. It was understood that declarations of adhesion should be addressed to the Cabinet at The Hague. The committee recognized the fact that a State can be bound only by a formal declaration by its Government; a simple insertion in the table would not suffice.

Article 4 of the proposition of the United States of America caused a lengthy and exhaustive legal discussion. Its text is as follows:

> In each particular case the signatory Powers shall draw up a special act (*compromis*) conformably to the respective constitutions or laws of the signatory Powers, defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure, and the periods to be observed in the matter of the constitution of the arbitral tribunal.

The American delegation believes that the importance of the *compromis* should not be exaggerated, and that it should not be given a preponderant rôle to the detriment of the treaty itself, for it depends upon the treaty and has no independent existence. No treaty, no *compromis*.

According to Mr. Scott, in order to appreciate the nature and importance of the *compromis*, the nature of the treaty must be considered. A contract concluded between two or more States is given the name of treaty. It imposes upon the contracting parties an obligation to do or not to do a certain thing, and engages their good faith. If it is indisputable that a treaty engenders mutual rights and duties, its execution, nevertheless,

depends upon the co-operation of a branch of the national Government. Whether this national organ be composed of a single or of several persons is a matter of indifference in the eyes of international law.

In order to submit a difference to arbitration, the parties must be in agreement upon the question to be decided. Such are the substance and essence of the *compromis*, conformably to the provisions of Article 31 of the Convention of 1899 and Article 4 of the American project.

The elaboration of such an agreement is the result of negotiation and is accomplished only when the States at variance have consented to insert in it such and such a point. To become binding the agreement must be ratified in each respective State by the organ that is competent to conduct international affairs. This may be a single individual, the responsible head of the State, or the head of the State in conjunction with a national organ. In the United States it is the President, by and with the advice and consent of the Senate.

At any rate, the proposed agreement does not bind any one until it has been ratified by the competent authority, and this ratifying authority is determined by the constitutions and laws of the respective contracting States.

> In order that this point may be clearly grasped (says Mr. Scott), and that there may be no misunderstanding as to the delay which might be necessary for bringing about the collaboration of the national organ, the United States has endeavoured to express in clear and explicit terms the fact that the elaboration of the *compromis* depends upon the authority which is competent to conclude treaties. In America for instance, it is the Executive and the Senate.

And again :

> To sum up, if it is intended that the right to submit the elaboration of the *compromis* to national constitutional and legislative provisions must be reserved, *expressis verbis*, we fully admit the legality of this requirement. As far as we are concerned, the reservation goes without saying, imposes itself automatically ; but, in order to avoid possible misunderstanding, which might lead to eliminations and cause our good faith to be suspected, we have deemed it necessary to state the situation fairly and squarely, such as it appears in the constitutional theory and practice of our country.

The meaning of the article under discussion is perfectly clear to his Excellency Count Tornielli. He takes the floor again to say that, when an arbitration case occurs between the United States of America and Italy, for example, the latter will be bound and its executive authority must execute the engagements resulting from the treaty as soon as this international act has been ratified according to Italian constitutional forms, while the Government at Washington, in order to carry out the terms of the principal treaty, which its constitutional authorities have approved, will request Italy to make a new convention, that is to say, the special act, the *compromis*, which also will require the approval of the Senate. There is an evident inequality between the obligations which the two parties will have contracted in signing the general treaty.

But there can be arbitration without a *compromis*. The treaty concluded between Italy and Denmark stipulates that in default of a special *compromis* the arbitrators will decide upon the basis of the claims formulated by the parties. If the United States of America can accept clauses to this effect, the undeniable inequality would be eliminated.

The delegation of the United States of America replied to this question in the negative.

His Excellency Mr. Léon Bourgeois inquires whether it is proper to take up here the conditions that are necessary for the conclusion of a *compromis* in every country. Why enter into so many details here?

As soon as a State engages to fulfil in good faith the obligations which it has contracted, is it to be supposed that it will seek pretexts to slip out of them? Is not such a refusal, moreover, always possible, even if the consent of the executive authority alone is required? Is it not contemplated even in the project for the Permanent Court?

The delegations of Great Britain and Serbia share this opinion.

His Excellency Mr. Hammarskjöld draws a distinction between the two aspects under which the *compromis* may be viewed. He believes that it is not a new convention but an act of procedure. Indeed, if the *compromis* were a new convention, the arbitration treaty would lose almost all its binding force.

> If [he said] the words 'conformably to the laws, &c.', mean that each Government must observe the fundamental and other laws of the State, they are useless. If, on the contrary, their object is to stipulate that the *compromis* must be considered a new convention, and that an arbitration convention is only a promise to conclude one, they are very dangerous.

His Excellency Mr. Nelidow states that when a treaty, submitted to the Parliament, has been approved, it must be carried out by the two parties. Consequently, when once the arbitration convention has been concluded, the parties are under the obligation to make a *compromis*, in respect to which they must come to an agreement. In the United States each *compromis* must still receive a legislative sanction before it becomes binding, so that European States will be bound while the United States will not yet be bound, as their obligation is subject to a potestative condition.

Such is also the opinion of his Excellency Mr. Mérey, who insists upon the inequality of fact which will exist between the contracting parties. While, in the matter of the *compromis*, the other Powers are bound upon the signing of the arbitration convention, the American Government is not. It has engaged to do what it has no power to do. The other Governments, on the contrary, can make a firm engagement, because its fulfilment depends solely upon their executive authorities.

Mr. Renault and his Excellency Mr. Ruy Barbosa state that the execution of an award may indeed be a duty imposed upon the authorities of a Government, but that is a question of municipal law which cannot be entered into. Indeed, Governments which are not obliged to submit the *compromis* to a Senate, like the United States, may nevertheless have to obtain the consent of a Parliament in order to execute arbitral awards. Such was the case with the English Government in the *Alabama* affair and of the French Government in an arbitration with the United States, under the Monarchy of July. The truth is that the matter must be left to the good faith of the parties.

If there is no confidence in such good faith, the logical conclusion would be to discard every kind of international engagement.

It should be our desire to decrease arbitrariness so far as possible.

Article 4 of the American proposition was finally adopted by ten votes to seven.

Articles 6, 7, and 8 of that proposition were then voted without discussion.

I have already had occasion to mention the proposition presented by the delegation of Switzerland an amendment to Article 16 of the Convention of July 29, 1899.[1] To the

[1] *Post*, pp. 475, 477.

mind of the author the aim of this proposition is to make it possible for the advocates as well as the opponents of a world-wide treaty of obligatory arbitration to adhere to a proposition which would be acceptable to all. It suggests a formula whereby the principle of obligatory arbitration may be introduced into the Convention and established on a practical basis, which would be susceptible of extension and acceptable to all the States.

'It would seem to be of some use,' said his Excellency Mr. Carlin at the session of August 29th, 'now that there is neither a unanimous nor an almost unanimous vote in favour of the British proposition.'

He adds that the idea which inspires his proposition appears to have been appreciated, since it has found a welcome in the new propositions of the delegations of Great Britain and of the United States. All who have accepted the English proposition can also vote for the Swiss proposition, while stating their preference for a more general and more binding formula.

This point of view was disputed by some delegates and the proposition submitted by the Swiss delegation was rejected by ten votes to five.

Voting against: The delegations of Great Britain, the United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Norway, Russia and France.

Voting for: The delegations of Germany, Argentine Republic, Belgium, Greece, and Switzerland.

The committee had thus proceeded to a consideration, on the first reading of the Anglo-American proposition and of the Swiss proposition, and the vote thereon. It remained for it to discuss the draft resolution presented by the delegation of Austria-Hungary.

His Excellency Mr. Mérey pointed out its timeliness in the following words:

> The resolution, in the form in which I have ventured to submit it to our committee for consideration is, in my opinion, the resultant of our discussion.
>
> As I had the honour of saying the other day, I am of the opinion that, if we have devoted and if we still devote considerable time to the discussion of the question of compulsory arbitration, this most interesting and profound deliberation has in nowise been barren and will not be without results. What results have we already reached? In the first place, the establishment—I may say unanimous establishment—of the principle of the application of obligatory arbitration to certain international conventions, or parts of conventions. In the first part of my resolution appears the statement or the confirmation of this principle. It seems to me that this principle is expressed here much more clearly, distinctly, and formally than in the various texts which have been proposed for Article 16 of the Convention of 1899.
>
> As for the practical and definitive applications of the principle of obligatory arbitration, two opposite opinions have been expressed in our committee. A certain number of our colleagues believe that we can come to an agreement at once on a definitive stipulation which would include a list or table, more or less long, of the Conventions in question. Another portion of our committee believes that it would be better to leave it to the Governments, more particularly to the competent departments, to make a preliminary examination of the technical and legal details. The second part of my resolution is conceived in accordance with this last idea.

His Excellency the first delegate of Austria-Hungary points out, in conclusion, that his proposition offers this great advantage—that it can be accepted by all without sacrificing the opinions expressed, and that it meets the needs of the situation, since many

of the delegations voted for certain numbers of the Anglo-Portuguese list only on the express condition that all or nearly all of the States represented at the Conference would accept a definitive list, even though it might be very restricted.

Some slight criticisms were made of the text of the Austro-Hungarian resolution. They did not in any way change the sense of the proposition, and his Excellency Mr. Mérey accepted the modifications requested.

Should a discussion and vote upon this resolution be taken up in committee, or was it better, on account of the widely divergent views, to carry the question before the First Commission, in order to learn, as his Excellency Count Tornielli said, the opinion of forty-four States, as only eighteen are represented in the committee?

> The delegation of Italy [said he] has made reservations as to the meaning of the votes to be cast upon the various points included in the English, Portuguese, and other lists. All these votes should be provisional. They could have no other object than to permit the committee to pass judgement upon the importance of the list that might be selected.
>
> We are face to face with two different systems.
>
> The one would have neither reservations nor lists, but only the declaration of the principle of compulsory arbitration by the Conference, and the obligation of the signatory Governments to notify each other with respect to the matters which they are ready to submit without reserve to arbitration.
>
> The other, on the contrary, would have the declaration of the principle of obligatory arbitration accompanied by general and express limitations, upon the application of which each of the parties retains the right to decide, while consenting not to take advantage of these limitations with respect to a certain number of cases already determined.
>
> We all agree, I suppose, seeing the results of the vote on the articles relating to the lists, that there was a very small vote in favour of each of these articles. Out of eighteen votes the maximum majority obtained did not exceed two-thirds. Moreover, that majority was obtained on only one article. On six others there were eleven votes out of the eighteen. Although it is impossible to ascertain definitely to-day, I do not believe that I am mistaken in saying that the scattering of votes would appear still greater if account were taken of the fact that each of us was prompted by very different ideas in casting his ballot, with the result that these various majorities are not composed of the same delegations. Inconclusive in themselves, these majorities also lack homogeneity.
>
> Need I tell you, gentlemen, after these statements, that the preference of the Italian delegation is for the system which would include (1) a formal declaration which the Conference is fortunately in a position to make, to the effect that the Powers are unanimously in favour of the application of obligatory arbitration to disputes concerning questions of a legal nature, more especially involving the interpretation or application of international conventions; (2) an engagement on the part of the Powers to notify each other of the matters which they are ready to submit to arbitration without reserve. If I had to give you the reasons for this preference, I would not hesitate to repeat the eloquent words spoken by one of our most sympathetic colleagues[1] immediately after I concluded my remarks at our meeting last Friday. You will find those words *in extenso* in our *procès-verbaux*. I shall make use only of the conclusion. Yes, gentlemen! it is because the Italian Government is also a sincere advocate of obligatory arbitration that its delegation, while appreciating the relative merit of several propositions which have been submitted to us, recognizes the difficulties in the way of putting them into effect forthwith, and believes that the propositions containing the lists of Conventions with respect to which exception will be made in the matter of the general provision establishing reservations, instead of simplifying,

[1] General Porter in his remarks of August 23, 1907.

would seriously complicate the question. I shall omit all arguments of a legal nature; but, taking into account the votes on the different points included in the lists, I yield to a feeling of political timeliness and say that we have every reason to foresee that our palliative list would make a bad impression on public opinion, which, although it has been trusting us for nearly three months, is nevertheless keeping an eye on us.

His Excellency Count Tornielli pointed out in conclusion that it is urgent for us to decide and choose between the two opposing systems. Should not the Commission decide the question by a vote?

Such is not the opinion of his Excellency Mr. Léon Bourgeois.

He considers that the time has not yet come to request the Commission to decide the question for the committee. It would be an avowal of weakness and incompetence on the part of the latter. He believes, on the contrary, that the work of the committee has been interesting and useful and, consequently, that it is proper to continue it. In the course of the discussions there was almost always a majority, and it does not appear possible that it will now vanish. The committee has adopted a certain number of articles, but when it goes before the Commission, it will not disguise the fact that they were adopted simply by a majority.

The majority will defend its point of view before the Commission, just as the minority will be free to defend its position. In this way the advocates of every point of view will be enabled to present their arguments, and it will then be for the Commission to decide. The president desires to bring out the fact that the proposition of Count Tornielli would have the same result, but it would cause a serious delay. Moreover, it would imply a disavowal of the work of our colleagues, which we have no right to inflict upon them.

Their Excellencies Sir Edward Fry and Mr. Martens share the opinion expressed by the president.

As the delegation of Italy does not insist upon referring the question to the Commission, discussion takes place upon the Austro-Hungarian resolution which, to the mind of its author, does not present a *vinculum juris*, like the Swiss and British propositions. It is intended to replace the list and the protocol already adopted by the committee. The delegation of Austria-Hungary has already submitted to the committee another proposition contemplating the retention of Article 16 of the Convention of 1899, with the addition of a new paragraph. Under these circumstances the Austro-Hungarian propositions together would replace the American proposition.

Mr. Streit had proposed an amendment to the Swiss proposition, stipulating that every restriction or reservation made by one of the Powers in respect to matters regarding which it had declared itself willing to accept arbitration, might be invoked against this Power by any other Power, even if it had not made any reservations or restrictions. This proposition states:

> Every restriction or reservation which any one of the signatory Powers may add with respect to matters regarding which it declares itself willing to accept arbitration, may be invoked against that Power by any other Power, even if the latter has not made any reservation or restriction with respect to the said matters in its notification.

Perhaps it will appear necessary to certain of the signatory States to make restrictions by notifying such and such of the categories in question. The Greek proposition permits such restrictions and would therefore facilitate the extension of arbitration's field of application. Certain Powers will accept, with these restrictions, categories

which they would not have consented to if this right were not granted to them. Such would likewise be the case with the reservations.

This amendment, which had been proposed with respect to the Swiss proposition, may be added to any text concerning obligatory arbitration which is inspired by the same fundamental idea and provides unilateral notifications.

It was not, however, put to vote with the Austro-Hungarian resolution; but, if it is maintained by its author, the Commission will have to take it into consideration eventually.

Several delegations stated the reasons for the vote which they were about to cast upon the proposition presented by his Excellency Mr. Mérey.

The delegation of Brazil declares:

> We have voted for the general formula with its necessary restrictions. I have voted for the principle of a list, and I have likewise declared myself, by my ballot, in favour of the majority of the cases of obligatory arbitration mentioned in the British proposition.
>
> Nevertheless, it is somewhat to be feared that none of these systems will obtain a unanimous vote, or even a decisive majority to serve as a basis for a general convention of the States.
>
> In the voting on the list, most of the titles received a slight majority. But the composition of this majority varies in each case in such a way as to give reason to doubt whether two cases can be shown where the majorities coincide.
>
> If this be the case, as is feared, no list will be possible, even if it be reduced to the most modest proportions; and then, in order to save an important part of obligatory arbitration, it would be necessary for us to adopt the Austro-Hungarian resolution. It does not satisfy forthwith the aspirations of the friends of arbitration, but it makes the ground more solid, and opens to them a very wide field for development in the near future.

The delegation of Germany declares itself in favour of this proposition, which binds the Powers to a serious consideration of the question. The German Government is not only entirely willing to proceed with this study, but is pleased to believe that, in a short time, it will be in a position to present practical propositions on this subject to the Netherland Government.

The delegation of Mexico acquiesced, with the reservation of a definitive vote, in the project for obligatory arbitration, which shows, in its opinion, practical progress; but it will also vote in favour of the proposition of Austria-Hungary. It sees in that proposition an easy method of opening the way for the development of arbitration, if the project does not receive a sufficient majority.

The delegation of Serbia also, although it continues to prefer the articles already adopted by the committee, will vote for the Austro-Hungarian resolution, which might be useful in case the principle of a list should not obtain a sufficient majority.

The delegation of the Argentine Republic takes the same point of view as the delegation of Serbia.

The delegation of Belgium does not believe it possible to foresee whether the interpretation or application of a treaty would never, in a particular case, raise questions which would affect the security or the sovereignty of States.

Moved by the thought of conciliation, it does not refuse, however, to submit the question to further examination. It will vote for the resolution proposed by his Excellency Mr. Mérey, without, however, binding itself as to the result of the study which its Government will undertake.

The delegation of Russia, having already expressed the desire that an agreement might be reached upon certain cases for obligatory arbitration, within fixed and narrow limits, can see in the proposed resolution nothing more than a postponement of the question. It will therefore abstain from voting.

The delegation of Switzerland will also abstain. It inquires, moreover, if it is proper for the Conference to prescribe a fixed time limit for independent and sovereign Governments.

The delegation of France does not believe that it is possible to support the resolution of the delegation of Austria-Hungary and remain consistent with the votes which it has previously cast. In all the other propositions a bond of law is established from this time forth in the Convention. Such a bond does not exist in the resolution, the adoption of which would leave us only Article 16 of the Convention of 1899, consisting of a simple recommendation. There is neither an engagement nor an article containing a real obligation. It would also make it impossible for the delegates to announce, during the Conference, their adhesion to the application of obligatory arbitration in respect to certain specified matters.

The delegates of Great Britain and the United States of America share the views expressed by his Excellency the president of the committee.

His Excellency Mr. Ruy Barbosa, declaring himself convinced by the words of the president, withdraws his former declaration.

His Excellency Mr. Mérey states that he voted for some points of the Anglo-Portuguese list, but nevertheless he does not consider that he is inconsistent. The vote upon the list was merely for the purpose of getting our bearings. The result of this test vote was unfavourable to the very principle of a list. As this principle is now excluded, Mr. Mérey considers it advisable to devise another expedient. His proposition therefore does not seem to him to be either contradictory or illogical.

The delegation of the Netherlands is in favour of obligatory arbitration and the principle of a list. But, in view of the votes cast, which do not warrant the hope that the Powers will be almost unanimous, it adheres to the proposition of Mr. Mérey, which will perhaps bring about the almost unanimous adoption desired.

The delegation of Italy declares that the vote which it intends to cast in favour of the Austro-Hungarian proposition will not prevent it from voting favourably for other propositions which may be submitted to the committee, if the Austro-Hungarian proposition does not obtain the quasi-unanimous vote necessary for its adoption.

A ballot is then taken upon the draft resolution proposed by the delegation of Austria-Hungary. It is adopted by eight votes to five, with four abstentions.

Voting for: The delegations of Germany, Austria-Hungary, Belgium, Greece, Italy, Mexico, the Netherlands, and Serbia. *Voting against:* The delegations of the United States of America, Brazil, France, Great Britain, and Portugal. *Abstaining:* The delegations of Argentine Republic, Norway, Russia, and Switzerland. The delegation of Sweden was not represented.

His Excellency Count Tornielli states, after the balloting, that the two opinions which have come to light in the committee have been expressed by the votes upon the British proposition, which received ten votes from the eighteen States represented in the committee, and upon the Austro-Hungarian proposition, which received eight. He believes that neither of the two propositions has received a sufficient number of votes to be considered as definitively accepted. Consequently he presents the text of a conciliatory proposition.

which he reads, and asks that this proposition be printed and distributed, in order that it also may be discussed :

> The signatory Powers state that the principle of obligatory arbitration is applicable to disputes which have not been settled through diplomatic channels and which concern questions of a legal nature, more especially questions as to the interpretation or application of international conventions.
>
> Consequently they engage to study most carefully and as soon as possible the question of the application of obligatory arbitration. Such study must be completed by December 31, 1908, at which time, or even earlier, the Powers represented at the Second Hague Conference will notify each other reciprocally, through the Royal Netherland Government, of the matters which they are ready to include in a stipulation concerning obligatory arbitration.

Mr. Crowe points out that the Austro-Hungarian proposition, which was voted for by several members of the committee merely in the hope that an almost unanimous vote would be obtained, received a smaller majority than the British proposition. The latter had received ten votes to five, while the resolution of Mr. Mérey obtained only eight votes to five.

The proposition of the delegation of Italy was not discussed in committee, as its author requested a postponement of such consideration until the plenary Commission had voted upon the propositions already adopted by the committee.

His Excellency Count Tornielli states that neither the Anglo-American proposition nor the Austro-Hungarian proposition obtained a number of votes approximating quasi-unanimity. But it is possible that this division of the votes will not continue when, instead of eighteen States, forty-four are called upon to vote. The authors of these propositions may legitimately claim the right to have a ballot by the plenary Commission decide between the two.

If one of the two projects obtains a quasi-unanimous vote, which seems to be counted on, the question will be settled ; but if this does not happen, before declaring that the Conference has been unable to do anything for arbitration, the Italian proposition should be taken into consideration and the committee should be called to vote upon it.

His Excellency Mr. Carlin reserves the right to present to the Commission the proposition which he had submitted to the committee and which the latter did not adopt.

Mr. Streit reserves the same right in respect to his amendment.

The committee finally ends its labours upon the question of obligatory arbitration by a vote, on the second reading, on the texts of the Anglo-American proposition already voted.

But before taking up the first of the provisions of this project, his Excellency Sir Edward Fry requests the retention of Article 16 of the Convention of July 29, 1899, which he considers the keystone of arbitration.

The committee adopts these views and likewise votes for the new paragraph which the delegation of Austria-Hungary had proposed as an addition to this provision.

Article 16, which in the new numbering will be No. 38, appears therefore in the following terms :

ARTICLE 38

> In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the contracting Powers as the most effective, and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the signatory Powers should, if the case arose, have recourse to arbitration, so far as circumstances permit.

Article 16 *a* of the Anglo-American proposition is voted without discussion by fourteen votes to two, with two abstentions.

Voting for: the Netherlands, Great Britain, United States of America, Argentine Republic, Italy, Serbia, Mexico, Brazil, Switzerland, Portugal, Sweden, Norway, Russia, and France.

Voting against: Germany, Austria-Hungary.

Abstaining: Belgium, Greece.

The article is worded as follows:

ARTICLE 16 *a*

Differences of a legal nature, and especially those relating to the interpretation of treaties existing between two or more of the contracting States, which may in future arise between them and which it may not have been possible to settle by diplomacy, shall be submitted to arbitration, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of any of the said States, and do not concern the interests of other States not involved in the dispute.

Article 16 *b* is likewise approved, without discussion, by fourteen votes to two, with two abstentions.

Voting for: the Netherlands, Great Britain, United States of America, Argentine Republic, Italy, Serbia, Brazil, Mexico, Switzerland, Portugal, Sweden, Norway, Russia, and France.

Voting against: Germany, Austria-Hungary.

Abstaining: Belgium, Greece.

ARTICLE 16 *b*

Each signatory Power shall be the judge of whether the difference which arises affects its vital interests, independence, or honour, and consequently is of such a nature as to be comprised among those which are excepted from obligatory arbitration, as provided in the preceding article.

The vote on Article 16 *c* gave rise to an exchange of views as to the choice to be made between Article 16 *b* of the British proposition and Article 3 of the American proposition.

These two articles read as follows:

ARTICLE 16 *b*

The high contracting Powers recognize that certain of the differences referred to in Article 16 are by nature subject to arbitration without reserve.

ARTICLE 3

Each of the signatory Powers engages not to avail itself of the provisions of the preceding article in such of the following cases as shall be enumerated in its ratification of this Convention, and which shall also be enumerated in the ratifications of every other Power with which differences may arise; and each of the signatory Powers may extend this agreement to any or all cases enumerated in its ratification to all the other signatory Powers, or may limit it to those which it may specify in its ratification.

His Excellency Mr. L. Bourgeois points out that the projects agree in two points : statement of the principle of obligatory arbitration, and postponement of the engagement of the Powers until the exchange of ratifications.

Article 3 of the proposition of the United States of America contains, besides, a provision by virtue of which each Power may specify the States with which it intends to bind itself.

This clause having been eliminated by a vote of the committee, which rejected it by eight votes to seven, the two first points remained, which were adopted by thirteen votes to four, with one abstention.

Voting for : the Netherlands, Great Britain, United States of America, Argentine Republic, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, Russia, and France.

Voting against : Germany, Austria-Hungary, Belgium, and Greece.

Abstaining : Switzerland.

The British article is thus accepted, with a slight change in its wording, proposed by his Excellency the first delegate of Sweden.

ARTICLE 16 *c*

The high contracting Parties recognize that certain differences contemplated by Article 16 are by nature subject to arbitration without the reservations mentioned in Article 16 *a*.

Article 16 *d* contains a list of the matters which all the signatory Powers agree in considering as susceptible of embodiment in a stipulation respecting arbitration without reserve.

As was pointed out by our eminent president, this article can only stand if a list is voted for and receives a unanimous vote. It was therefore necessary to proceed to a vote, on second reading, upon the different subjects in the various lists submitted to the committee in order to ascertain the situation in regard to them.

The president puts them to vote in the order of the number of votes that they obtained on first reading.

The following is the result of this vote :

No. 11. Reciprocal free aid to the indigent sick.

Voting for (12) : the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, and France.

Voting against (4) : Germany, Greece, Austria-Hungary, and Belgium.

Abstaining (2) : Russia and Switzerland.

No. 6. International protection of workmen.

Voting for (12) : the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, and France.

Voting against (4) : Germany, Greece, Austria-Hungary, and Belgium.

Abstaining (2) : Russia and Switzerland.

No. 7. Means of preventing collisions at sea.

Voting for (12) : the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, and France.

Voting against (4) : Germany, Greece, Austria-Hungary, and Belgium.

Abstaining (2) : Russia and Switzerland.

No. 10 *b*. Weights and measures.

Voting for (12): the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, and France.

Voting against (4): Germany, Greece, Austria-Hungary, and Belgium.

Abstaining (2): Russia and Switzerland.

No. 2. Measurement of vessels.

Voting for (12): the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, and France.

Voting against (4): Germany, Greece, Austria-Hungary, and Belgium.

Abstaining (2): Russia and Switzerland.

B (Article 16 *a*). Pecuniary claims for damages, when the principle of indemnity is recognized by the parties.

Voting for (12): the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Portugal, Sweden, Norway, Russia, and France.

Voting against (5): Germany, Greece, Austria-Hungary, Belgium, and Brazil.

Abstaining (1): Switzerland.

No. 3. Wages and estates of seamen.

Voting for (12): the Netherlands, Great Britain, Argentine Republic, United States of America, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, and France.

Voting against (4): Germany, Greece, Austria-Hungary, and Belgium.

Abstaining (2): Russia and Switzerland.

No. 4. Equality of foreigners and nationals as to taxes and imposts.

Voting for (9): the Netherlands, Great Britain, Italy, Serbia, Mexico, Portugal, Sweden, Norway, and France.

Voting against (6): Germany, Argentine Republic, Greece, Brazil, Austria-Hungary, and Belgium.

Abstaining (3): United States of America, Russia, and Switzerland.

No. 1. Customs tariffs.

Voting for (9): the Netherlands, Great Britain, Serbia, Italy, Mexico, Portugal, Sweden, Norway, and France.

Voting against (6): Germany, Greece, Argentine Republic, Brazil, Austria-Hungary, and Belgium.

Abstaining (3): United States of America, Russia, and Switzerland.

No. 14. Private international law.

Voting for (7): the Netherlands, Great Britain, Serbia, Portugal, Norway, Russia, and France.

Voting against (7): Germany, Argentine Republic, Greece, Brazil, Mexico, Austria-Hungary, and Belgium.

Abstaining (4): United States of America, Italy, Sweden, and Switzerland.

No. 8. Protection of literary and artistic works.

Voting for (10): the Netherlands, Great Britain, Argentine Republic, United States of America, Serbia, Mexico, Brazil, Portugal, Norway, and France.

Voting against (4): Germany, Greece, Austria-Hungary, and Belgium.
Abstaining (4): Italy, Switzerland, Sweden, and Russia.

No. 9. Regulation of commercial and industrial companies.
Voting for (9): the Netherlands, Great Britain, United States of America, Serbia, Portugal, Sweden, Norway, Russia, and France.
Voting against (5): Germany, Argentine Republic, Greece, Austria-Hungary, and Belgium.
Abstaining (4): Italy, Mexico, Brazil, and Switzerland.

No. 10 *a*. Monetary systems.
Voting for (8): the Netherlands, Great Britain, Serbia, Mexico, Portugal, Sweden, Norway, and France.
Voting against (8): Germany, United States of America, Argentine Republic, Italy, Greece, Brazil, Austria-Hungary, and Belgium.
Abstaining (2): Russia and Switzerland.

No. 5. Rights of foreigners to acquire and hold property.
Voting for (8): the Netherlands, Great Britain, United States of America, Italy, Serbia, Portugal, Norway, and France.
Voting against (8): Germany, Argentine Republic, Greece, Mexico, Brazil, Sweden, Austria-Hungary, and Belgium.
Abstaining (2): Russia and Switzerland.

No. 2 (Article 18 of the Swedish proposition). In case of pecuniary claims involving the interpretation or application of conventions of every kind between the parties in dispute.
Voting for (8): the Netherlands, Argentine Republic, Italy, Serbia, Portugal, Sweden, Norway, and France.
Voting against (6): Germany, Great Britain, Greece, Brazil, Austria-Hungary, and Belgium.
Abstaining (4): United States of America, Mexico, Russia, and Switzerland.

No. 15. Civil and commercial procedure.
Voting for (8): the Netherlands, Great Britain, Serbia, Portugal, Sweden, Norway, Russia, and France.
Voting against (5): Germany, Argentine Republic, Greece, Austria-Hungary, and Belgium.
Abstaining (5): Brazil, United States of America, Italy, Mexico, and Switzerland.

No. 12. Sanitary regulations.
Voting for (9): the Netherlands, United States of America, Serbia, Brazil, Portugal, Mexico, Sweden, Norway, and France.
Voting against (6): Germany, Argentine Republic, Italy, Greece, Austria-Hungary, and Belgium.
Abstaining (3): Great Britain, Russia, and Switzerland.

No. 13. Regulations concerning epizooty, phylloxera, and other similar pestilences.
Voting for (9): the Netherlands, Great Britain, United States of America, Serbia, Brazil, Portugal, Sweden, Norway, and France.

Voting against (7): Germany, Argentine Republic, Italy, Greece, Switzerland, Austria-Hungary, and Belgium.

Abstaining (2): Mexico and Russia.

No. 2 (Article 16 *b* of the Portuguese proposition). Taxes against vessels (dock charges lighthouse and pilot dues), salvage charges and taxes imposed in case of damage or shipwreck.

Voting for (7): the Netherlands, Italy, Serbia, Portugal, Sweden, Norway, and France.

Voting against (7): Germany, Great Britain, Argentine Republic, Greece, Brazil Austria-Hungary, and Belgium.

Abstaining (4): United States of America, Brazil, Russia, and Switzerland.

No. 3 (Article 18 of the Swedish proposition). In case of pecuniary claims arising from acts of war, civil war, or the arrest of foreigners or seizure of their property.

Voting for (9): Argentine Republic, France, Italy, Mexico, Norway, the Netherlands, Portugal, Serbia, and Sweden.

Voting against (5): Germany, Austria-Hungary, Belgium, Great Britain, and Greece.

Abstaining (4): Brazil. United States of America, Russia, and Servia.

Serbian proposition. Postal, telegraph, and telephone conventions.

Voting for (8): Argentine Republic, France, Italy, Norway, the Netherlands, Portugal, Serbia, and Sweden.

Voting against (5): Germany, Austria-Hungary, Belgium, Great Britain, and Greece.

Abstaining (5): Brazil, United States of America, Mexico, Russia, and Switzerland.

To sum up, no case obtained a unanimous vote; but eight cases received an absolute majority (seven cases having twelve votes and one having ten); ten others received a simple majority.

The delegation of the United States of America only voted with the reservation of the first part of the American Article 3 concerning ratification.

The article as a whole is adopted by thirteen votes to five.

Voting for: the Netherlands, Great Britain, United States of America, Argentine Republic, Italy, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, Russia, and France.

Voting against: Germany, Greece, Austria-Hungary, Switzerland, and Belgium.

The following is the text adopted by the committee:

ARTICLE 16 *d*

In this class of questions they agree to submit to arbitration without reserve the following differences:

I. Disputes concerning the interpretation and application of conventional stipulations relating to the following matters:

(*a*)
(*b*)
(*c*)
(*d*)
&c., &c., &c.

II

III

Article 16 *e* gives rise to the two following remarks only :

The British delegation points out that, in case the draft protocol is accepted, it would be necessary to complete this article by a paragraph indicating the conditions under which new matters might be added.

The delegation of the United States of America renews its reservations concerning ratification.

The article is adopted by thirteen votes to four, with one abstention.

Voting for : the Netherlands, Great Britain, Italy, United States of America, Argentine Republic, Serbia, Mexico, Brazil, Portugal, Sweden, Norway, Russia, and France.

Voting against : Germany, Austria-Hungary, Belgium, and Greece.

Abstaining : Switzerland.

The following is the wording of the article, with the addition presented by the delegation of Great Britain :

ARTICLE 16 *e*

The high contracting Parties have, moreover, decided to annex to the present Convention a protocol enumerating :

1. Such other matters as appear to them at the present time to admit of embodiment in a stipulation respecting arbitration without reserve.

2. The Powers which now contract this engagement with each other with respect to such matters, in whole or in part, on condition of reciprocity.

The protocol shall likewise fix the conditions under which other matters may be added, which may be recognized in future as admitting of embodiment in stipulations concerning arbitration without reserve, as well as the conditions under which non-signatory Powers shall be permitted to adhere to the present agreement.

Article 16 *f* had been adopted on the first reading in the following form :

It is understood that the conventional stipulations contemplated by Articles 16 *c* and 16 *d* shall be subject to arbitration without reserve, in so far as they refer to engagements which must be executed directly by the Governments or by their administrative organs.

This article had brought forth a British amendment, which was rejected by a tie vote.

An agreement was reached between their Excellencies Sir Edward Fry and Mr. Milovanovitch to put the English amendment in a new form and to present it again to the committee as follows :

It is understood that arbitral awards, in so far as they relate to questions coming within the jurisdiction of national courts, shall have merely an interpretative force, with no retroactive effect upon prior judicial decisions.

The committee had already discussed at length the legal controversy expressed by the two foregoing texts. I had the honour to give you an account of this debate, and I shall therefore confine myself to stating that the delegations of Russia and Sweden declared that they shared the point of view of his Excellency Mr. Milovanovitch, while his Excellency Mr. Asser renewed his previous declarations. As for his Excellency Mr. Bourgeois, while sharing theoretically the opinion of the delegations of Russia, Serbia, and Sweden, he will vote for the retention of Article 16 *f*, because the question has already been decided in this sense. Several members of the committee consider this decision important and have conditioned their votes on its being upheld.

The British proposition, amended by his Excellency Mr. Milovanovitch, is nevertheless accepted by seven votes to five, with six abstentions.

The delegations of Brazil, Italy, and the Netherlands declare that this action of the committee forces them to reserve their final votes upon the other articles of the Convention, unless the Serbian wording is adopted.

The new article is therefore worded as follows :

ARTICLE 16 *f*

It is understood that arbitral awards, in so far as they relate to questions coming within the jurisdiction of national courts, shall have merely an interpretative force with no retroactive effect upon prior decisions.

Article 16 *g* of the British proposition said :

It is understood that stipulations contemplating obligatory arbitration under special conditions, which appear in treaties already concluded, shall remain in force.

His Excellency Mr. Carlin, who has already expressed the opinion that the Conference cannot, by a general convention, modify an international convention already in existence, points out as an example that the international convention concerning the transportation of freight by railroads contains a clause with respect to optional arbitration. In order not to conflict with this stipulation, it is necessary to omit from the article under discussion the word ' obligatory '.

His Excellency Mr. Hammarskjöld, taking a similar point of view, requests, in turn, the omission of the words ' special conditions '.

These omissions and the article itself are accepted without a vote.

The following wording is adopted :

ARTICLE 16 *g*

It is understood that stipulations contemplating arbitration, which appear in treaties already concluded or to be concluded, shall remain in force.

Articles 16 *h* and 16 *i* are adopted by the committee without discussion, but with slight changes in the text. Their tenor is as follows :

ARTICLE 16 *h*

If all the States signatory to one of the Conventions mentioned in Articles 16 *c* and 16 *d* are parties to a suit concerning the interpretation of the Convention, the arbitral award shall have the same force as the Convention itself and must be equally well observed.

If, on the contrary, the dispute arises between only a few of the signatory States, the parties in dispute must notify the signatory Powers a reasonable time in advance, and the latter Powers have the right to intervene in the case.

The arbitral award shall be communicated to the signatory States which have not taken part in the case. If the latter unanimously declare that they accept the interpretation of the point at issue adopted by the arbitral award, that interpretation shall be binding upon all and shall have the same force as the Convention itself. In the contrary case, the award shall be binding upon the Powers in dispute or upon such Powers as have formally accepted the decision of the arbitrators.

ARTICLE 16 *i*

The procedure to be followed in adhering to the principle established by the arbitral award, as provided in paragraph 3 of the preceding article, shall be as follows :

If a convention establishing a union with a special office is involved, the parties taking part in the case shall transmit the text of the award to the special office through the State in whose territory the office is located. The office shall draw up the text of the article of the convention to accord with the arbitral award, and forward it through the same channel to the signatory Powers that have not taken part in the case. If the latter unanimously accept the text of the article, the office shall make known their acceptance by means of a protocol, a true copy of which shall be transmitted to all the signatory States.

States whose reply has not reached the office within one year from the date on which the office forwarded the text of the article, shall be considered as having accepted it.

If a convention establishing a union with a special office is not involved, the said functions of the special office shall be performed by the International Bureau of The Hague through the Netherland Government.

It is understood that the present stipulation in no way affects arbitration clauses which are already contained in existing treaties.

The tenor of Article 16 *k* seems to his Excellency Count Tornielli to make it impossible for the parties to have the *compromis* settled by the judge himself. He makes a reservation with respect to it.

The article is adopted in the following form :

ARTICLE 16 *k*

In each particular case the signatory Powers shall conclude a special act (*compromis*) conformably to the respective constitutions or laws of the signatory Powers, defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure, and the periods to be observed in the matter of the constitution of the arbitral tribunal.

Article 16 *l* is accepted without remarks. It is worded as follows :

ARTICLE 16 *l*

The stipulations of Article 16 *d* cannot be invoked in any case where the interpretation or application of extraterritorial rights is involved.

Articles 16 *m* and 16 *n* are likewise accepted, without discussion, in the following form :

ARTICLE 16 *m*

The present Convention shall be ratified with the least possible delay.

The ratifications shall be deposited at The Hague.

The ratification of each signatory Power shall specify the cases enumerated in Article 16 *d*, in which the ratifying Power shall not take advantage of the provisions of Article 16 *a*.

A *procès-verbal* shall be drawn up for each ratification, a certified copy of which shall be transmitted through the diplomatic channel to all the Powers which were represented at the International Peace Conference at The Hague.

A signatory Power may at any time deposit new ratifications, including additional cases contained in Article 16 *d*.

ARTICLE 16 *n*

Each of the signatory Powers shall have the right to denounce the Convention. This denunciation may be made in such a way as to involve the entire withdrawal of the denouncing Power from the Convention, or as to have effect only with respect to a Power designated by the denouncing Power.

This denunciation may likewise be made with respect to one or more of the cases enumerated in Article 16 *d* or in the protocol contemplated by Article 16 *e*.

Such portions of the Convention as have not been denounced shall continue to remain in force.

The denunciation, whether total or partial, shall not take effect until six months after written notice has been given to the Netherland Government, and immediately communicated by the latter to all the other contracting Powers.

All of these articles were accepted by a vote of thirteen to four, with one abstention.

Voting for: The delegations of the United States of America, Argentine Republic, Brazil, France, Great Britain, Italy, Mexico, Norway, the Netherlands, Portugal, Russia, Serbia, and Sweden.

Voting against: The delegations of Germany, Austria-Hungary, Belgium, and Greece.

The delegation of Switzerland abstained.

To recapitulate, the committee voted upon two propositions which it submits for the Commission to pass upon:

One, emanating from the Austro-Hungarian delegation, is in the form of a resolution. It was voted by eight votes to five, with four abstentions, one delegation not being represented; but we shall observe that several of the adhesions are merely subsidiary.

The other, emanating from the collaboration of the delegates of the United States of America, Great Britain, Portugal, Serbia, and Sweden, was voted by thirteen votes to four, with one abstention. But it must also be stated that three votes in favour of the project—those cast by the delegations of Brazil, Italy, and the Netherlands—were cast only with the reservation that the wording of Article 16 *f* as proposed by the delegation of Serbia should be retained.

The delegation of the United States of America, in casting its vote on several of the articles, notably on Article 16 *c*, made formal reservations concerning ratification, conformably to the text of the first part of the American Article 3.

Finally, their Excellencies Sir Edward Fry and Mr. Hammarskjöld had declared at the session of August 23, before the vote on the first reading, that they would vote for a large part of the Portuguese proposition only on condition that it receive practically general consent—a unanimous or quasi-unanimous vote.

'Supposing this consent should not be obtained,' said the first delegate of Great Britain, 'the English delegation considers that it would be preferable to leave freedom of action to each nation.'

I give below these two propositions.

I have not been able to insert the Anglo-American project in the text of the Convention for the pacific settlement of international disputes, or to place it at the end of that act in the form of a separate Convention. The committee, of which I am merely the mouthpiece, passed no general resolution with respect to this, and it is not therefore for the reporter to pass upon the question himself. Wishing to be impartial, I have left it for the Commission or the Conference to decide.

I might remark, moreover, that at the session of September 4 last, his Excellency Count Tornielli stated, without calling forth the slightest protest:

> But to-day I confine myself to pointing out that in yesterday's session the committee was enabled to note the fact that neither of the two propositions which were under consideration—one, which I shall call the Anglo-American, and the other, which I shall designate as the Austro-Hungarian, after its author—received even an approximately unanimous vote. It is possible that the votes will not continue to be thus divided when forty-seven, instead of eighteen, States are called upon to vote. One or the other of these propositions may have a chance of receiving a quasi-unanimous vote, which is necessary to give a resolution sufficient moral weight. For my part, I consider that the authors of these propositions may very legitimately claim the right to have a vote by the plenary Commission decide between them.
>
> It is evident that, if their predictions are verified and one of the two propositions obtains a quasi-unanimous vote, as expected by its author, the question will be decided. But if, on the contrary, neither of the two propositions receives a decisive vote, I ask that, before it is declared that the Conference has been unable to do anything for arbitration, the Italian proposition be taken into consideration and then, and not till then, I shall request the Commission to vote upon it.
>
> I have therefore the honour to request you to postpone the discussion and vote on the proposition of the delegation of Italy until the plenary Commission has voted upon the propositions which have occupied our attention up to the present time. The conciliatory nature of our proposition permits us, I think, to make this request.

As a result of these remarks, which met with no opposition, the committee voted upon the two propositions between which the Commission will have to choose.

The vote on the second reading of the Anglo-American proposition, following the declaration of the first delegate of Italy, did not change the situation, inasmuch as this second vote likewise was far from being quasi-unanimous.

Furthermore, I shall call your attention to the fact that it hardly seems possible to insert the text of the Anglo-American project in its present form after Article 16 of the Convention of 1899. It is not customary to introduce in the middle of a treaty provisions governing its ratification and denunciation. The wording of Articles 16 *m* and 16 *n* seems to indicate that it was the intention of the authors of the proposition to make it a special Convention.

Under these circumstances, I repeat that, in the absence of action by the committee, the reporter could not take the initiative in a matter which is beyond his power.

ANGLO-AMERICAN PROJECT

ARTICLE 16 *a*

Differences of a legal nature, and especially those relating to the interpretation of treaties existing between two or more of the contracting States, which may in future arise between them and which it may not have been possible to settle by diplomacy, shall be submitted to arbitration, provided, nevertheless, that they do not affect the vital interests, the independence or the honour of any of the said States, and do not concern the interests of other States not involved in the dispute.

ARTICLE 16 *b*

Each signatory Power shall be the judge of whether the difference which arises affects its vital interests, its independence, or its honour, and, consequently, is of such a nature as to be comprised among those which are excepted from obligatory arbitration, as provided in the preceding article.

ARTICLE 16 *c*

The high contracting Powers recognize that certain of the differences referred to in Article 16 are by nature subject to arbitration without the reservations mentioned in Article 16 *a*.

ARTICLE 16 *d*

In this class of questions they agree to submit to arbitration without reserve the following differences :

I. Disputes concerning the interpretation and application of conventional stipulations relating to the following matters :

(*a*)
(*b*)
(*c*)
(*d*) &c.

II.
III.

ARTICLE 16 *e*

The high contracting Parties have decided, moreover, to annex to the present Convention a protocol enumerating :

1. Such other matters as appear to them at the present time to admit of embodiment in a stipulation respecting arbitration without reserve.

2. The Powers which now contract this engagement with each other with respect to such matters, in whole or in part, on condition of reciprocity.

The protocol shall likewise fix the conditions under which other matters may be added which may be recognized in the future as admitting of embodiment in stipulations respecting arbitration without reserve, as well as the conditions under which non-signatory Powers shall be permitted to adhere to the present agreement.

ARTICLE 16 *f*

It is understood that arbitral awards, in so far as they relate to questions coming within the jurisdiction of national courts, shall have merely an interpretative force, with no retroactive effect on prior decisions.

ARTICLE 16 *g*

It is understood that stipulations contemplating arbitration, which appear in treaties already concluded or to be concluded, shall remain in force.

ARTICLE 16 *h*

If all the States signatory to one of the Conventions mentioned in Articles 16 *c* and 16 *d* are parties to a suit concerning the interpretation of the Convention, the arbitral award shall have the same force as the Convention itself and must be equally well observed.

If, on the contrary, the dispute arises between only a few of the signatory States, the parties in dispute must notify the signatory Powers a reasonable time in advance, and the latter Powers have the right to intervene in the case.

The arbitral award shall be communicated to the signatory States which have not taken part in the case. If the latter unanimously declare that they accept the interpretation of the point at issue adopted by the arbitral award, that interpretation shall be binding upon all and shall have the same force as the Convention itself. In the contrary case, the award shall be binding only upon the Powers in dispute, or upon such Powers as have formally accepted the decision of the arbitrators.

Article 16 *i*

The procedure to be followed in adhering to the principle established by the arbitral award, as provided in paragraph 3 of the preceding article, shall be as follows :

If a convention establishing a union with a special office is involved, the parties taking part in the case shall transmit the text of the award to the special office through the State in whose territory the office is located. The office shall draw up the text of the article of the Convention to accord with the arbitral award, and forward it through the same channel to the signatory Powers that have not taken part in the case. If the latter unanimously accept the text of the article, the office shall make known their acceptance by means of a protocol, a true copy of which shall be transmitted to all the signatory States.

States whose reply has not reached the office within one year from the date on which the office forwarded the text of the article shall be considered as having accepted it.

If a convention establishing a union with a special office is not involved, the said functions of the special office shall be performed by the International Bureau of The Hague through the Netherland Government.

It is understood that the present stipulation in no way affects arbitration clauses which are already contained in existing treaties.

Article 16 *k*

In each particular case the signatory Powers shall conclude a special act (*compromis*) conformably to the respective constitutions or laws of the signatory Powers, defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure, and the periods to be observed in the matter of the constitution of the arbitral tribunal.

Article 16 *l*

The stipulations of Article 16 *d* cannot be invoked in any case where the interpretation or application of extraterritorial rights is involved.

Article 16 *m*

The present Convention shall be ratified with the least possible delay.

The ratifications shall be deposited at The Hague.

The ratification of each signatory Power shall specify the cases enumerated in Article 16 *d*, in which the ratifying Power shall not take advantage of the provisions of Article 16 *a*.

A *procès-verbal* shall be drawn up for each ratification, a certified copy of which shall be transmitted through the diplomatic channel to all the Powers which were represented at the International Peace Conference at The Hague.

A signatory Power may at any time deposit new ratifications, including additional cases contained in Article 16 *d*.

Article 16 *n*

Each of the signatory Powers shall have the right to denounce the Convention. This denunciation may be made in such a way as to involve the entire withdrawal of the denouncing Power from the Convention, or as to have effect only with respect to a Power designated by the denouncing Power.

This denunciation may likewise be made with respect to one or more of the cases enumerated in Article 16 *d* or in the Protocol contemplated by Article 16 *e*.

Such portions of the Convention as have not been denounced shall continue to remain in force.

The denunciation, whether total or partial, shall not take effect until six months after written notice has been given to the Netherland Government, and immediately communicated by the latter to all the other contracting Powers.

RESOLUTION PRESENTED BY THE DELEGATION OF AUSTRIA-HUNGARY RELATIVE TO OBLIGATORY ARBITRATION[1]

After having conscientiously weighed the question of arbitration, the Conference has come to the conclusion that certain matters, carefully specified, are susceptible of submission to obligatory arbitration without any restriction, and that those which lend themselves particularly to this method of settlement are disputes regarding the interpretation or application of certain international conventions or parts of conventions.

Most of the matters in question being more or less technical in character, any decision as to the extent to which and the conditions under which obligatory recourse to arbitration might here be introduced should, however, be preceded by such study as is beyond the competence of the Conference and can be entrusted only to experts, inasmuch as it requires special knowledge and experience. The Conference therefore invites the Governments, after the close of the Hague meeting, to submit the question of the application of obligatory arbitration to certain international conventions or parts of conventions—to careful examination and profound study. This study must be completed by . . . at which time the Powers represented at the Second Hague Conference shall notify each other, through the Royal Netherland Government, of the matters which they are willing to include in a stipulation regarding obligatory arbitration.

CONSIDERATION IN COMMISSION

The question of obligatory arbitration, which had already called forth such brilliant and conscientious discussions in committee A, was again taken up by the First Commission, which exhibited such lofty views, such eloquence and such legal knowledge, that it is my duty to pay them here the highest tribute. It is with a feeling of genuine regret that, in order not to swell this report to undue proportions, I find myself deprived of the satisfaction of repeating here *in extenso* the speeches which were made in the course of the two sessions held by the Commission on October 5.

His Excellency Mr. Beldiman states that in principle and as a general proposition the advocates of obligatory arbitration are unanimous in proclaiming that by extending its application as far as possible real progress would be effected in the field of public international law and a new guaranty of peace between nations would be offered. But the moment it is a question of putting this idea into practice, we encounter manifold difficulties, some of them unsurmountable.

The orator first rapidly surveys the project as a whole, as elaborated by the committee of examination and recommended to the Commission for adoption.

The Anglo-American proposition begins with an article which aims to establish obligatory arbitration with respect to differences of a legal nature and those relating to the interpretation of treaties, with the well-known reservation of all questions involving vital interests, independence, or the honour of one or the other of the contracting States. No less than three complex problems immediately arise from this proposition.

In the first place, as it is a question of differences of a legal nature and of the interpretation of treaties, which may often give rise to a dispute of the same kind, the question comes up: What will be the effect of an arbitral decision upon national courts? Can an arbitral award nullify decisions rendered by national courts? What situation

[1] *Actes et documents*, vol. II, p. 913, *annexe* 45.

with respect to national courts is created by a stipulation which would force a State to submit to arbitration disputes which are within the jurisdiction of national courts?

The attempt was made to solve this serious question by a formula, elaborated by a special subcommittee, tending to *exclude* from obligatory arbitration conventions concluded or to be concluded, in so far as they relate to provisions, the application and interpretation of which are within the jurisdiction of national courts.

But this solution did not finally prevail in the committee of examination. Another solution was preferred, which protects national courts from arbitral awards, *only* in so far as their retroactive effect is concerned.

Second problem: What will be the effect of an arbitral award when it involves the application or interpretation of a treaty concluded by several States, some of which only have been obliged to resort to arbitration by virtue of the obligation contracted, while the other signatories remain out of the litigation?

Such a case may happen quite frequently, for example in the matter of general Conventions. How provide for various interpretations of such a treaty, indeed for serious conflicts between the arbitral award, which holds only for the parties in litigation, and a different application of the same stipulations by the other signatories, who have not taken part in the case?

The committee of examination stopped at a solution which requires unanimity of all the signatory States in order to make the interpretation of the point at issue adopted by the arbitral award binding upon all (Article 16 *h* of the project). In default of such unanimity, the project does not provide any solution for this most important question, and general conventions thus remain open to complications emanating from arbitral awards which concern only a few of the signatory States.

Indeed, these same problems—the effect of arbitral awards upon national courts, and the interpretation of treaties concluded by several States, such as general conventions—these two problems, indeed, may come up in all cases of international arbitration, independently of their origin. But the essential difference, which we must not overlook, is quite another thing. What is the issue to-day? The project which is proposed to us invites the Governments represented at the Conference to make an engagement—either general with known reservations, or special in respect to certain specified categories of differences, but in such case without reservations—to submit to arbitration disputes which may arise between them as to matters contemplated by the convention to be concluded. Now, the making of such an engagement means that a State accepts in advance all these complications, which are inevitable in a great number of cases, without being able to foresee the consequences.

One of the elementary conditions of every international stipulation between sovereign States is equality, perfect reciprocity in respect to the obligation contracted. But such cannot be the case in regard to the United States of America and the other republics whose constitution is similar to that of the United States.

Indeed, Article 4 of the American proposition provides that the *compromis* must be concluded conformably to the *respective constitutions or laws* of the signatory Powers. This means that, in respect to the United States, for example, the *compromis* does not become binding until after it has been approved by the Senate, while, in respect to the majority of European Powers, it is binding as soon as it has been signed by the Government.

The Ambassador of Italy has described this situation in the following words, which deserve to be remembered :

> There is, consequently, an *evident inequality* in the obligations which the two parties have contracted in signing the general treaty.

We are therefore invited to conclude a general treaty, which in no way establishes equal engagements between the signatory States : some will be bound by the *compromis* when their authorized Minister has signed it ; others, conformably to their constitutions, will have to submit the *compromis*, which has already been signed, to the approval of a legislative body, independent of the executive authority and free to accept or reject the *compromis*.

Thus we have before us a project of the greatest importance in the matter of public international law, which leaves three serious problems unsolved, for which no solution is indicated ; but we are invited to pass on to a general principle, the practical application of which brings up the most serious difficulties, as I have shown.

The orator devotes himself to showing that all these unsurmountable difficulties originate in an erroneous conception of the very nature of international arbitration, from which results are sought which are contrary to its essence. He analyses in detail the constituent elements of arbitration, in order to prove that the optional principle is one of its essential conditions and that, consequently, what is called obligatory arbitration cannot be applied practically except in a very limited way and in cases of wholly secondary importance.

As positive proof of this stands out the fact that the categories of disputes which it is desired to subject to obligatory arbitration without the well-known reservations involve only matters of such slight importance that the most prominent members of the Conference have dubbed them 'harmless' (*anodines*), which matters could therefore not have the least influence upon the normal good relations between States and still less upon the maintenance of peace.

This equivocation pervades the whole debate, and the orator states in conclusion that his Government could not adhere to a project which leaves unsolved problems of international law of the greatest importance and is at the same time of no real benefit to the cause of peace.

His Excellency the Marquis de Soveral laid special stress on the conclusions which, in his opinion, could be drawn from the important discussion to which his proposition gave rise in committee A. He notes that this proposition was adopted as one of the bases of the committee's work. It also served as a starting-point for the successive propositions of the delegations of Switzerland, Serbia, Austria-Hungary, and the United States. He does not forget, however, that the Portuguese list is an inheritance from the First Peace Conference, and that it was afterwards taken up by the Interparliamentary Union. He is happy to see it sanctioned by the votes of the committee, which modified it and gave it greater precision, but did not alter its essential character.

The first delegate of Portugal states that the great cause of arbitration has been taken up by the Conference with the same attention and interest as it receives from the whole world. The principle of obligatory arbitration was unanimously recognized by committee A, and the differences of opinion concerned merely the conditions of its immediate application. No one found the list unacceptable ; some States merely wanted more time

in order to study it more carefully, promising that they would soon show us the positive and favourable result of their study. The committee was therefore divided upon a question of timeliness and not of principle. Even in this field an interesting evolution has taken place. At the beginning of the discussion all the difficulties of the proposition appeared, and some large States which have many important interests in every quarter of the world hesitated for a moment as to what course they should take. But as the discussion proceeded and it was perceived that these difficulties either were common to every problem of international law and did not apply solely to arbitration, or else were not as serious as they were represented to be, a feeling of confidence succeeded the first impulse of legitimate prudence, and England and the United States adhered to the Portuguese project in its entire[ty]. Mr. de Soveral hopes that this great example will be followed by the Commission u[nanimously]. Arbitration emerges innocent and acquitted from the severe trial which has [undergone] by the committee. He asks that the Commission confirm this acquittal.

[Limited] to obligatory, but not *world-wide*, arbitration emerges victorious [from the] difficulties brought up embrace the whole field of international law. [If we were to] consider them, it would be necessary to conclude that no *world-wide* [convention] is possible on any matter; that is to say, that the Conference must be [closed] before it has again opened. But far from that; the Conference has for three [objects] the elaboration of *world-wide* conventions on the most complex questions of the [day], upon the Prize Court, upon the Court of Arbitration. In these Conventions [we] safeguard well the interests of the Powers; it cannot fear to act in the same manner with respect to the settlement of differences where neither honour, nor independence, nor [the] essential interests of States are involved.

His Excellency Mr. de Soveral reminds the Commission that Portugal, at the time of a well-known difference, stated in terms which had weight, since they convinced its opponent, that 'the refusal to accept arbitration, when proposed by the weaker party, gives rise to doubts as to the justice of the claim formulated by the stronger party'. Treaties of arbitration are only mutual assurances of equity. Small States find in them the same security that the Great Powers should seek above all in the balance of their forces. That is why we hope that the small States will not let this opportunity slip by to join with the Great Powers, who come to them prompted by public opinion much more than by their own interests, in a pact of such broad scope, not in the immediate application of which it is susceptible but in the admirable principle which it sanctions. Those who consider the result insignificant should not put obstacles in the way of granting it to us.

Our responsibility would be heavy indeed if these great efforts were in vain and if the slowness of our work were further aggravated by its sterility in the eyes of public opinion, which is waiting for us to finish before passing judgement upon us. Let us demonstrate by our votes, as was said by the first delegate of Austria-Hungary, that we are not platonic advocates of obligatory arbitration.

His Excellency Baron Marschall declares that he cannot accept the project elaborated by the committee of examination. As an advocate of the principle of obligatory arbitration he considers that the acceptance of this project would be of no benefit either to the institution of arbitration or to the cause of peace.

There are two systems for putting obligatory arbitration into effect: the individual system and the world-wide system. According to the first, each State reserves the right to choose its co-contractants, in order to come to an agreement with them upon the

compromis clause, either in general or with respect to a particular case. They make the agreement precise and specific. They select the matters which seem to be suitable for arbitration; they adapt the details of the *compromis* clause and of the *compromis* to the character of the matters selected; and, in regard to controversies relating to the interpretation of treaties, the States which have concluded these treaties insert in them the *compromis* clause. Such an agreement can be made between two States, between a number of contractants, or even between all the States in the world, when the treaty—like the Postal Union for example—is universal in character. According to this system, the work of construction is begun upon the ground; well-known and well-cleared ground is chosen, stone is piled upon stone, and the structure is enlarged fundamentally and solidly, according to the material which is available.

The world-wide system, the system which was adopted by the committee, follows the very opposite course. It begins with the largest framework that can be constructed; that is to say, the whole world. Then material is sought to fill it. Such is the origin of the list. As the list did not appear to be sufficient, the table was invented. Each State puts its name under various headings to learn later, after the table has been deciphered, with what States it is bound. It is impossible to choose the other contractants. From a legal point of view this system is not open to attack, but it is inconsistent with the fundamental basis of arbitration. What is the essence of arbitration? Good understanding. It is good understanding that should govern the interpretation of the *compromis* clause; and it is indispensable in concluding a *compromis*. Now, all good understanding proceeds from an inclination of mind and of spirit. That is true in regard to both private life and international life. This inclination is inseparable from the personality of the contracting States, from their relations, from their community of sentiments, of interests and of traditions. In this sense, we speak of the 'spirit of the treaty', which animates the terms of the Convention and regulates and assures its application. If the contractants had no freedom of choice and if treaties were concluded by means of a stiff and inanimate table, this spirit would be squeezed out of them, thus destroying the very seed of arbitration, which we must preserve and cherish, so that it may sprout again—an impossibility in the arid soil of tabulated headings.

Confronted by these two systems—the world-wide system and the individual system—his Excellency Baron Marschall maintains two propositions:

1. The conclusion of a treaty of arbitration, deserving the name *obligatory*, is possible only by applying the individual system.
2. There can be no progress towards the peaceful settlement of international controversies except through individual treaties.

Baron Marschall then lays stress on the fact that the draft world-wide Convention elaborated by the committee leaves unsolved a series of problems, which appear to him to be of the utmost importance.

The difficulties begin in the very first and fundamental articles of the project, which establish obligatory arbitration for disputes of a legal nature. The meaning of the word *legal* is ambiguous. It would seem to exclude 'political' matters. But it is absolutely impossible to draw a line of demarcation between the two in a world-wide treaty. A question may be legal in one country and political in another. There are even matters which, though purely legal, become political at the time of the dispute. On the other hand, it is possible to conceive of legal questions being distinguished from technical and economic questions.

But the distinction is no less difficult, and the project does not state who will be called upon to decide whether a question is legal or not.

As to the influence which the clause concerning 'honour, independence and vital interests' should exert upon the binding force of world-wide treaty, Baron Marschall refers to what he said on the subject in his speech of July 23.

He points out the danger that there is in inserting provisions of this nature in a world-wide treaty. In all times one of the principal sources of international conflicts has been the ambiguous stipulations and indecisive terms of conventional law. Here are two articles which do not contain a single term that clearly and accurately defines the rights and duties which flow from them, two articles which vacillate between the opposite poles of obligation and option, and it is proposed to recommend these provisions to the world as 'the most effectual method of settling international disputes'.

The defects of the project, which have just been pointed out, are inherent in the system. That is the reef upon which the world-wide system will inevitably be wrecked; for differences of interpretation of an arbitration treaty, which result in refusal to arbitrate, would more seriously compromise the relations of States than the real point at issue.

Compare the project of the committee with the Italo-Argentine treaty, recently concluded at The Hague, which is an example of the application of the individual system. Everything in it is clear, precise, binding. It is a model of the way arbitration treaties should be concluded.

As to the list, which contains an enumeration of matters with respect to which arbitration is obligatory without reserve, it should be noted that nearly all the points which it has been proposed to insert are harmless in character. Some of them are of such a nature that it would be impossible to conceive of a dispute about them. This is especially so in regard to treaties concerning the measurement of vessels, weights and measures, and estates of deceased seamen.

But there are other points in the lists, which deserve very serious attention—especially those relating to treaties which compel States to enact laws of a certain character, for example in regard to 'protection of workmen'. A dispute as to whether one of the States has fulfilled this obligation would have to be settled by arbitration. The arbitral award might prescribe modification of the law. How could this award be executed? It has been said that approval of this Convention by the lawmakers would give the force of law to all future arbitral awards. If that is the case, it would be very difficult to obtain the approval of parliaments, which would hardly be disposed to accept, as collaborators in legislation, unknown arbitrators of the future, the selection of whom would be made by the executive authority. On the other hand, it has been stated that the modification of a law demanded by an arbitral award must be subject to the votes of parliaments. But, in case of a negative vote, would there be *force majeure*? Some have said 'no'; others, 'yes'. No solution was found for the question in committee.

There are problems in the list that are still more serious. There is a series of treaties, the interpretation and application of which are to be determined solely by national courts. Such are treaties concerning *private international law*, in its general acceptation, literary property, industrial property, civil procedure and private international law properly so called. But the authority which one State exercises in respect to the subjects of another State may be contested as being contrary to the terms and the spirit of the treaty. What would be the effect of an arbitral award in such a case? The article states that it shall

have no retroactive effect. But the article adds that the award shall have an 'interpretative force'. That means that national courts must submit to it. But courts will not accept the interpretation as authoritative unless the award has the force of law. Here we have the same problem, only more serious; for the prestige and authority of national courts are involved. The attempt is made to have two entirely distinct authorities interpret the same matter, and the national authority, which is a stable element surrounded by all kinds of guarantees, is asked to submit in future to the interpretation decided upon by the arbitral authority, which is a thing of the moment and disappears after the award is made. This is politically and legally impossible. If private international law, which fifty years ago was scarcely known, continues to develop as rapidly as it has in the past twenty years, it will some day be necessary to provide a uniform application of the stipulations which relate to it. Then perhaps there will be some thought of instituting a high international court, not of arbitration, but of cassation, which will act, in the matter of private international law, with the same guarantees and the same powers as our supreme courts of justice. But the solution which is proposed in the project muddles the question instead of solving it, and gives rise to the danger of grafting upon international controversies a national dispute between the different constitutional authorities.

In regard to Article 16 *k* of the project, his Excellency Baron Marschall shows the influence of the provisions concerning the *compromis* upon the binding force of the treaty.

He calls attention to the proposition of the German delegation, which tended to give arbitration treaties the force of a *pactum de contrahendo*, a convention to agree, granting to each of the parties the right to compel a *compromis*. He states with regret that this proposition did not meet with the welcome which might have been expected from fervent advocates of obligatory arbitration. The discussions on the *compromis* have, moreover, brought to light the special difficulty in the matter of States whose constitution requires approval of the *compromis* by a legislative body, thus causing an evident inequality between such Powers and other States, where the executive authority is competent in itself to agree upon a *compromis*.

The provisions of Article 16 *n*, permitting the denunciation of the treaty, not only generally, but with respect to particular States, may be considered as a concession made by the world-wide system to the individual system. But there is a great difference between not concluding a special treaty and denouncing a general arbitration treaty, concluded in the solemn forms of a Peace Conference.

Summing up his criticism, his Excellency Baron Marschall states that the project has one defect, which, according to his experience, is the worst that can occur in a legislative and contractual matter: it makes promises which it cannot keep. It calls itself binding and it is not. It boasts of being a step forward, and it is not. It prides itself upon being an effectual method of settling international disputes, and in reality, it enriches international law with a series of problems in the matter of interpretation, which in many cases will be more difficult to solve than the old disputes, and even likely to embitter the latter. It has been said that this project establishes the principle of obligatory arbitration for the world. This principle has already been established, in theory, by unanimous public opinion, and in practice by a long series of individual treaties, which are constantly becoming more numerous.

Germany, who was hesitating eight years ago, has concluded on the basis of the individual system, treaties of obligatory arbitration of a general character and with

respect to particular cases. It will follow the same course in future. The vote upon the project will not therefore be upon the question whether or not obligatory arbitration should be introduced; its meaning is rather: should we hold to the individual system, which has been tested, or should the world-wide system be introduced, the vitality of which has not yet been proved?

The German delegation is convinced that the individual system must be decided upon. It is sure that this system will greatly aid the brilliant development of obligatory arbitration established by the Convention of 1899; and that the work of the Conference, by showing the difficulties which must be overcome, will in any case have contributed to promoting progress in this direction.

His Excellency Mr. Drago states that the matters which compose the list appear to be of little importance when they are studied separately, but they have great significance when they are considered as a whole, being the first sign of life in the principle of world-wide obligatory arbitration.

One of these points is very far-reaching for the South American States: the submission to obligatory arbitration of pecuniary claims for indemnification. It has recently been seen how far such claims can go, and how greatly they are reduced when submitted to an impartial tribunal.

The independence of courts would not suffer from world-wide arbitration, and there could be no conflicts with local courts. The treaties are political in character, if they are considered as pacts or contracts between nations. Their character is very different from the point of view of national laws. Courts apply treaties like other municipal laws. They have nothing to do with political relations; but if the interpretation which they give to the treaty in last resort is not conformable to the spirit or the letter of the international Convention, the State which considers that it has suffered injury may take such diplomatic steps as it deems necessary to obtain an interpretative law, which will govern the question in future. Arbitration will take place, if there be occasion, not for the purpose of attacking the independence of the courts or the legality of their decisions, but merely to establish the fact whether in the case in dispute the treaty may be considered as having been violated politically, and whether there is occasion to demand an authoritative interpretation by the legislature; except in the matter of allowing damages or reparation for acts previously committed.

The project has one exceedingly practical side: it prepares the way; clears the ground; moreover, it in no way hinders the conclusion of special arbitration treaties between two or more nations. On the contrary, conventions of this kind will serve to give experience on a small scale and consequently without danger.

This is not a question of incompatible systems; but rather of systems forming concentric circles, the radii of which run in the same direction. Some of these radii, however, stop at the first circumference, while others continue to the second; but they do not interfere with each other. There could be world-wide arbitration, applicable to the nations in general, and more restricted arbitration created by special treaties. The provisions of both would often coincide; but it is certain that in time, clauses which are of special application in the beginning will assume a more and more general character, and the radius of the first circumference will, in more than one instance, reach the second.

The project which is submitted to us has also the advantage of satisfying the universal conscience, which demands arbitration more and more urgently every day. If the

Conference should disband without having done anything, the Argentine delegation will have shown by its vote its intentions and efforts to succeed.

The delegation of Belgium considers that it is necessary to mention again its former declarations, in order to dissipate certain misconceptions.

As far back as July 9, this delegation made known the fact that its Government which is favourable to the principle of obligatory arbitration and desirous of co-operating in extending it, accepts it as applicable to all disputes of a legal nature arising from the interpretation and application of all treaties concluded or to be concluded between the contracting Parties, with the reservation of controversies which affect the essential interests of States. It accepts, furthermore, obligatory arbitration, with the same reservations, in the matter of pecuniary claims for damages, provided there has been a previous understanding on the principle of indemnity.

Unaffected by any influence, led only by legal considerations, the delegation of Belgium has not deviated for a single instant from the path which it had mapped out.

The draft Convention elaborated by the committee is based upon the list system, the object of which is to subject to obligatory arbitration a certain number of disputes without giving the contracting parties the right to reserve cases in which the differences which are thus to be settled might give rise to questions of a nature to compromise the essential interests of the nations.

The delegation of Belgium has declared that it cannot foresee, in regard to any treaty whether its interpretation or application might not, in a particular instance, give rise to questions of a nature to involve the sovereignty or security of States; but, with the idea of conciliation, it does not refuse to consent, without binding itself, to a reconsideration of this question. It supported and will again vote for the Austro-Hungarian resolution in this sense.

The list system, moreover, is not one of truly obligatory arbitration, as some have been pleased to call it, since the parties may, in any event, refuse to resort to arbitration by disputing the legal nature of the difference. It is to be noted, furthermore, that the project submitted to the Commission, after having excluded all reservations based upon the vital interests of States, gives to certain of them the right to accept or refuse a *compromis* —without which arbitration is a dead letter—according to the action of their parliaments.

> In truth (said his Excellency Baron Guillaume) obligatory arbitration, which I would like to set up against the idea of war, that arbitration which involves great political matters, capable of disturbing the peace of the world, because they affect the honour and vital interests of nations—is not opposed by the delegation of Belgium or by any other delegation; it is opposed by the Conference, or at any rate by the committee which has been charged to consider the question in its name. That committee has formally declared that it does not accept the principle. No one has protested; and the propositions based upon the said principle have not even been considered.
>
> Public opinion, therefore, must not be led astray and fancy that the Conference is divided into advocates and opponents of general obligatory arbitration. Public opinion must not imagine for a single instant that the latter are preventing the former from realizing their humanitarian and peace-making plans.

His Excellency Mr. d'Oliveira desires to state that the principle of *world-wide* arbitration was unanimously recognized by committee A. Those who did not vote for the Anglo-Portuguese project, nevertheless supported the Swiss proposition or the Austro-Hungarian

resolution, both of which provide for the conclusion, sooner or later, of world-wide arbitration treaties. Mr. d'Oliveira then endeavours to group the legal objections which were aimed at the project in committee, and the replies made thereto.

The committee was put on its guard against the dangers of conflicting arbitral awards in the interpretation of general conventions. These conflicts would be so frequent, in the opinion of some, that they might be summed up, said Mr. d'Oliveira, by the adage *quot capita tot sententiae*. But the reply was made that the danger, if real, existed already, since States interpret such conventions as they like and solely according to their reciprocal convenience. On the contrary, as soon as recourse to arbitration becomes obligatory it will act as a regulator and substitute equity and justice for the good-will or whim of States. If a first decision is just, it will be confirmed; if it is unjust, it will be reversed. The danger pointed out would not be created by arbitration; but, on the contrary, arbitration would cause it gradually to disappear. Moreover, the danger is to a great extent imaginary. General conventions rest upon the convergent interests of States, all of which desire that a uniform interpretation may be assured. Obligatory arbitration has long been in existence in the postal convention, and has caused no difficulty.

Stress has been laid on the dangers in applying arbitration, even without retroactive effect, to the decisions of national courts. To satisfy this scruple, it has been proposed that arbitration be restricted to reciprocal engagements between States. But, upon reflection, Mr. d'Oliveira believes that the disagreement upon this question in committee was not so serious as was imagined. It is true that stress was laid on the advisability of obtaining interpretative decisions for the future from arbitrators, in cases where Court decisions appeared to be notoriously erroneous. But no one said that this obligation should be imposed with respect to conventions which recognize the competence of the Courts, and consequently exclude any other competence. When a State has bound itself merely to give such a provision of a convention the force of a national law, it has fulfilled its duty when it has kept its promise. The arbitration convention does not modify the extent or scope of previous conventions, and is applicable only to engagements contemplated by such conventions.

Finally, it has been said that the execution of arbitral awards might cause disputes with parliaments. But this difficulty is common to every arbitration. Arbitral awards generally involve the payment of indemnities, which must be approved by parliament. If parliamentary intervention is to be feared by Governments, only autocratic States would be able to conclude arbitration treaties. Why bother here as to how the convention will be received by parliaments? They will have to ratify it and will see then to what they are binding themselves. It is difficult to believe that they will reject a project, the formula of which has been given to us by the Interparliamentary Union, in which twenty-three parliaments are represented by such respected men as our colleagues Messrs. Beernaert and d'Estournelles. Moreover, the refusal of a parliament to execute an arbitral award would impose upon it serious responsibilities. It would expose itself to censure and the accusation of bad faith; it would also expose itself to the denunciation of the convention on the part of the injured States.

The fact has been lost sight of that all these objections apply without exception to the general arbitration treaties that are now in force in Europe and in America.

An international law will always be *lex imperfecta*, because it has no higher sanction than the good faith of the parties, upon which it rests. If we allow ourselves to be

frightened by theoretical dangers, we shall make no progress, and we shall put ourselves in the position of a man who goes on foot instead of taking the train, with the excuse that by so doing he does not run the risk of derailment.

His Excellency Mr. d'Oliveira then sums up the results of the votes in committee. The vote on the first reading had not appeared to be homogeneous. The second vote, however, did not confirm this apprehension. Eight numbers on the list, three of which are very important (pecuniary claims, protection of workmen, and literary protection) obtained an absolute majority. The twenty-two headings of various lists—Swedish, Serbian, British, and Portuguese—were voted for by France, Norway, the Netherlands, Serbia, and Portugal. Sweden voted for 19; Great Britain 16; Italy 15; Mexico 14; the United States 12; Argentine 11; Brazil 9; and Russia 4. These adhesions permit us to constitute, apart from the list, an arbitral union, in the manner indicated by the British protocol. This protocol, developing a happy thought of the Swiss proposition, makes it possible to conclude arbitration treaties, automatically, so to speak, without the necessity of direct negotiations and separate treaties for every case.

His Excellency Mr. d'Oliveira hopes that these important results will be appreciated by the Commission and that a unanimous agreement will follow its deliberations.

Mr. Max Huber desires, before the voting, to make clear the attitude of the delegation of Switzerland.

Although his country has always been in sympathy with the propagation of the institution of arbitration, the Federal Council considers that the reservations of independence, honour and vital interests are essential and indispensable; for it is impossible at the present time to foresee the scope of an unconditional world-wide treaty of arbitration. The delegation of Switzerland cannot therefore accept any proposition which stipulates obligatory arbitration without reserve.

But the delegation of Switzerland, which attaches great value to the conclusion of individual treaties, does not oppose the introduction of the principle of unconditional arbitration into the convention. Such were its views in presenting, in a spirit of conciliation and compromise, a proposition, the principal aim of which is to allow each Power to offer or accept arbitration without reservations, at the time and to the extent that it may deem proper. Thanks to the system of notifications, which this proposition contemplates, the legal bond is created automatically as soon as and in so far as such notifications bear upon identical cases. The conclusion of arbitration treaties would thus be greatly simplified and facilitated, and the obligation to arbitrate might spread in the most diverse directions and in the most varied degrees.

It is otherwise with a world-wide arbitration treaty which, for the very reason that it must include all the States and take into account their varied interests and needs, can necessarily include only a very limited number of subjects.

The idea at the bottom of the Swiss proposition has been recognized as just and practical, since it has been adopted in projects afterwards presented, notably in that of the committee of examination. Nevertheless, in so far as the protocol mentioned in Article 101 is concerned, this last formula has the disadvantage of limiting the right of offering arbitration, since it involves a previous understanding between at least two Powers. Moreover, it does not stipulate that the declarations between State and State, and not the notations in a table, which is only the register of the notifications, give rise to the legal bond.

The delegation of Switzerland, while reserving the right to bring its proposition [illegible]

again and showing itself disposed to eliminate its list in order to assure a unanimous vote, would nevertheless accept the protocol in question, if a *general* agreement can be reached upon this basis.

Mr. Louis Renault asks to be permitted to explain the work of the committee from the standpoint of a jurist.

He waves aside certain objections which would tend to nothing less than the prevention of any arbitration treaty contemplating future disputes. Granting that a treaty of this kind be found acceptable and even desirable, when it is concluded with a specific State, is there an unsurmountable barrier between such a treaty and a treaty concluded between the States as a whole? It is not a question of denying the differences which must naturally exist between the two cases, but of seeing whether it is impossible to conclude any such treaty in the second case.

The arbitration proposed concerns countries with which treaties have been concluded, the interpretation of which it is proposed to submit to arbitral courts. If the engagement is made in general terms, it is with reservations that may have caused a smile. Such reservations, however, are found none the less in treaties concluded by Powers which have not been in the habit of binding themselves lightly. The truth is that they understand they are binding themselves without compromising their essential interests, and, if the engagement is therefore necessarily restricted, it nevertheless exists, and a Government will look twice before taking advantage of a pretended vital interest to withdraw from its promise.

Such is the meaning of the first two articles of the project. After the general formula, cases were foreseen in which arbitration might be established without reservation. The list drawn up by a majority of the committee has been styled *harmless*. I am not so sure that all these cases are so insignificant. Suffice it to mention cases where the amount of damages is to be determined when the principle of responsibility is recognized by the debtor State. His Excellency Mr. Drago has shown the importance that questions of this kind may assume. Moreover, have the advocates of the project the notion that war can be prevented with their formula? Evidently not; they merely desire that nations may become accustomed to having their normal relations governed by rules; to having the disputes of everyday life settled judicially. This habit will develop; the application of arbitration will become more frequent and more important; and law will thus govern international relations more completely.

Mr. Renault then takes up the specific objections raised in regard to the difficulties which would result from the execution of arbitral awards in certain cases.

The first is that of universal unions. Obligatory arbitration applied to a union of this kind would bring about, it is said, a veritable confusion on account of the divergent decisions which would occur. According to Mr. Renault, the logical conclusion would be to exclude even optional arbitration with respect to such treaties. Why assume that the decisions will necessarily be conflicting? The idea of arbitration, on the contrary, when applied to unions, is to prevent the destruction by divergent systems of jurisprudence of the uniformity which it is their aim to establish. The Convention of 1899 anticipated a dispute of this kind (Article 56) and gave it a rational solution.

The second objection concerns cases where arbitration is applied to a question upon which national courts have passed. Will the arbitral award invalidate judicial decisions? There is no doubt, according to Mr. Renault, that this question should be answered in the negative. National decisions remaining intact, the award has merely an interpretative

force for the future. The dignity of courts is no more injured than it is by the promulgation of an interpretative law, and it would seem that their prestige would suffer more from the establishment of the high international court which certain Governments appear to dream of and which might annul their decisions.

Finally, mention was made of difficulties that might result from the constitutional rules of certain countries, which are of a kind to impede the conclusion of a *compromis* or the execution of an award. It is impossible, according to Mr. Renault, to expect to require that the institutions of the contracting countries must be on a par; otherwise arbitration would be excluded with respect to a number of countries. A State binds itself according to its constitutional rules and it must keep its engagements. That is the essential thing. It is for the Government to take such steps as are necessary in order to keep its word; that is a domestic matter. Even where a *compromis* has been signed by the executive authority in the fullness of power, it is possible that another factor may be necessary for the execution of the award. Therefore there is always a time when each party must rely on the good faith of the other, in spite of all the precautions and formalities to which they have resorted.

Mr. Renault's conclusion is that the objections to the project of the committee are in no way decisive.

His Excellency Mr. Rangabé, referring to the declaration made on July 18 in the subcommission, declares that the Greek delegation is not in a position to vote in favour of the text adopted by the committee; but its vote must not be interpreted as being unfavourable to obligatory arbitration. It prefers, in the interest of this very cause, special treaties, concluded in each instance between two specified Powers, which treaties should take into account the definite relations existing between those Powers.

In spite of this point of view, the Greek delegation may support any endeavour to elaborate a world-wide treaty of compulsory arbitration. But (1) it could not concur in a formula of too general a character, which includes differences of a legal nature and questions concerning the interpretation of any treaty, according to the formula adopted by the committee of examination, although it contains the well-known reservations of honour, &c., as these reservations do not abolish, from its point of view, the obligation to have recourse to arbitration; (2) it would accept this obligation in respect to specified subjects with the said reservations.

Notably, it would willingly support any formula possessing the desired flexibility, so that an agreement might be reached, to a greater or less extent according to the desire of the parties, as regards both the determination of the subjects and the addition of clauses. The different propositions presented to the committee of examination have shown that it is not impossible to find such a formula and to have it unanimously accepted.

His Excellency Mr. Choate[1] reminds the Commission of the fact that the proposition which he presented in the name of the delegation of the United States, the real title of which was: 'Draft Convention of general arbitration' was, after certain modifications, warmly approved in the committee of examination in spite of all the efforts made, particularly by the German delegation, to fight it.

He regrets the irreducible opposition but for which the American proposition could have been adopted. He does not see why they should refuse to conclude a general arbitration

[1] For the entire speech of Mr. Choate, see pp. 45-53 of *American Addresses at the Second Hague Peace Conference*, Boston, 1910.

treaty, when they are ready to sign individual agreements with any one Power. Why could not a nation, which can come to an understanding with twenty other States, reach an agreement with forty-five, if such is the imperative desire of all the peoples? He hopes that, if the German Government does not consent to sign such a treaty immediately, it will eventually adhere to it. Every Power, great or small, must bow to the will of public opinion, which demands, more and more, that useless war shall disappear. Every war is useless when recourse to arbitration is possible.

Taking up one of the principal objections of the first delegate of Germany, he inquires, with Mr. Renault, whether the term 'questions of a legal nature' is really as obscure as has been stated. He does not think so. In any event, there is the same difficulty in distinguishing legal questions from political questions, whether special treaties or a general treaty are concerned.

Mutual confidence must be the foundation of all the conventions which it is the task of the Conference to elaborate. Such confidence requires that the States engage to have recourse to peaceful means for the settlement of every difference whatever its nature. There are none which should be left to force alone. It further requires that a State be considered as bound by a treaty of arbitration, whatever may be the constitutional peculiarities which distinguish it. This statement replies to the objections which are brought up by the question of the conclusion of a *compromis* in the United States of America. History, moreover, proves that in the past fifty years the United States has concluded as many treaties of arbitration as any other Power, and that it has never failed to conclude a *compromis*.

His Excellency the first delegate of the United States of America concludes by reminding the Commission of the *vœu* in favour of arbitration adopted by the Pan American Conference at Rio, and the progress of public opinion in this direction, which is becoming more marked every day. He asks the delegates to give their support to the cause of humanity and civilization.

His Excellency Mr. Milovanovitch, referring to the proposition submitted to the Commission by the delegation of Serbia relating to obligatory arbitration, as well as the explanations which he made on that occasion, reiterates his declaration that the organization of such arbitration should be the principal task of the Conference.

He then reminds the Commission that the Serbian delegation, taking into account the fact that it is impossible for the time being to extend obligatory arbitration so as to include disputes of a political nature, which are, nevertheless, the real causes of war, had particularly insisted that two categories of disputes—those relating to the interpretation and application of commercial treaties and those concerning pecuniary questions—be submitted to such arbitration. Such disputes, indeed, while not directly causing the danger of war, nevertheless affect interests which are as numerous as they are important, and help to form currents of sympathy or of antipathy between nations. The submission of such differences to obligatory arbitration would be equivalent to purifying and disinfecting the international political atmosphere.

The project elaborated by the committee of examination is far from satisfying him. In the list of cases which it submits to obligatory arbitration, none of the substantial subjects of commercial treaties appears, not even conventional customs tariffs, of which, nevertheless, the *compromis* clause has in recent years become an integral part. Such also is the case with pecuniary questions. The restricted conditions under which they are

submitted to obligatory arbitration are such that it might be asked whether, even in this field, any appreciable progress has been made.

The project, therefore, is not a step forward with respect to the immediate application of obligatory arbitration, and its practical value shrinks to almost nothing. Nevertheless, while declaring the project to be insufficient, the delegation of Serbia will vote for it because it contains the formal affirmation of the application of obligatory arbitration without reserve. For the same reason, it will likewise vote for any other proposition, even if it be more restrictive, provided it contains the same affirmation. In thus marking out its line of conduct, it will console itself for the insufficiency of the result obtained by remembering that other great ideas, which have overturned and regenerated the world, have often had very modest beginnings.

His Excellency the first delegate of Great Britain points out that Article 1 of the project elaborated by the committee, which has been so severely criticized to-day, appears at the beginning of the treaty between Germany and Great Britain. He confines himself moreover, to making the two following statements :

> Arbitration, in all its forms, springs from the free consent of the Powers at variance, and the only difference between what is called obligatory arbitration and non-obligatory arbitration is that in the first case consent is given in advance, while in the second consent is given after the difference has arisen. In both hypotheses it is in substance only a question of a sovereign act by the Powers at variance, which in no way affects their independence, any more than the making of a contract interferes with the independence of the individual contractant.
>
> National laws recognize, in private matters, the utility of agreements contracted before the differences arise, provided they are restricted to matters, the character of which can be foreseen. Why, then, cannot an international law follow the course of development of a national law ?

His Excellency admits that it may be said, and not without reason, that in view of the reservations and the right to denounce, which are stipulated in the project, the obligatory character of the Convention is not very pronounced and that the *vinculum iuris* may be broken without difficulty. But the nations of the world do not allow themselves to be guided solely by legal conceptions and to be bound by *vincula iuris*, and the Convention, weak as it may be from a legal standpoint, will nevertheless be of great moral value as the expression of the conscience of the civilized world.

His Excellency Samad Khan desires to say that, even though he entirely agrees with the eminent orators who have endeavoured to show, with great authority, the obstacles that may be met on the road and the gaps presented by the Convention under preparation, he finds that the advantages of a world-wide arbitration Convention are so great and the guarantee that it will give to the world at large is so considerable, that it is the duty of the Conference to brave the obstacles, which are relatively insignificant, and to leave to our successors, who perhaps will be more fortunate than we, the task of filling the gaps.

With these sentiments, therefore, and more convinced than ever, he earnestly makes the present declaration.

> The great merit of this Conference in the eyes of the world is that all national consciences are equal in it, and that each of the States which we here represent has a right to its share of justice and of truth.
>
> We have met in order that we may all proclaim with one voice our devotion to the cause of arbitration. We know that, unfortunately, this great cause will not triumph

between to-day and to-morrow; but that is an additional reason why its defenders should show themselves persevering and faithful. As for me, it is with a feeling of respect and pride that I bring, in the name of my Government, one stone for an edifice, the foundations of which were dug by our predecessors, who have the gratitude of all mankind, without regard to country, continent, or race. It is merely a question now of building little by little, until our successors can celebrate the glorious completion.

The Ottoman delegation declares, by order of its Government, that it cannot support any proposition tending to make arbitration obligatory. It will vote, therefore, against the project elaborated by the committee of examination.

His Excellency Mr. Martens points out that the legal side of the project of the committee of examination has frequently been attacked, often with good reason. But it must not be forgotten that the question of obligatory arbitration is first of all world-wide, a question of culture and of civilization. Obligatory arbitration has become the shining light toward which are turned the eyes of all nations. Favourable action on the part of the Conference will above all have an important moral effect upon international relations.

The delegation of Russia has, in the present year, 1907, more modest expectations as to the scope of obligatory arbitration than in 1899. It will be satisfied with little, provided the first stage be finally passed and the principle of obligatory arbitration proclaimed.

But, in order that this proclamation may not be vain; in order that obligatory arbitration may be *real* in the limited field which is to-day asked for it; it is *absolutely indispensable* that a genuine Court of Arbitration be created. That was the view of the delegation of Russia in presenting its project for the creation of a small Permanent Court within the large Court which exists at present. The two questions of obligatory arbitration and of a Permanent Court are intimately connected. One cannot be decided without the other.

If it is desired to introduce obligatory arbitration in the field of legal and technical questions of a secondary character, there must first be instituted a court easy of access and inexpensive, with simple machinery and regularly operating. Without such a permanent court, with doors and windows open to everybody, obligatory arbitration cannot be brought about. We cannot wish for one without the other.

His Excellency Lou Tseng-tsiang gives the reasons for his vote. It was his intention to vote in favour of the project submitted by the committee, but he can no longer do so on account of the insertion of Article 16 *e*.

The report of Baron Guillaume gives no explanation concerning the object of this article, which absolutely conflicts with the principles of the advocates of arbitration.

The goal toward which all the efforts of the Conference are bent is that of enlarging as much as possible the categories of differences which may be submitted to arbitration. Restriction in these categories would be a serious denial of this lofty and noble purpose to extend the domain of law and to strengthen the sentiment of international justice.

The article in question seems to contemplate certain countries in particular; among others China. The delegation can, therefore, only emphatically protest against this clause, and until it is suppressed, will vote against the project.

His Excellency the first delegate of Japan declares that he intends to reserve his vote upon the project submitted for his consideration and that he will abstain. Although he

has always supported the principle of arbitration and appreciates the lofty, peaceful and humanitarian ideas which it proclaims, he states, nevertheless, that its sanction as a universal obligation is a new point of view, beyond the broad lines laid down by the Convention of 1899. Such sanction is of a kind to produce consequences and responsibilities of a very serious nature, as well as limitations to the sovereignty of each contracting State.

Under these circumstances, the delegation of Japan asks that the Governments be given sufficient time to study the subject carefully.

The delegation of Denmark adheres entirely and completely to the principle of obligatory arbitration. Of this its Government has given practical proof by concluding several treaties of obligatory arbitration containing no reservation, and it has learned with much regret that the negotiations of the Conference do not seem likely to result in a general application of this principle forthwith.

It will vote for the Anglo-American proposition as well as (secondarily) for propositions of a more limited scope which may be submitted to the Conference.

The delegation of Siam declares once again that, following the instructions which it has received, it will vote, as in the past, in favour of any proposition, the object of which is the confirmation and more general application of the principle of arbitration. Inasmuch as its sympathy for obligatory arbitration is real and sincere, it would have been very happy to give its approval, without reserve, to the project which is submitted to the Commission and which preserves the principle.

It still hopes to vote for it, but will find itself constrained to make reservations in regard to Article 16 *l*, treating of the interpretation or application of extra-territorial rights. The delegation of Siam will explain its point of view on this question when the articles of the project are under discussion.

His Excellency Samad Khan declares that he also will have something to say about Article 16 *l*, but, until the propitious time arrives, he endorses the declaration made by the delegation of Siam.

His Excellency Mr. Mérey takes the floor, in his capacity as author of a proposition, the aim of which is to state the unanimous acceptance of the principle of obligatory arbitration, as well as to ensure its application in the near future.

In his opinion, this principle can be applied only to matters which are not exclusively legal, but rather of a technical nature. Its application to political questions will long remain a dream that cannot be realized. Consequently, he believes that the importance of this question has been somewhat exaggerated in the discussion. Even taking the whole Anglo-Americo-Portuguese list as the starting-point, it may be stated that none of the points in this list has ever given rise to a serious dispute. This means that neither mankind nor general peace would gain anything thereby.

The orator develops the thought that, if it were a question of curing the ills of mankind, obligatory arbitration would certainly figure only among the harmless remedies for a passing pain.

However, a physician who should give such a medicine, without conscientious study, to all the sick and for all maladies, would indeed cause no catastrophes, but might bring about very serious complications. He would be considered unpardonably superficial.

Everybody agrees, says Mr. Mérey, in considering obligatory arbitration a practical means of settling certain controversies arising from the interpretation of a whole category

of international treaties. Such treaties indisputably contain a series of stipulations of a technical nature, and it may be questioned whether there are among the members of the Conference specialists who are sufficiently versed in such matters. Nevertheless it is proposed to subject to obligatory arbitration a group of treaties, the technical character of which is beyond the grasp of this high assembly.

His Excellency the first delegate of Austria-Hungary declares, therefore, that for his part he is not able to admit such a proceeding, for he is convinced that by adopting even the smallest list, the far-reaching effect of such an act could not be foreseen.

He proposes a method, which is perhaps slower but surer, namely, recourse to specialists. He does not doubt that, if the question really interests it, public opinion will wait another year, inasmuch as it has already waited centuries.

As his Excellency the first delegate of Germany has set forth all the anomalies on the legal side of the question, the orator confines himself to a consideration of its technical side, which constitutes one of the essential points of the Austro-Hungarian proposition; for this proposition, besides the statement of the unanimous acceptance of the principle of obligatory arbitration, stipulates its application to certain treaties or parts of treaties, after a preliminary study by the proper departments. In this way the same result or even a better result than at present will be reached in one year, and the expert branches of the Government will have had an opportunity to examine the field in question at close range.

In so far as the advantages are concerned which—as another orator claimed—small States might obtain from obligatory arbitration, his Excellency Mr. Mérey thinks that he ought to remind their representatives of the fact that this is a double-edged sword, and that the experience of the past ten years has clearly proved that, in the majority of cases, the small States have experienced its consequences and even its severities.

The orator confines himself to these considerations; and, being convinced that the proposition of the committee of examination cannot obtain a unanimous or an almost unanimous vote, he declares that he cannot accept it.

The Austro-Hungarian draft resolution will in the end be found to be the only possible way out of this debate.

The delegation of Bulgaria desires, before voting, to make clear its attitude.

Its Government has always been, and still is, in favour of extending arbitration.

> But we find ourselves (says General Vinaroff) confronted by two systems, which have been voted by various majorities in the committee of examination: the system of the Anglo-American proposition, and the system proposed by the first delegate of Austria-Hungary.
>
> The Anglo-American proposition contains various provisions which it is impossible for us to admit, because, in our opinion, they change the nature of obligatory arbitration in purely legal matters.
>
> Hence, as all the articles of this proposition form a system or a whole, we cannot, to our regret, adhere to it.

His Excellency Mr. Léon Bourgeois did not desire to enter into the discussion; but he cannot close it without expressing his personal sentiments and drawing his conclusions.

As president, he has, moreover, a duty to fulfil. He has promised to lead our good-will as far as possible.

He therefore desires to make every effort to keep the work of the eleven sessions of

the Commission and the eighteen sessions of its committee of examination from being useless, that it may leave behind as much fruit as possible.

> What do we ask ? (said his Excellency).
>
> The affirmation of the principle of obligatory arbitration in respect to disputes of a legal nature, with the right to reserve the vital interests of States.
>
> The affirmation that there are for civilized people certain classes of questions, either of a purely financial nature, or pertaining to international interests common to all peoples in respect to which it is definitively desired that law shall be the only rule among nations.
>
> Finally, we ask that those who have made up their minds to this effect, shall state that fact here.
>
> But what concerns us above all is the significance our acts will have, according to whether or not our signatures appear at the bottom of a Hague Convention.
>
> 'There is', the reporter of the Convention of July 29 said in 1899, 'a society of nations, and the peaceful settlement of international disputes among them is the first object of that society.'
>
> Now, gentlemen, it is at The Hague that that society has truly become aware of its existence ; it is the international institution of The Hague which represents it in the eyes of the world ; it is here that the rules for the organization and development of that society are elaborated, in the legislation of war as well as in that of peace, the code, as it were, of its fundamental acts.
>
> All that is done here has the great significance of being the fruit of the common consent of humanity. Remember what our colleagues of Italy and the Argentine Republic considered that they were called upon to do, when they concluded a few days ago one of the most complete and outspoken of treaties of obligatory arbitration. They made a point of communicating its text to our Conference in plenary session, as if they recognized that the treaty would not have its full force until it had received here the sanction of universal assent.
>
> Furthermore, is it possible to hope that, by means of scattered agreements, we shall ever reach formulas suitable to conciliate all States ?
>
> Scattered negotiations naturally run the risk of resulting in different wordings, not only because they reflect the state of mind that is peculiar to such and such a nation, but also because one Power may refuse a particular concession to another Power which would perhaps place it in a position of inferiority in respect to the other for the future, while it would consent to contract the same engagement with the States of the world as a whole, in consideration of the immense good which the greater guarantee of a general agreement would ensure it.

The Commission then takes under consideration the Anglo-American proposition elaborated by committee A.

The following is the tenor of the first two articles :

> ARTICLE 16 *a*
>
> Differences of a legal nature, and especially those relating to the interpretation of treaties existing between two or more of the contracting States, which may arise in future between them and which it may not have been possible to settle by diplomacy, shall be submitted to arbitration, provided, nevertheless, that they do not affect the vital interests, the independence or the honour of any of the said States, and do not concern the interests of other States not involved in the dispute.
>
> ARTICLE 16 *b*
>
> Each signatory Power shall be the judge of whether the difference which arises affects its vital interests, its independence, or its honour, and, consequently, is of such a nature as to be comprised among those which are excepted from obligatory arbitration, as provided in the preceding article.

They are passed by 35 votes to 5, with 4 abstentions.

Voting for: United States of America, Argentine Republic, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Siam, Sweden, Uruguay, and Venezuela.

Voting against: Germany, Austria-Hungary, Greece, Roumania, and Turkey.

Abstaining: Japan, Luxemburg, Montenegro, and Switzerland.

The next article, worded as follows:

ARTICLE 16 *c*

The high contracting Powers recognize that certain of the differences referred to in Article 16 are by nature subject to arbitration without the reservations mentioned in Article 16 *a*

is passed by 33 votes to 8, with 3 abstentions.

Voting for: United States of America, Argentine Republic, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Siam, Sweden, Uruguay, and Venezuela.

Voting against: Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Roumania, Switzerland, and Turkey.

Abstaining: Japan, Luxemburg, and Montenegro.

Article 16 *d* is worded as follows:

ARTICLE 16 *d*

In this class of questions they agree to submit to arbitration without reserve the following differences:

I. Disputes concerning the interpretation and application of conventional stipulations relating to the following matters:

At the request of his Excellency Count Tornielli, the Commission decides to pass to a vote upon the different points of the list contained in Article 16 *d*, before proceeding to the acceptance of the principle itself.

His Excellency the President, therefore, puts to vote the titles of the list which obtained an absolute majority in the committee.

The following is the result of this ballot:

No. 11. Reciprocal free aid to the indigent sick:

Voting for (31): United States of America, Argentine Republic, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Salvador, Serbia, Sweden, Uruguay, and Venezuela.

Voting against (8): Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Roumania, Switzerland, and Turkey.

Abstaining (5): Japan, Luxemburg, Montenegro, Russia, and Siam.

Titles No. 6 (International protection of workmen); No. 7 (Means of preventing collisions at sea); No. 10 *b* (Weights and measures); No. 2 (Measurement of vessels); No. 3 (Wages and estates of deceased seamen) received the same vote.

B. Article 16 *a*: Pecuniary claims for damages, when the principle of indemnity is recognized by the parties.

Voting for (31): United States of America, Argentine Republic, Bolivia, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Sweden, Uruguay, and Venezuela.

Voting against (8): Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Roumania, Switzerland, and Turkey.

Abstaining (5): Brazil, Japan, Luxemburg, Montenegro, and Siam.

No. 8. Protection of literary and artistic works.

Voting for (26): United States of America, Argentine Republic, Bolivia, Chile, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Mexico, Nicaragua, Norway, Panama, Paraguay, Peru, Persia, Portugal, Salvador, Serbia, Uruguay, and Venezuela.

Voting against (9): Germany, Austria-Hungary, Belgium, Bulgaria, China, Greece, Roumania, Switzerland, and Turkey.

Abstaining (9): Brazil, Italy, Japan, Luxemburg, Montenegro, the Netherlands, Russia, Siam, and Sweden.

Article 16 *d* is adopted by 31 votes to 8, with 5 abstentions:

Voting for: United States of America, Argentine Republic, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Sweden, Uruguay, and Venezuela.

Voting against: Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Roumania, Switzerland, and Turkey.

Abstaining: Italy, Japan, Luxemburg, Montenegro, and Siam.

ARTICLE 16 *e*

The high contracting parties have decided, moreover, to annex to the present Convention a protocol enumerating:

1. Such other matters as appear to them at the present time to admit of embodiment in a stipulation respecting arbitration without reserve.

2. The Powers, which now contract this engagement with each other with respect to such matters, in whole or in part, on condition of reciprocity.

The protocol shall likewise fix the conditions under which other matters may be added, which may be recognized in the future as admitting of embodiment in stipulations respecting arbitration without reserve, as well as the conditions under which non-signatory Powers shall be permitted to adhere to the present agreement.

Article 16 *e* receives 32 votes to 7, with 5 abstentions.

Voting for: United States of America, Argentine Republic, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Salvador, Serbia, Siam, Sweden, Switzerland, Uruguay, and Venezuela.

Voting against: Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Roumania, and Turkey.

Abstaining: Italy, Japan, Luxemburg, Montenegro, and Russia.

ARTICLE 16 *f*

It is understood that arbitral awards, in so far as they relate to questions coming within the jurisdiction of national courts, shall have merely an interpretative force, with no retroactive effect on prior decisions.

His Excellency Mr. Asser reminds the Commission that the delegation of the Netherlands has already made known its opposition to this article, which settles only a part of the very important question concerning the relation between international arbitral awards on the one hand, and the acts of national judicial and legislative authorities on the other. Moreover, this settlement is defective.

This problem causes a lengthy discussion in the Commission, and his Excellency Mr. Milovanovitch, who is the author of the proposition, while upholding his opinion and remaining convinced that the provision which he has proposed gives the question an absolutely legal solution, consents to withdraw the provision of Article 16 *f*, in view of the doubts and uncertainties expressed by certain delegations.

Should the article which his Excellency Mr. Milovanovitch had just withdrawn be replaced by the proposition which his Excellency Mr. Asser made in committee? This question was discussed somewhat at length, and the first delegate of Roumania presented the proposition of Mr. Asser, which its author had abandoned; but the Commission decided finally by a vote of 23 to 8, with 12 abstentions, that Article 16 *f* should be omitted.

ARTICLE 16 *g*

It is understood that stipulations contemplating arbitration, which appear in treaties already concluded or to be concluded, shall remain in force.

This article is adopted without a vote; but, upon the proposal of his Excellency Count Tornielli, it is decided that this stipulation shall be inserted after Article 16 *e*.

ARTICLE 16 *h*

If all the States signatory to one of the conventions mentioned in Articles 16 *c* and 16 *d* are parties to a suit concerning the interpretation of the convention, the arbitral award shall have the same force as the convention itself and must be equally well observed.

If, on the contrary, the dispute arises between only a few of the signatory States, the parties in dispute must notify the signatory Powers a reasonable time in advance, and the latter Powers have the right to intervene in the case.

The arbitral award shall be communicated to the signatory States which have not taken part in the case. If the latter unanimously declare that they accept the interpretation of the point at issue adopted by the arbitral award, that interpretation shall be binding upon all and shall have the same force as the convention itself. In the contrary case, the award shall be binding only upon the Powers in dispute, or upon such Powers as have formally accepted the decision of the arbitrators.

ARTICLE 16 *i*

The procedure to be followed in adhering to the principle established by the arbitral award, as provided in paragraph 3 of the preceding article, shall be as follows:

If a convention establishing a union with a special office is involved, the parties

taking part in the case shall transmit the text of the award to the special office through the State in whose territory the office is located. The office shall draw up the text of the article of the convention to accord with the arbitral award, and forward it through the same channel to the signatory Powers that have not taken part in the case. If the latter unanimously accept the text of the article, the office shall make known their acceptance by means of a protocol, a true copy of which shall be transmitted to all the signatory States.

States whose reply has not reached the office within one year from the date on which the office forwarded the text of the article, shall be considered as having accepted it.

If a convention establishing a union with a special office is not involved, the said functions of the special office shall be performed by the International Bureau of The Hague through the Netherland Government.

It is understood that the present stipulation in no way affects arbitration clauses which are already contained in existing treaties.

These two articles are adopted without a ballot, but the third paragraph of Article 101 is omitted upon the proposal of the United States of America.

ARTICLE 16 *k*

In each particular case the signatory Powers shall conclude a special act (*compromis*) conformably to the respective constitutions or laws of the signatory Powers, defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure and the periods to be observed in the matter of the constitution of the arbitral tribunal.

This provision gives rise to a discussion between his Excellency Mr. Mérey and Mr. Scott. Their Excellencies Count Tornielli and Mr. Hammarskjöld explain the votes which they are about to cast, and Article 16 *k* is finally adopted by 27 votes to 7, with 9 abstentions.

The delegations of Bolivia and Nicaragua were not represented.

Voting for: United States of America, Argentine Republic, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Persia, Portugal, Salvador, Serbia, Switzerland, Uruguay, and Venezuela.

Voting against: Germany, Austria-Hungary, Belgium, Bulgaria, Roumania, Russia and Turkey.

Abstaining: Greece, Italy, Japan, Luxemburg, Montenegro, Norway, the Netherlands, Siam, and Sweden.

The following is the wording of Article 16 *l*, which aroused lively opposition on the part of certain delegations.

ARTICLE 16 *l*

The stipulations of Article 16 *d* cannot be invoked in any case where the interpretation or application of extraterritorial rights is involved.

The delegation of Persia, which has already declared itself in sympathy with the principle of obligatory arbitration, requests the omission of this provision. His Excellency Samad Khan cannot admit that the interpretation or application of extraterritorial rights shall be exempt from the provisions of Article 16 *d*. It could not have been the wish of the authors of the proposition submitted to our deliberations to deprive some of the

signatories of the justice proclaimed in the Convention, and to awaken the distrust of nations, whose representatives have enthusiastically followed the progress of a great cause. He has faith in the sincerity of the sentiments of equity and of international concord which have inspired the authors of the project under discussion, and hopes that this provision will be stricken out.

The delegation of Siam also requests the omission of this article.

> We consider that it is not admissible (says Mr. Corragioni d'Orelli) to stipulate in a world-wide convention, particularly in a convention of this kind, that one category of cases, differences, or disputes shall be exempt from arbitration—more especially, it is true, from obligatory arbitration, but, perhaps, in the opinion of some, from arbitration in general—solely for the reason that a question of extraterritorial rights is involved.

The delegation of China protests against the insertion of a clause which would compel it to change its attitude towards a cause, with which it has never ceased to show itself in sympathy.

> As Article 16 *l* (said his Excellency Lou Tseng-tsiang) is aimed at a certain number of Powers, and as the representatives of these Powers have raised their voices in protest, I rise, therefore, in the name of the Government which I have the honour to represent here, to ask the Commission to do an act of international equity and justice before this altar of the God of law and justice, so eloquently extolled by our very honourable colleague Mr. Martens, by eliminating this article, which contains, from our point of view, a striking inequality.

The delegations of the United States of America, Russia, Germany, and Turkey likewise request the omission of this provision; but his Excellency Sir Edward Fry declares that he cannot consent to it.

Every subject has been excluded from the project, which, if governed by the principle of obligatory arbitration, might by its importance put into play interests which it is at present desirable to leave out of consideration.

The rights resulting from extraterritoriality occupy a special place in the field of international law. They include, besides the right of jurisdiction exercised in certain countries, the rights enjoyed by diplomatic and consular agents, and war-ships in foreign ports. All the nations of the world have contracted mutual engagements in this respect, and cordial relations between them depend, to a great extent, upon the maintenance of such engagements without discussion.

His Excellency Mr. Léon Bourgeois will vote for the article, without, in his opinion, conflicting with the principle of the equality of States and the equal right of all nations to resort to arbitration.

The article does not exclude any State, but contemplates certain categories of cases. In the first lists presented to the committee diplomatic and consular privileges and the right of foreigners to acquire and hold property were spoken of. These matters brought up the general problem of extraterritoriality, which exists among all the nations of the world. But, as these matters are not on the definitive list, he recognizes that the article is practically useless. Extraterritorial rights appear to him to be exempt, in fact, from obligatory arbitration the moment any one of the cases admitted to be without reservation does not explicitly refer thereto.

The omission of Article 16 *l* is decided upon by a vote of 36 to 2 (France and Great Britain), with 5 abstentions (Greece, Japan, Portugal, Sweden, and Switzerland).

Sir Edward Fry declares that, as Article 16 *l* has not been accepted, the British delegation must reserve for its Government the right to withdraw from the obligation to resort to arbitration in all cases involving the interpretation or the application of extraterritorial rights.

The discussion of Article 16 *m* and 16 *n* is then taken up.

ARTICLE 16 *m*

The present Convention shall be ratified with the least possible delay.

The ratifications shall be deposited at The Hague.

The ratification of each signatory Power shall specify the cases enumerated in Article 16 *d*, in which the ratifying Power shall not take advantage of the provisions of Article 16 *a*.

A *procès-verbal* shall be drawn up for each ratification, a certified copy of which shall be transmitted through the diplomatic channel to all the Powers which were represented at the International Peace Conference at The Hague.

A signatory Power may at any time deposit new ratifications, including additional cases contained in Article 16 *d*.

ARTICLE 16 *n*

Each of the signatory Powers shall have the right to denounce the Convention. This denunciation may be made in such a way as to involve the entire withdrawal of the denouncing Power from the Convention, or as to have effect only with respect to a Power designated by the denouncing Power.

This denunciation may likewise be made with respect to one or more of the cases enumerated in Article 16 *d* or in the protocol contemplated by Article 16 *e*.

Such portions of the Convention as have not been denounced shall continue to remain in force.

The denunciation, whether total or partial, shall not take effect until six months after written notice has been given to the Netherland Government, and immediately communicated by the latter to all the other contracting Powers.

The wording of these articles brought up the question whether the provisions upon which the Commission had just voted should form an integral part of the Convention for the pacific settlement of international disputes or take the shape of a special convention.

I have already had the honour to state that committee A came to no decision upon this point.

In Commission his Excellency Mr. Nelidow, president of the Conference, expressed the opinion that the articles of the Anglo-American project could not, under any circumstances, form an integral part of the old Convention of 1899. Indeed, as they have not obtained the assent of all the delegations, they could not be inserted in a convention which has been unanimously voted.

That would imperil the very existence of the whole Convention.

His Excellency Count Tornielli shared this point of view. It is preferable not to insert in the Convention of 1899 Article 16 *a* and those that follow of the Anglo-American project, the discussion of which has just closed. This project has already been put in the form of a separate act, and the provisions which it contains concern a special subject: the application of the principle of obligatory arbitration to certain categories of international disputes. If these provisions, which have given rise to a debate so recent as to render it unnecessary to mention here its character and scope, were introduced into the general

Convention, we would run the risk of making it impossible for certain Powers to sign the revised new Convention.

The delegations of Roumania and the United States of America expressed the same opinion.

His Excellency Mr. Mérey, in his turn, pointed out three reasons against the insertion of the articles voted in the text of the Convention of 1899.

> 1. The articles, which we have just been discussing, do not contain matters of detail and simple improvements, such as we have introduced, but rather a new element of much greater and graver importance, which does not enter into the scope of the Convention of 1899.
>
> 2. Obligatory arbitration does not figure in the programme of our Conference, which mentions only improvements to be made in the Convention of 1899. The introduction of obligatory arbitration is more than a simple improvement. Obligatory arbitration should, therefore, remain separate.
>
> 3. Finally, to resume a thought which has already been formulated by his Excellency Mr. Beldiman, what would be the position of Powers which have signed and ratified the Convention of 1899, but do not accept the new provisions? Such Powers would be forced to suffer the consequences: denounce the Convention, recall their members of the Permanent Court, &c. His Excellency does not believe that the advocates of the proposition of the committee of examination would like to bring about this regrettable result.

His Excellency Baron Marschall endorses the words of Mr. Mérey.

His Excellency Mr. Léon Bourgeois states that no one has thought of forcing the signers of the Convention of 1899 to withdraw from the Convention of 1907.

He believes, with his Excellency Mr. Martens, that it would have been possible not to settle this question until the end of our deliberations, when it had been ascertained that a final agreement could not be reached upon it; but, since no one insists upon the Anglo-American project being embodied in the Convention of 1899, the question raises no difficulty and Articles 16 *m* and 16 *n* retain their usefulness.

They are accepted without discussion, and the Commission passes to a vote upon the Anglo-American project as a whole, which is adopted by 32 votes to 9, with 3 abstentions.

Voting for: United States of America, Argentine Republic, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Mexico, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Siam, Sweden, Uruguay, and Venezuela.

Voting against: Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Montenegro, Roumania, Switzerland, and Turkey.

Abstaining: Italy, Japan, and Luxemburg.

The articles of the English protocol, contemplated by Article [illegible] Anglo-American project, which is a simple explanation of the machinery in[illegible] at article, are adopted without vote or discussion. The following is their text:

ARTICLE 1

Each Power signatory to the present protocol accepts arbitrat[illegible] without reserve in controversies concerning the interpretation and application of con[illegible]nal stipulations relating to such of the matters enumerated in the table hereto an[illegible] indicated by

the letter A in the column bearing its name. It declares that it contracts this engagement with each of the other signatory Powers whose reciprocity in this respect is indicated in the same manner in the table.

ARTICLE 2

Each Power shall, however, have the right to notify its acceptance of matters enumerated in the table, with respect to which it may not already have accepted arbitration without reserve in the terms of the preceding article. For this purpose it shall address itself to the Netherland Government, which shall notify this acceptance to the International Bureau at The Hague. After having made proper notation in the table contemplated by the preceding article, the International Bureau shall immediately forward true copies of the notification and of the table thus completed to the Governments of all the signatory Powers.

ARTICLE 3

Moreover, two or more signatory Powers, acting in concert, may address themselves to the Netherland Government and request it to insert in the table additional matters with respect to which they are ready to accept arbitration without reserve in the terms of Article 1.

These additional matters shall be inserted in the table and the notification, as well as the corrected text of the table, shall be transmitted to the signatory Powers in the manner prescribed by the preceding article.

ARTICLE 4

Non-signatory Powers are permitted to adhere to the present protocol by notifying the Netherland Government of the matters in the table with respect to which they are ready to accept arbitration without reserve in the terms of Article 1.

It is the duty of the reporter to state here that a definite and complete project concerning obligatory arbitration was thus voted in Commission by a large majority, which majority was faithfully and constantly maintained in regard to every one of the articles and in the vote upon the project as a whole. This fact is indisputable, and it is our duty to state it.

We give below the text of the Anglo-American Convention as it was adopted by the First Commission:

PROJECT VOTED BY THE COMMISSION

ARTICLE 16 *a*

Differences of a legal nature, and especially those relating to the interpretation of treaties existing between two or more of the contracting States, which may in future arise between them, and which it may not have been possible to settle by diplomacy, shall be submitted to arbitration, provided, nevertheless, that they do not affect the vital interests, the independence or the honour of any of the said States, and do not concern the interests of other States not involved in the dispute.

ARTICLE 16 *b*

Each signatory Power shall be the judge of whether the difference which arises affects its vital interests, its independence, or its honour, and, consequently, is of such a nature as to be comprised among those which are excepted from obligatory arbitration, as provided in the preceding article.

ARTICLE 16 *c*

The high contracting parties recognize that certain of the differences referred to in Article 16 are by nature subject to arbitration without the reservations mentioned in Article 16 *a*.

ARTICLE 16 *d*

In this class of questions they agree to submit to arbitration without reserve the following differences:

I. Disputes concerning the interpretation and application of conventional stipulations relating to the following subjects:

1. Reciprocal free aid to the indigent sick.
2. International protection of workmen.
3. Means of preventing collisions at sea.
4. Weights and measures.
5. Measurement of ships.
6. Wages and estates of deceased seamen.
7. Protection of literary and artistic works.

II. Pecuniary claims for damages, when the principle of indemnity is recognized by the parties.

ARTICLE 16 *e*

The high contracting Parties have decided, moreover, to annex to the present Convention a protocol enumerating:

1. Such other matters as appear to them at the present time to admit of embodiment in a stipulation respecting arbitration without reserve.

2. The Powers, which at present contract this engagement with each other with respect to such matters, in whole or in part, on condition of reciprocity.

The protocol shall likewise fix the conditions under which other matters may be added, which may be recognized in future as admitting of embodiment in stipulations respecting arbitration without reserve, as well as the conditions under which non-signatory Powers shall be permitted to adhere to the present agreement.

ARTICLE 16 *f*

If all the States signatory to one of the conventions mentioned in Articles 16 *c* and 16 *d* are parties to a suit concerning the interpretation of the Convention, the arbitral award shall have the same force as the Convention itself and must be equally well observed.

If, on the contrary, the dispute arises between only a few of the signatory States, the parties in dispute must notify the signatory Powers a reasonable time in advance, and the latter Powers have the right to intervene in the case.

The arbitral award shall be communicated to the signatory States which have not taken part in the case. If the latter unanimously declare that they accept the interpretation of the point at issue adopted by the arbitral award, that interpretation shall be binding upon all and shall have the same force as the Convention itself. In the contrary case, the award shall be binding only upon the Powers in dispute, or upon such Powers as have formally accepted the decision of the arbitrators.

ARTICLE 16 *g*

The procedure to be followed in adhering to the principle established by the arbitral award, as provided in paragraph 3 of the preceding article, shall be as follows:

If a convention establishing a union with a special office is involved, the parties taking part in the case shall transmit the text of the award to the special office through the State in whose territory the office is located. The office shall draw up the text of the article of the convention to accord with the arbitral award, and forward it through the same channel to the signatory Powers that have not taken part in the case. If the latter unanimously accept the text of the article, the office shall make known their acceptance by means of a protocol, a true copy of which shall be transmitted to all the signatory States.

If a convention establishing a union with a special office is not involved, the said

functions of the special office shall be performed by the International Bureau at The Hague through the Netherland Government.

It is understood that the present stipulation in no way affects arbitration clauses which are already in existing treaties.

Article 16 *h*

In each particular case the signatory Powers shall conclude a special act (*compromis*) conformably to the respective constitutions or laws of the signatory Powers, defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure and the periods to be observed in the matter of the constitution of the arbitral tribunal.

Article 16 *i*

It is understood that stipulations contemplating arbitration, which appear in treaties already concluded or to be concluded, shall remain in force.

Article 16 *k*

The present Convention shall be ratified with the least possible delay.

The ratifications shall be deposited at The Hague.

The ratification of each signatory Power shall specify the cases enumerated in Article 16 *d*, in which the ratifying Power shall not take advantage of the provisions of Article 16 *a*.

A *procès-verbal* shall be drawn up for each ratification, a certified copy of which shall be transmitted through the diplomatic channel to all the Powers which were represented at the International Peace Conference at The Hague.

A signatory Power may at any time deposit new ratifications, including additional cases contained in Article 16 *d*.

Article 16 *l*

Each of the signatory Powers shall have the right to denounce the Convention. This denunciation may be made in such a way as to involve the entire withdrawal of the denouncing Power from the Convention, or as to have effect only with respect to a Power designated by the denouncing Power.

This denunciation may likewise be made with respect to one or more of the cases enumerated in Article 16 *d* or in the protocol contemplated by Article 16 *e*.

Such portions of the Convention as have not been denounced shall continue to remain in force.

The denunciation, whether total or partial, shall not take effect until six months after written notice has been given to the Netherland Government, and immediately communicated by the latter to all the other contracting Powers.

PROTOCOL

PROVIDED FOR BY ARTICLE 16 E OF THE BRITISH PROPOSITION RELATING TO OBLIGATORY ARBITRATION

Article 1

Each Power signatory to the present protocol accepts arbitration without reserve in controversies concerning the interpretation and application of conventional stipulations relating to such of the matters enumerated in the table hereto annexed as are indicated by the letter A in the column bearing its name. It declares that it contracts this engagement with each of the other signatory Powers whose reciprocity in this respect is indicated in the same manner in the table.

ARTICLE 2

Each Power shall, however, have the right to notify its acceptance of matters enumerated in the table with respect to which it may not already have accepted arbitration without reserve in the terms of the preceding article. For this purpose it shall address itself to the Netherland Government, which shall notify this acceptance to the International Bureau at The Hague. After having made proper notation in the table contemplated by the preceding article, the International Bureau shall immediately forward true copies of the notification and of the table thus completed to the Governments of all the signatory Powers.

ARTICLE 3

Moreover, two or more signatory Powers, acting in concert, may address themselves to the Netherland Government and request it to insert in the table additional matters with respect to which they are ready to accept arbitration without reserve in the terms of Article 1.

These additional matters shall be inserted in the table and the notification, as well as the corrected text of the table, shall be transmitted to the signatory Powers in the manner prescribed by the preceding article.

ARTICLE 4

Non-signatory Powers are permitted to adhere to the present protocol by notifying the Netherland Government of the matters in the table,[1] with respect to which they are ready to accept arbitration without reserve in the terms of Article 1.

Desirous of bringing about a unanimous agreement upon the question of obligatory arbitration, his Excellency Mr. Martens, in the name of the delegation of Russia, submitted to the Commission for consideration the following project, which he considered a middle ground, requiring no one to sacrifice his own opinion :

A. CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

ARTICLE 16

Old Text. In questions of a legal nature, and especially in the interpretation or application of international conventions, etc.

ARTICLE 17

New Text. On account of the great difficulty in determining the extent to which and the conditions under which recourse to obligatory arbitration may be recognized by the unanimous vote of the Powers in a general treaty, the contracting Powers confine themselves to enumerating in an additional act, annexed to the present Convention, such cases as deserve to be taken into consideration in the free opinion of the respective Governments. This additional act shall be binding only upon such Powers as sign it or adhere to it.

[Here follow the articles of the old Convention of 1899, with the modifications adopted by the First Commission.]

B. ADDITIONAL ACT TO THE CONVENTION

Preamble. Considering that Article 16 (38) of the Convention of 1899 for the pacific settlement of international disputes sets forth the agreement of the signatory Powers to the effect that in legal questions, and especially in the interpretation and application of international conventions, arbitration is recognized as the most effective

[1] For the table see p. 448.

MODEL OF TABLE TO BE ANNEXED TO THE PROTOCOL OF THE BRITISH PROPOSITION

	Germany	United States of America	Argentine Republic	Austria-Hungary	Belgium	Bolivia	Brazil	Bulgaria	Chile	China	Colombia	Costa Rica	Cuba	Denmark	Dominican Republic	Ecuador	Spain	France	Great Britain	Greece	Guatemala	Haiti	Honduras	Italy	Japan	Luxemburg	Mexico	Montenegro	Nicaragua	Norway	[illegible]
1. Pecuniary claims for damages, when the principle of indemnity is recognized by the parties																														
2. Reciprocal free aid to the indigent sick																														
3. International protection of workmen																														
4. Means of preventing collisions at sea																														
5. Weights and measures																														
6. Measurement of vessels																														
7. Wages and estates of deceased seamen																														
8. Protection of literary and artistic works																														
9. Governance of commercial and industrial companies																														
10. Pecuniary claims arising from acts of war, civil war, arrest of foreigners, or seizure of their property																														
11. Sanitary regulations																														
12. Equality of foreigners and nationals as to taxes and imposts																														
13. Customs tariffs																														
14. Regulations concerning epizooty, phylloxera, and other similar pestilences																														
15. Monetary systems																														
16. Rights of foreigners to acquire and hold property																														
17. Civil and commercial procedure																														
18. Pecuniary claims involving the interpretation or application of conventions of all kinds between the parties in dispute																														
19. Repatriation conventions																														
20. Postal, telegraph, and telephone conventions																														
21. Taxes against vessels, dock charges, lighthouse and pilot dues, salvage charges and taxes imposed in case of damage or shipwreck																														
22. Private international law																														

and at the same time most equitable means of settling disputes which diplomacy has failed to settle;

Considering that arbitration should be made obligatory in differences of a legal nature which, in the free opinion of the contracting Powers, do not involve their vital interests, their independence, or their honour;

Considering the usefulness of indicating in advance the kinds of disputes in which the above-mentioned reservations are not admissible;

The Powers signing this additional act have agreed upon the following provisions:

ARTICLE 1

ARTICLE 16 *d*. In this class of questions, they agree to submit to arbitration without reserve the following differences:

I. Disputes concerning the interpretation and application of conventional stipulations relating to the following matters: (*a*) (*b*) (*c*) (*d*), etc., etc., etc.

ARTICLE 2

New. The signatory Powers engage to ratify this additional act before the first of January, 1909, and, in the act of ratification, to indicate precisely the kind of differences with respect to which they accept obligatory arbitration.

ARTICLE 3 AND FOLLOWING

(Text voted for Articles 16 *e*, etc.)

The first article of the Russian proposition, numbered 17, was put to vote and was accepted by 31 votes to 5, with 8 abstentions.

Voting for: Argentine Republic, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, Peru, Persia, Portugal, Russia, Salvador, Serbia, Uruguay, and Venezuela.

Voting against: Germany, United States of America, Austria-Hungary, Belgium, and Roumania.

Abstaining: Italy, Japan, Luxemburg, the Netherlands, Siam, Sweden, Switzerland, and Turkey.

In view of this vote, his Excellency Mr. Martens, in the name of the delegation of Russia, withdraws his proposition, which he had only submitted in the hope that it might obtain a unanimous vote.

The Commission had still to declare itself upon the resolution proposed by the delegation of Austria-Hungary in the course of the deliberations of committee A, which had been adopted in the session of September 3, by 8 votes to 5, with 4 abstentions.

His Excellency Mr. Mérey states that the Anglo-American project obtained only a large majority in Commission, but did not succeed in drawing the unanimous or almost unanimous vote necessary for its presentation to the Conference.

The revised text of the Convention for the pacific settlement of international disputes had been definitively and unanimously adopted by the Commission. The Commission's action constitutes an accomplished fact, which it is impossible to reconsider for the purpose of introducing new articles into the Convention.

Therefore, only two alternatives remain: to disband without being able to come to

an agreement upon the question of obligatory arbitration, or to vote for the resolution proposed by the delegation of Austria-Hungary.

The first of these alternatives would certainly not mean that the Conference has been a failure, for it has not indeed wasted its time; it has devoted itself to serious study and the discussions into which it has entered will furnish valuable material for the future. But nevertheless it does not seem as if there should be any hesitation between a negative result and a general agreement.

The Austro-Hungarian proposition has no longer the subsidiary character which has been ascribed to it, now that the draft convention has not succeeded in obtaining a quasi-unanimous vote. It is less palliative than some have been pleased to call it, for it creates an obligation in express terms. The Powers that sign it would engage to notify the Netherland Government, within a period to be determined, of the matters which they are ready to submit to obligatory arbitration.

The resolution of the delegation of Austria-Hungary can be accepted by all. 'If any one still has scruples as to this proposition,' said Mr. Mérey, 'let him throw them aside with a noble gesture; let him perform an act of abnegation, if that be necessary, even a slight *sacrificio dell' intelletto;* and let the question to be settled by the Conference be settled by a unanimous vote.'

At the very beginning of the deliberations upon obligatory arbitration the delegation of Switzerland had presented intermediate propositions, tending to reconcile the different opinions confronting each other and to secure, if possible, a unanimous vote. It continued its efforts in this sense up to the last moment.

The Swiss propositions went further to meet the desires of the majority than the Austro-Hungarian draft resolution. Also the delegation of Switzerland had abstained from casting a vote upon this project in the committee of examination. At present it will be only too glad to support it, if it is accepted by all the States. If it cannot be so accepted, the Swiss delegation will abstain.

His Excellency the President of the Conference reminds the Commission that the first principle of every conference is that of unanimity. This is not a vain form, but the basis of every political agreement. In parliaments, majorities can force their wishes upon minorities because the members of such assemblies represent only a single and the same nation; but in an international conference each delegation represents a different State, all equally sovereign. No one has the right to accept the decision of a majority, which might be contrary to the desires of his Government. Hence there can be no resolutions of the Conference unless they are unanimously adopted.

This opinion is shared by the delegation of Belgium, which points out the fact that unanimous agreement is the rule of diplomatic conferences. The delegates of autonomous sovereignties deliberate in full liberty and in a position of perfect equality. Their aim is to define more clearly the common ground where their various views and their common desire to ameliorate the condition of nations may meet.

We have not met to be counted, said his Excellency Mr. van den Heuvel, but to agree. From another point of view, the formation of irreducible groups would be a thing to be feared. Confidence in a majority more or less strong would be destructive of the spirit of concession.

We have accomplished a part of our task by the revision of the Convention relating to the pacific settlement of international disputes. Everybody has shown himself in

favour of proclaiming the indisputable advisability of admitting more and more frequently the arbitration *compromis* clause. Disagreements have broken out when it was a question of adopting a practical formula. Some desire to extend obligatory arbitration, not by a world-wide treaty, but by special treaties; others have declared that obligatory arbitration would be generally accepted only if accompanied by essential reservations. The committees have drawn up a rather modest list, which has been voted by a majority, and this list has become a new obstacle in the way of agreement.

The Austro-Hungarian resolution, upon which we have now to declare ourselves, does not completely meet our personal point of view. We nevertheless recommend its adoption in a spirit of conciliation. It does not clash with the sentiments of any group; it attests our wish to extend obligatory arbitration in practice, and binds our Governments to give further study to the question whether a list of subjects where arbitration might be admitted without reserve can be drawn up.

His Excellency Mr. de Beaufort makes the following declaration:

> In the session of the committee of examination, the delegation of the Netherlands gave as the reason for its adhesion to the proposition of his Excellency Mr. Mérey the fact that the votes cast in committee did not admit of the hope that there would be an almost unanimous vote of the Powers for the list, to which it had declared itself to be favourable. After the vote on the list by the First Commission, the delegation of the Netherlands, to its great regret, was forced to recognize the fact that things had turned out as it had anticipated, and that the list would not have the support of a strong and weighty minority.
>
> The same reasons which led us to vote for the proposition of Austria-Hungary in the committee of examination hold good at the present moment, and under these circumstances we are disposed again to cast our ballot in favour of that proposition.
>
> On the one hand, we have the certainty that the special Convention on obligatory arbitration, containing the list for which we have voted, will not obtain the votes of many States; on the other hand, the Austro-Hungarian proposition shows us the possibility that, upon the expiration of a fixed period of time, the majority, perhaps all, of the States represented at the Conference will support stipulations of obligatory arbitration in respect to certain matters.
>
> The delegation of the Netherlands is convinced that, in order to bring obligatory arbitration into conventional international law, general or almost general assent is of the greatest importance from the very beginning. Regretting, therefore, that it has been impossible to obtain such assent, but not losing the hope that in the near future an agreement will be brought about, the delegation of the Netherlands believes that it is acting in favour of the principle of obligatory arbitration by casting its vote for the proposition of Mr. Mérey.

His Excellency Baron Marschall supports the point of view of the president of the Conference. His Government, conforming to the custom which has always been the rule in international conferences, cannot accept the principle that the majority decides and the minority must bow to it. Such a conception would endanger the future of international conferences.

Their Excellencies Sir Edward Fry, Mr. Ruy Barbosa, and Mr. Drago declare that they do not accept the Austro-Hungarian resolution. They consider that, as the Anglo-American project has been voted by a large majority, they cannot renounce the results of that vote and begin all over again consideration of the whole question of obligatory arbitration.

The text of the project presented by the committee proves that there is a certain

number of nations which have studied the question sufficiently to conclude, at the present time, a general treaty of obligatory arbitration.

His Excellency Mr. Choate[1] states that after three months of discussion the Commission has made known its wishes by an overwhelming majority. It has declared itself in favour of obligatory arbitration. It has voted a series of articles, both separately and as a whole, and the same majority has remained faithful. It is not possible for the minority to prevent the majority from acting and force it to abandon what has been done up to the present moment, declares his Excellency Mr. Choate. The Conference is competent to pass upon this question and we should submit it to the Conference.

We have accepted the declaration of the principle of obligatory arbitration; we have admitted that cases where the vital interests of nations are involved should be excepted, giving the Powers themselves the right to determine the legitimacy of these reservations. We have voted a list of cases, in which arbitration would be obligatory in the strictest sense of the word: all that remains is for us to settle a few details. We cannot make all these results depend upon further consideration by the Governments.

The majority should not impose its will upon the minority; but it should be able, under the flag of the Conference, to put into execution what it has decided upon.

The principle of unanimity has not always been observed; exceptions may be cited. At any rate, it is a question which it is within the power of the Conference to decide.

After a declaration by the delegation of Serbia, which will vote in favour of the project, holding nevertheless to the convictions which it has frequently expressed, the Austro-Hungarian resolution is put to vote, and is rejected by 24 votes to 14, with 6 abstentions.

Voting for: Germany, Austria-Hungary, Belgium, Bulgaria, Denmark, Greece, Italy, Luxemburg, Montenegro, the Netherlands, Roumania, Russia, Serbia, and Turkey.

Voting against: United States of America, Argentine Republic, Bolivia, Chile, Colombia, Cuba, Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Persia, Portugal, Salvador, Siam, Uruguay, and Venezuela.

Abstaining: Brazil, China, Japan, Norway, Sweden, and Switzerland.

His Excellency Count Tornielli then takes the floor and makes the following speech:

> In the early days of September I had the honour to request in Committee A that a proposition, presented by the Italian delegation on the subject of obligatory arbitration, be postponed until the Commission had declared itself upon all the other propositions which had been laid before it.
>
> The result of recent voting persuades me that it would be unwise to continue further the search for formulas which have no chance of obtaining a unanimous vote. Under these circumstances, I abandon the proposition which I had the honour to announce.
>
> I am convinced that after the intense labour of legal analysis and profound criticism of the texts, which has permitted us to improve and complete considerably and substantially the work of peaceful settlement of international disputes, our minds are no longer willing to renounce the objections which every new formula will not fail to meet.
>
> This is no time for great speeches.
>
> There are, however, certain facts which should be stated. I shall sum them up under three heads:
>
> The first—the most essential—is that the Conference of 1907 has unanimously recognized the principle of obligatory arbitration.

[1] An English version of Mr. Choate's speech in full appears in *American Addresses at the Second Hague Peace Conference* (Boston, 1910), pp. 58–62.

The second consists in the affirmation, which met with no contradiction, that in the vast field of international relations, forming the subject of the conventional law of States, there are many matters which can without doubt be submitted to obligatory arbitration.

The third statement, for which I request your unanimous consent, is this. All the States of the world have been working here together for four months upon questions that are difficult, at times even delicate, and learning not only to know each other better, but also to esteem and love each other more.

The general spirit which has arisen from the contact of all these forces working together is very lofty. It is a striking spectacle and an undeniable result. Differences of opinion among us have never gone beyond legal controversies and questions of detail.

Let us be wise and stop at that. We have travelled over a good road. Let us be content with the work accomplished, and give it time to bear fruit.

If, on looking backward, any one of us feels a little regret at beholding certain tasks uncompleted, on turning our eyes toward the future we are all filled with confidence, and no discouragement invades our souls.

These noble words called forth the applause of the entire assembly. Their Excellencies the first delegates of Germany and Austria-Hungary respectively declared that they accepted the three statements made by his Excellency Count Tornielli, and his Excellency Mr. Léon Bourgeois, in an ardent extemporaneous speech, requests his colleagues to support a proposition which safeguards the rights and respects the opinions of all. 'We shall go forth from the Conference united, knowing that we have worked for the good of mankind and that we have taken a considerable step forward in the cause of obligatory arbitration.'

Your reporter asks permission, gentlemen, to add here his modest word to the tribute paid to the wise utterance of his Excellency the first delegate of Italy.

No one can dispute the results obtained by those who proposed, defended, and voted for the Anglo-American proposition. A strong and homogeneous majority elaborated a Convention after stubborn labour. The study undertaken by the First Commission and its committees will be a valuable source to draw from in future. His Excellency Count Tornielli showed that he was convinced of this; but he advised the majority of the Commission not to ignore the convictions of a loyal minority, and to postpone until to-morrow the realization of projects, the premature execution of which might compromise the principle of unanimity, which is the basis of every international conference.

The warm welcome given, without hesitation or delay, to the suggestions of the eminent Italian statesman has once more proved the sentiments of equity and conciliation which have always pervaded the deliberations of the First Commission.

His Excellency Mr. Léon Bourgeois has kept the promise which he once made in the course of our long deliberations:

Our aim should be, not to count but to unite our forces.

A small committee, presided over by his Excellency Mr. Nelidow, soon agreed upon the following wording:

> The Commission,
>
> Actuated by the spirit of mutual agreement and concession characterizing the Peace Conference,
>
> Has resolved to present to the Conference the following declaration, which, while reserving to each of the States represented full liberty of action as regards voting, enables them to affirm the principles which they regard as unanimously admitted:

The Commission is unanimous:

1. In admitting the principle of obligatory arbitration;

2. In declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of international agreements, may be submitted to obligatory arbitration without any restriction.

Finally, it is unanimous in proclaiming that, although it has not yet been found feasible to conclude a Convention in this sense, nevertheless, the divergences of opinion which have come to light have not exceeded the bounds of judicial controversy, and that, by working together here during the past four months, the collected States of the world not only have learned to understand one another and to draw closer together, but have succeeded, in the course of this long collaboration, in evolving a very lofty conception of the common welfare of humanity.

The wording of this declaration so completely met the views and sentiments of the Commission, that it was soon voted, after a few short speeches.

The delegation of Belgium declared that, faithful to the sentiments of conciliation by which it has been continually guided, it would vote for the declaration presented to the Commission. It would do so in the same sense and in the same spirit in which it voted for the resolution of the delegation of Austria-Hungary.

It is pleased to believe that the Commission will in this way unanimously bear witness to its sympathy with and fidelity to the principle of obligatory arbitration.

The delegation of Roumania will vote for the declaration under the same conditions as the delegation of Belgium.

The delegation of the United States of America[1] states that, after three months of discussion, the Commission has adopted, by a majority of two-thirds of the votes cast, a project intended to put into execution, in a concrete and practical form, the principle of obligatory arbitration. The hope was cherished that it would be possible to conclude an agreement between the Powers which had supported the project, while leaving the door open for the others.

The logical conclusion from these facts would be to submit the project to the Conference and place it in its Final Act.

The declaration which is proposed to him for acceptance, appears to his Excellency Mr. Choate to be a genuine and serious retreat from the position won. He therefore will abstain from voting upon it, with the conviction that its adoption would imperil the progress of the cause of arbitration.

The British delegation did not share this point of view. It regarded the declaration as a simple statement of facts accomplished, and not as an abandonment of results obtained. It therefore gave it its full support.

The declaration was unanimously voted, with four abstentions (United States of America, Haiti, Japan, and Turkey), amidst general enthusiasm. All the positions won were maintained, the rights of all were safeguarded, a spirit of concord and wise conciliation permitted the Commission to appear before the Conference, united and conscious of the usefulness of its efforts.[2]

[1] For the full text of Mr. Choate's remarks, see *American Addresses at the Second Hague Peace Conference* (Boston, 1910), pp. 63–4.

[2] For remainder of Baron Guillaume's report, dealing with contract debts, see *post*, p. 441. The conclusion of the report, pp. 498–9, also deals with the pacific settlement convention and obligatory arbitration.

Annexes: (a) Convention of July 29, 1899, for the Pacific Settlement of International Disputes (Parts I, II, and III)

ANNEX I[1]

PROPOSITION OF THE FRENCH DELEGATION

DRAFT INTENDED TO REPLACE PART III OF THE CONVENTION OF JULY 29 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES (ARTICLES 9 TO 14)

Commissions of Inquiry

ARTICLE 1

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 2

International commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined; it determines the mode and time in which the commission is to be formed, as well as the mode and time of designation of the assessors if there are any; the extent of the powers of the commissioners and of the assessors; the place where the commission shall meet and whether it may remove to another place if there is need; the forms and procedure to be followed, and, generally speaking, all the conditions upon which the parties have agreed.

ARTICLE 3

Unless otherwise stipulated, international commissions of inquiry shall be formed in the manner determined by Articles 32 and 34 of the present Convention.

ARTICLE 4

In case of the death, retirement or disability from any cause of one of the commissioners or assessors, his place is filled in the same way as he was appointed.

ARTICLE 5

The parties designate the place of sitting of the commission, and this cannot be altered except with their assent.

However, the commission is entitled to move temporarily to the situs of the controversy, if it is not already there, or to send thither one or more of its members.

ARTICLE 6

The commission decides on the choice of languages to be used by itself, and to be authorized for use before it.

ARTICLE 7

The commission is entitled to settle the rules of procedure for the prosecution of the inquiry and to arrange all the formalities required for dealing with the evidence, in conformity with the provisions of the special inquiry convention.

[1] *Actes et documents*, vol. ii, p. 859, *annexe* I

ARTICLE 8

The parties are entitled to appoint delegates or special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

They are further authorized to engage counsel or advocates appointed by themselves, to defend their rights and interests before the commission.

The commission as well as the adverse party should be notified of the names of the agents and counsel designated by each party.

ARTICLE 9

A secretary general acts as registrar for the international commission of inquiry. He is named by it.

It is his duty under the control of the president to make the necessary arrangements for the sittings of the commission, the preparation of the minutes, and have charge of the archives while the inquiry lasts.

He provides the necessary stenographer and translators.

ARTICLE 10

The sittings of the commission are not public, nor are the minutes and documents connected with the inquiry published, except in virtue of a decision of the commission taken with the consent of the parties.

ARTICLE 11

On the inquiry both sides must be heard.

In the manner and time fixed by the commission, the parties communicate to the commission and to the other party all instruments, papers and documents which they consider useful for ascertaining the truth, as well as the list of witnesses whose evidence it wishes to be heard.

ARTICLE 12

Every investigation, every examination of a locality must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ARTICLE 13

The commission is entitled to ask from either party such explanations and information as it deems expedient. In case of refusal, the commission shall take note thereof.

ARTICLE 14

The litigant Powers undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

ARTICLE 15

The agents are authorized, in the course of the inquiry, to present in writing to the commission and to the other party such statements and requisitions, as they consider useful for ascertaining the truth.

ARTICLE 16

The witnesses are subpœnaed on the request of the parties or by the commission of its own motion.

They are heard in succession and separately, in the presence of the agents and their counsel, and in the order fixed by the commission.

No witness can be heard more than once upon the same facts, if it is not for the purpose of being confronted by another witness whose statement would contradict his own.

ARTICLE 17

The examination of witnesses is conducted by the president.

The members of the commission may, however, ask the witness questions which they consider proper to throw light upon or complete his evidence, or to inform themselves on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the president to put such additional questions to the witness as they think expedient.

ARTICLE 18

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the president to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 19

A minute of the evidence of the witness is drawn up forthwith and read to the wi The latter may make such alterations and additions as he thinks well, which sh recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to s

ARTICLE 20

After the parties have presented all the explanations and evidence, the pre declares the inquiry terminated, and the commission adjourns to deliberate and to draw up its r

ARTICLE 21

The commission considers its decision in p

All questions are decided by a majority of the bers of the commission.

If a member declines to vote, the fact must be re in the minutes.

ARTICLE 22

The report of the international commission of inquiry is adopted by a m ity v and signed by all the members of the commission.

ARTICLE 23

The report of the international commission of inquiry is read at a public sittin the agents and counsel of the parties being present or duly summoned.

A copy of the report is delivered to each party.

ARTICLE 24

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the litigant Powers entire freedom as to the effect to be given to this finding.

ARTICLE 25

Each party pays its own expenses and an equal share of the expenses incurred by the commission.

ANNEX 2[1]

PROPOSITION OF THE RUSSIAN DELEGATION

DRAFT INTENDED TO REPLACE PART III OF THE CONVENTION OF JULY 29, 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

TITLE III

International Commissions of Inquiry

ARTICLE 9

In disputes of an international nature involving neither honour nor independence, and arising from a difference of opinion on points of fact, the signatory Powers agree to institute, if circumstances allow, a commission of inquiry to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation, and establishing, if necessary, responsibility therefor.

ARTICLE 10

The international commission of inquiry is constituted by special agreement between the parties in dispute setting forth their agreement to have recourse thereto, and to conform, so far as procedure is concerned, to the following rules.

ARTICLE 11

In the above case the commission is constituted in the following manner:

Each litigant party shall name one member. For the selection of the third, who shall be the president of the commission, the litigant parties shall address a neutral Power or the Administrative Council of the Permanent Court of Arbitration.

The neutral Power and the Administrative Council shall, as a general rule, choose the third commissioner from the list of the members of the Permanent Court of Arbitration.

ARTICLE 12

Each party shall be represented before the commission by an agent who shall act as intermediary between it and the Government which has named him.

The appointment of counsel for the defence of their interests is left to the judgement of the parties.

ARTICLE 13

The commission shall be formed within two weeks after the date of the incident which caused its formation. It shall sit, so far as possible, in the place where the incident occurred.

ARTICLE 14

The commission shall itself establish the rules of procedure within the shortest possible time.

However, the following rules will serve as principles to be followed:

1. All decisions shall be made by majority vote.

2. The president shall control the inquiry, in which both sides must be heard. However, the commissioners and the agents have the right to take part in the examination of the case.

3. The inquiry begins with the communication to the members of the commission by the respective agents of all documents relating to their cause.

4. Each party may freely summon witnesses up to the close of the examination. After this a witness cannot be heard except with the consent of the opposite party or the sanction of the commission.

[1] *Actes et documents*, vol. II, p. 862, *annexe 2*.

5. Witnesses who have not appeared before the commission can give their testimony before the competent authorities of their countries. Written depositions shall not be accepted except as documents.

6. No arguments or statements of conclusions shall be had before the commission.

7. The report is drawn up by the commissioners in secret session without participation by the agents.

8. The report shall have the character of the finding of an examiner and in nowise that of an arbitral award. It should be limited to a statement of facts and responsibility.

9. The report is signed by all of the members of the commission of inquiry. It does not contain the opinion of the minority.

Upon the reading of the report the labours of the international commission of inquiry are concluded.

ARTICLE 15

(Formerly Article 12)

The litigant Powers undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

ARTICLE 16

(Formerly Article 13)

The international commission of inquiry presents its report to the litigant Powers.

ARTICLE 17

The Powers in litigation, having taken note of the statement of facts and responsibility pronounced by the international commission of inquiry, are free either to conclude a friendly settlement, or to resort to the Permanent Court of Arbitration at The Hague.

ANNEX 3 [1]

PROPOSITION OF THE ITALIAN DELEGATION

I

Add to Article 10 of the Russian proposition (Annex 2) and to Article 2 of the French proposition (Annex 1): 'All rules to be followed by international commissions of inquiry, so far as they are not determined by the special convention between the parties, are fixed by the commission itself. However, the adoption of the provisions contained in the present set of rules is recommended to commissions to facilitate their task.'

II

Amendment to Article 13 of the Convention:

Add to Article 13: 'If one of the parties refuses to sign, the fact shall be mentioned, and the report shall be equally valid if it is signed by an absolute majority.'

ANNEX 4 [2]

PROPOSITION OF THE NETHERLAND DELEGATION

The Netherland delegation has the honour to propose the following modifications:

In Article 9 of the Hague Convention of July 29, 1899, for the peaceful settlement of international disputes;

Replace the words 'deem it expedient' by the word 'agree'.

[1] Ibid., p. 864, *annexe* 3.

[2] Ibid., p. 865, *annexe* 4.

In the French proposition (Annex 1):

Insert in Article 2 after the words ' to be followed ', the words ' the languages which it shall use and those the use of which shall be authorized before it '.

Omit Article 6.

Add to Article 7 the words ' and of the present convention '.

Omit the last paragraph of Article 16.

Add after Article 24, a new article as follows:

It is of course understood that Articles 8—13 and 15—21 are applicable to procedure before the commission of inquiry only in so far as the parties have not agreed upon other rules in the special inquiry convention.

ANNEX 5[1]

PROPOSITION OF THE BRITISH DELEGATION

DRAFT INTENDED TO REPLACE PART III OF THE CONVENTION OF JULY 29, 1899

PART III

International Commissions of Inquiry

ARTICLE 1

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 2

International commissions of inquiry are constituted by special agreement between the parties in dispute.

ARTICLE 3

The convention states the agreement of the parties to have recourse to the inquiry, it defines the facts to be examined and the extent of the powers of the commissioners, it necessary it fixes the date for the presentation of the statement of facts by each party, and of the documents relating to the dispute, and determines the modifications which the parties consider it wise to make to the procedure provided in Articles 11 to 23.

ARTICLE 4

1. International commissions of inquiry are formed, unless otherwise stipulated, in the manner determined by Articles 32 and 34 of the present Convention.

2. In case of the death, retirement or disability from any cause of one of the commissioners, his place is filled in the same way as he was appointed.

ARTICLE 5

The Powers in dispute undertake to supply the international commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with and to accurately understand the facts in question.

[1] *Actes et documents*, vol. II, p. 865, *annexe* 5.

ARTICLE 6

Within a period fixed by the inquiry convention each party shall present to the commissioners and to the other party to the dispute a statement of the facts and all the documents relating to the cause.

ARTICLE 7

On the inquiry both sides shall be heard.

ARTICLE 8

The international commission of inquiry presents its report, signed by all the members of the commission, to the Powers in dispute.

ARTICLE 9

The report of the commission is limited to a finding of facts, and has in no way the character of an award. It leaves to the parties in dispute entire freedom as to the effect to be given to this finding.

ARTICLE 10

If no special inquiry convention is made, the following rules shall be applicable to procedure before the commission.

ARTICLE 11

The meeting-place of the commission is designated by the parties. In default of such designation, the commission shall sit at The Hague.

The place of sitting thus fixed cannot be altered by the commission without the consent of the parties, except in the case of *force majeure*.

ARTICLE 12

The International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and is authorized to place its offices and staff at the disposal of the signatories for the use of the commission of inquiry.

ARTICLE 13

The parties are entitled to appoint delegates or special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

They are further authorized to engage counsel or advocates appointed by themselves, to defend their rights and interests before the commission.

The commission as well as the adverse party should be notified of the names of the agents and counsel designated by each party.

ARTICLE 14

The commission decides on the choice of languages to be used by itself, and to be authorized for use before it.

ARTICLE 15

All of the commission's decisions are made by a majority vote.

ARTICLE 16

The president shall control the inquiry. However, the commissioners, the agents and the counsel have the right to take part in the examination of the case.

ARTICLE 17

The witnesses are subpœnaed on the request of the parties or by the commission of its own motion up to the close of the examination. After this no witness can be heard without the consent of the adverse party or the sanction of the commission.

The witnesses are heard in succession and separately, in the presence of the agents and their counsel, and in the order fixed by the commission.

ARTICLE 18

Witnesses who have not appeared before the commission may give their testimony before the competent authorities of their countries. Written depositions shall not be accepted except as documents.

ARTICLE 19

When the commissioners have exhausted all the sources of information, each of the agents has the right to set forth in writing the conclusions and observations which he desires to submit to the commission. These conclusions and observations are read by the agents.

ARTICLE 20

The meetings of the commission shall be public when the agents present their statements of fact, the witnesses are examined, and the agents present their conclusions, and the final meeting when the commission makes known the result of its deliberations. The other meetings of the commission are not public.

ARTICLE 21

The report is drawn up by the commissioners in secret session without the participation of the agents; it is signed by all the commissioners and does not contain the opinion of the minority.

ARTICLE 22

The commission shall itself establish the details of procedure which are not provided for in the inquiry convention or the above rules.

ARTICLE 23

Each party pays its own expenses and an equal share of the expenses incurred by the commission.

ANNEX 6[1]

PROPOSITION OF THE HAITIAN DELEGATION

The Haitian delegation requests permission to call the kindly attention of the Second Peace Conference to the following points of the Arbitration Convention of 1899.

SPECIAL MEDIATION

It has seemed to it—and it submits its point of view without pretending to utter anything new—that special mediation as provided in Article 8 of the Convention of 1899 would have more chance of amounting to something if, instead of being confided to two Powers, it should be conferred upon a single State chosen under such conditions as to ensure its absolute impartiality. In the system provided in Article 8, each nation engaged in the conflict selects one Power, and the two Powers thus chosen by the interested parties must endeavour to prevent a breach of peaceful relations. The Haitian delegation

[1] *Actes et documents*, vol. ii, p. 868, *annexe* 6.

has asked itself whether, even unwittingly perhaps, the Powers charged with mediation might not have a certain tendency and consider themselves bound to present first and foremost and in the best light possible the cause of the States which have chosen them. It is to be feared that, as has happened only too often in cases of arbitration under a *compromis*, the mediating Powers may exhaust their efforts to discover primarily the least disadvantageous solution for their respective clients. There being no other Power to separate them, they have less chance of reaching an agreement, and their disagreement would run the risk of grave consequences by leaving the litigant parties under the impression that they are not entirely in the wrong.

Would it not be advantageous at the beginning of a dispute likely to endanger the peace to confer the rôle of mediator upon a State having no prejudice whatever? The Haitian delegation takes the liberty of proposing that the two Powers designated by the litigant parties shall have the right only to choose a third Power which shall be the real mediator. This third Power will more easily make the interested parties listen to reason because it does not derive its authority direct from them; at least its word will be less open to suspicion.

The Haitian delegation therefore has the honour to propose a redraft of Article 8 as follows:

> The signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:
>
> In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to which they entrust the mission of entering into direct communication with the Power on the other side, with the object of naming the mediator empowered to prevent the rupture of peaceful relations.
>
> For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Power, which must use its best efforts to settle it.
>
> In case of a definite rupture of peaceful relations, the three Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

The Power to Suggest the Formation of International Commissions of Inquiry

The extension given to arbitration can but strengthen the cause of peace. Likewise the Haitian delegation begs to call the attention of this august Conference to the opportunity of according third Powers the right to suggest, if necessary, the formation of the international commission of inquiry provided for in Article 9 of the Convention of 1899.

The two States involved may, from reasons of great personal convenience, hesitate to take the initiative in this matter; and a suggestion in this regard by a Power having no immediate interest in the controversy, would doubtless facilitate resort to an inquiry. Besides, Article 27 of the Convention of 1899 authorizes the signatory States to call the attention of the Powers in dispute to the fact that the Permanent Court is open to them.

There can therefore be no serious objection to granting to the nations disposed to offer their good offices or mediation the same power with regard to the organization of international commissions of inquiry.

With the benefit of these remarks the Haitian delegation takes the liberty of proposing the addition to Article 9 of the following paragraph:

> The signatory Powers may also suggest to parties in dispute recourse to international commissions of inquiry.

ANNEX 7[1]

PROPOSITION OF THE BRITISH AND FRENCH DELEGATIONS

DRAFT INTENDED TO REPLACE PART III OF THE CONVENTION OF JULY 29, 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES (ARTICLES 9 TO 14)

Commissions of Inquiry

ARTICLE 1

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the signatory Powers deem it expedient that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE 2

International commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined, it determines the mode and time in which the commission is to be formed, as well as the designation of the assessors, if there are any, the extent of the powers of the commissioners and of the assessors, the place where the commission shall meet, and, upon occasion, whether it may remove to another place; and if necessary, the date on which each party must present a statement of facts and, generally speaking, all the conditions upon which the parties have agreed.

ARTICLE 3

In order to facilitate the constitution and operation of international commissions of inquiry, the signatory Powers have adopted the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not agree upon other rules.

ARTICLE 4

Unless otherwise stipulated, international commissions of inquiry shall be formed in the manner determined by Articles 32 and 34 of the present Convention.

ARTICLE 5

In case of the death, retirement or disability from any cause of one of the commissioners or assessors, his place is filled in the same way as he was appointed.

ARTICLE 6

The parties designate the place of meeting of the commission. If it is not so determined the commission shall sit at The Hague. The place of sitting thus fixed cannot be altered by the commission except with the assent of the parties.

ARTICLE 7

The commission decides on the choice of languages to be used by itself, and to be authorized for use before it.

ARTICLE 8

The commission shall settle the details of the procedure not covered by the special inquiry convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

[1] *Actes et documents*, vol. II, p. 869, *annexe* 7.

ARTICLE 9

The parties are entitled to appoint delegates or special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to defend their rights and interests before the commission.

The commission as well as the adverse party should be notified of the names of the agents and counsel designated by each party.

ARTICLE 10

The International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and is authorized to place its offices and staff at the disposal of the signatory States for the use of the commission of inquiry.

ARTICLE 11

If the commission meets elsewhere than at The Hague a secretary general, acting as registrar for the Commission, shall be named by it.

It is the function of the registry, under the control of the president to make the necessary arrangements for the sittings of the commission, the preparation of the minutes, and for the custody of the archives while the inquiry lasts.

He provides the necessary stenographers and translators.

ARTICLE 12

The sittings of the commission are not public, nor the minutes and documents connected with the inquiry published, except by virtue of a decision of the commission taken with the consent of the parties.

ARTICLE 13

On the inquiry both sides must be heard.

At the dates fixed, the parties communicate to the commission and to the other party the statements of fact, if any, and in all cases, the instruments, papers and documents which they consider useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence they wish to be heard.

ARTICLE 14

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ARTICLE 15

The commission is entitled to ask from either party such explanations and information as it considers necessary.

In case of refusal the commission takes note thereof.

ARTICLE 16

The litigant Powers undertake to supply the commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

To ensure the summoning of witnesses or experts or the hearing of their testimony if they are unable to appear before the commission, each of the contracting parties, at the request of the commission, will lend its assistance and arrange for their evidence to be taken before the qualified officials of their own country.

ARTICLE 17

The agents are authorized in the course of or at the close of the inquiry, to present in writing to the commission and to the other party such statements, requisitions, or conclusions as they consider useful for ascertaining the truth.

ARTICLE 18

The witnesses are subpœnaed on the request of the parties or by the commission of its own motion.

They are heard in succession and separately, in the presence of the agents and their counsel, and in the order fixed by the commission.

No witness can be heard more than once upon the same facts, if it is not for the purpose of being confronted by another witness whose statement would contradict his own.

ARTICLE 19

The examination of witnesses is conducted by the president.

The members of the commission may, however, ask the witness questions which they consider proper to throw light upon or complete his evidence, or to inform themselves on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the president to put such additional questions to the witness as they think expedient.

ARTICLE 20

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the president to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 21

A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks well, which shall be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to sign it.

ARTICLE 22

After the parties have presented all the explanations and evidence, the president declares the inquiry terminated, and the commission adjourns to deliberate and to draw up its report.

ARTICLE 23

The commission considers its decision in private.

All questions are decided by a majority of the members of the commission.

If a member declines to vote, the fact must be recorded in the minutes.

ARTICLE 24

The report of the international commission of inquiry is adopted by a majority vote and signed by all the members of the commission.

If one of the members refuses to sign, the fact is mentioned, the report being valid if adopted by a majority.

ARTICLE 25

The report of the commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the report is given to each party.

ARTICLE 26

The report of the international commission of inquiry is limited to a finding of facts, and has in no way the character of an award. It leaves to the litigant Powers entire freedom as to the effect to be given to this finding.

ARTICLE 27

Each party pays its own expenses and an equal share of the expenses of the commission.

(b) Convention of July 29, 1899, for the Pacific Settlement of International Disputes (Part IV)

ANNEX 8[1]

PROPOSITION OF THE FRENCH DELEGATION

DRAFT OF PLAN TO SUPPLEMENT THE HAGUE CONVENTION OF JULY 29, 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

ARBITRATION BY SUMMARY PROCEDURE

ARTICLE 1

General provision

The system here given is drawn up solely with a view to facilitate the operation of the Hague Convention so far as it concerns certain disputes; as to points not covered by it, reference is had to the provisions of the Convention of 1899 so far as they would not be contrary to the principles of the rules here given.

ARTICLE 2

Organization of Tribunal

Each of the parties in dispute shall call upon a qualified person from among its own *ressortissants* to assume the duties of arbitrator. The two arbitrators thus selected shall choose an umpire. If they do not agree on this point, each of them shall propose a candidate, not a *ressortissant* of any of the parties, taken from the general list drawn up in accordance with the Hague Convention of 1899; which of the candidates thus proposed shall be the umpire shall be determined by lot.

The umpire presides over the tribunal, which gives its decision by a majority vote.

If one party so requests, each of the parties shall appoint two arbitrators in place of one, and the four arbitrators shall proceed to designate the umpire in the manner above indicated.

ARTICLE 3

Meeting-place of the Tribunal

In the absence of an agreement concerning the meeting-place of the arbitral tribunal this place shall be determined by lot, each party proposing a given city.

The Government of the country where the tribunal is to meet shall place at its disposition the staff and offices necessary for its operation.

ARTICLE 4

Procedure

When the tribunal has been formed according to the first article, it shall meet and settle the time within which the two parties must submit their respective cases to it.

[1] *Actes et documents*, vol. ii, p. 874, *annexe* 9.

Article 5

Each party shall be represented before the tribunal by an agent, who shall serve as intermediary between the tribunal and the Government which appointed him.

Article 6

The proceedings shall be conducted exclusively in writing. Each party, however, shall be entitled to ask that witnesses be heard. The tribunal shall, on its part, have the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses, whose appearance in court it shall consider useful.

In order to ensure the summoning or hearing of these experts or witnesses, each of the contracting parties, at the request of the tribunal, shall lend its assistance under the same conditions as for the execution of letters rogatory.

Article 7

If the dispute relates to the interpretation or application of a convention between more than two States, the parties between which it has arisen shall notify the other contracting parties of their intention to resort to arbitration and advise them of the arbitrators chosen by them.

The parties thus notified shall have the right to name arbitrators to form the tribunal in addition to the arbitrators designated by the Powers which have made the notification. If, within a month after this notification, any party has not designated an arbitrator of its choice, that Power will be understood to accept any decision which may be rendered.

The umpire shall be designated as indicated by Article 1, except that where there are more than five parties to the dispute, the restrictive clause relating to the nationality of the umpire shall not be applied. The umpire shall have the deciding vote in case of an equal division.

Article 8

Expenses

The expenses of the arbitration shall be borne equally by the parties to the dispute.

ANNEX 91

PROPOSITION OF THE RUSSIAN DELEGATION

PART IV

INTERNATIONAL ARBITRATION

CHAPTER II

The Permanent Court of Arbitration

Article 32

(*Vœu* of 1902)

The Powers which have recourse to arbitration sign a special act (*compromis*), in which are clearly defined the subject of the dispute, the extent of the arbitrators' powers as well as the amount of money which the two parties in dispute have agreed to place immediately at the disposal of the International Bureau to cover the necessary expenses for the progress of the arbitration.

The *compromis* always implies the engagement of the parties to submit in good faith to the arbitral award.

[1] *Actes et documents*, vol. II, p. 875, *annexe* 10.

ARTICLE 23

The litigant Powers which have agreed to submit their dispute to the Permanent Court of Arbitration agree to communicate this act immediately after the signature of the *compromis* to the International Bureau, asking the latter to take the necessary measures for the establishment of the arbitral tribunal.

After the choice of the arbitrators these same Powers shall communicate their names without delay to the International Bureau which, for its part, is obliged to communicate without delay to the arbitrators named the *compromis* which has been signed and the names of the members of the arbitral tribunal which has been established.

Add to original Article 23 after the words : ' the members of the Court are appointed for a term of six years. Their appointments can be renewed ', the following : ' the members of the Permanent Court of Arbitration have not the right to plead before the Court as counsel or advocates for the States in dispute, nor to act as agents.'

ANNEX 10[1]

PROPOSITION OF THE RUSSIAN DELEGATION

PART IV

INTERNATIONAL ARBITRATION

CHAPTER III

Arbitration Procedure

ARTICLE 34

The tribunal appoints its own president.

By common agreement the umpire acts as president.

ARTICLE 38

(*Vœu* of 1902)

The parties in dispute agree to determine in advance in the *compromis* the language of the arbitration procedure before the tribunal.

The arbitrators, agents and counsel are obliged to submit to this decision and not to employ any other than the official language chosen by the Powers for the special case.

ARTICLE 41

(*Vœu* of 1902)[2]

During the pleadings the parties are obliged to communicate to the parties and the arbitral tribunal, directly or through the International Bureau, all their instruments and documents.

After the meeting of the tribunal the latter shall immediately proceed to the discussions during which the presentation of new documents or written instruments on the part of the parties to the dispute shall not be permitted except in the case of actual *force majeure* and of absolutely unforeseen circumstances.

After the close of the debates no communication of new acts or written instruments can be made.

ARTICLE 55

Article 55 of the Convention of 1899 should be omitted.

[1] Ibid., p. 876, *annexe* 11.

[2] See *ante*, p. 340.

ANNEX 11[1]

PROPOSITION OF THE GERMAN DELEGATION

AMENDMENTS TO THE PROVISIONS OF THE HAGUE ARBITRATION CONVENTION OF JULY 29, 1899

ARTICLE 22, PARAGRAPH 4

Insert after the words 'at the Hague' the words 'as soon as possible'.

ARTICLE 24, PARAGRAPH 6

Insert after the words 'to the Bureau' the words 'as soon as possible'.

ARTICLE 37, NEW PARAGRAPH

The members of the Permanent Court may not act as delegates, agents, or advocates except on behalf of the Power which appointed them members of the Court.

ARTICLE 38, REVISED

The *compromis* shall designate the languages to be used by the tribunal and to be authorized for use before it.

ARTICLE 39, PARAGRAPH 2, REVISION OF THE SECOND SENTENCE

The *compromis* shall determine the form and the time in which this communication shall be made.

NEW ARTICLE 40 *a*

The tribunal shall not meet until the close of the pleadings.

NEW ARTICLE, REPLACING ARTICLES 42 AND 43

After the close of the pleadings, the tribunal shall refuse discussion of all new papers or documents to which the agents or counsel of the parties may call its attention.

The tribunal shall, however, take into consideration all new papers or documents which both parties shall agree to produce, or the production of which could not be made sooner by reason of *force majeure* or unforeseen circumstances. The tribunal shall decide in case of doubt, the question of whether these conditions are fulfilled.

ARTICLE 49

Erase the second branch of the sentence: 'to decide . . . conclude its arguments'.

NEW ARTICLE 51 *a*

If the decision requires some act in execution thereof, the arbitral sentence shall fix a period within which execution must be completed.

ARTICLE 57, NEW PARAGRAPH

The *compromis* shall fix a sum which each party must deposit before the opening of the case, as an advance to cover the expenses of the tribunal.

[1] *Actes et documents*, vol. ii, p. 877, *annexe* 12

ANNEX 12 [1]

PROPOSITION OF THE PERUVIAN DELEGATION

AMENDMENT TO ARTICLE 27 OF THE CONVENTION OF JULY 29, 1899

Add to Article 27 of the Convention for the pacific settlement of international disputes, July 29, 1899, Article 27 *bis*, in these terms :

In case of dispute between two Powers, one of them may always address to the International Bureau at The Hague a note containing a declaration that it would be ready to submit the dispute to arbitration.

This note shall make known briefly the point of view of the Power making it with regard to the dispute, and the claim set up by that Power.

The International Bureau must inform the other Power of the declaration which it has received, and it should place itself at the disposition of both Powers to facilitate any exchange of views between them which may lead to the conclusion of a *compromis*.

ANNEX 13 [2]

PROPOSITION OF THE CHILEAN DELEGATION

AMENDMENT TO THE PERUVIAN PROPOSITION [3]

ARTICLE 27 *bis*

In case a dispute, not arising from facts existing before the present Convention, should break out between two Powers, one of them may always address to the International Bureau at The Hague (if necessary by telegraph) a declaration making known its willingness to submit the difference to arbitration.

The International Bureau shall at once notify the interested Government of this declaration. It shall also send notice thereof, together with the reply made thereto, to the signatory Governments to the present Convention.

(c) Obligatory Arbitration

ANNEX 14 [4]

PROPOSITION OF THE SERBIAN DELEGATION

DRAFT OF A NEW ARTICLE 19 FOR THE HAGUE CONVENTION OF JULY 29, 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

ARTICLE 19

Independently of general or special treaties which at present provide or shall provide in future for obligatory arbitration as between the contracting States, the signatory Powers to the present Convention bind themselves to resort to arbitration and to submit their disputes to the Arbitration Court at The Hague :

a. For everything that concerns the interpretation or application of treaties of commerce, and conventions and agreements, under any form whatever, which are annexed thereto, as well as for all other treaties, conventions, agreements concerning the adjustment of economic, administrative and judicial interests.

b. For everything that concerns the execution of pecuniary agreements, the payment of indemnities or reparation for material damages between States or between a State and the subjects of other States, so far as the ordinary courts are not competent.

[1] Ibid., p. 879, *annexe* 15.
[2] Ibid., *annexe* 16.
[3] Annex 12 (*supra*).
[4] Ibid., p. 881, *annexe* 18.

ANNEX 15[1]

PROPOSITION OF THE PORTUGUESE DELEGATION[2]

AMENDMENTS AND ADDITIONS TO THE CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES OF JULY 29, 1899

NEW ARTICLE REPLACING ARTICLE 16

The high contracting Parties agree to submit to arbitration differences of a legal nature or relating to the interpretation of treaties existing between the signatory Powers which may arise among them and which can not be settled by direct diplomatic negotiation, subject however to the condition that they do not involve either the vital interests or independence of the parties in dispute, or the interests of third Powers.

ARTICLE 16 *a*

It is understood that each of the contracting Powers has the exclusive right to determine whether any difference which may arise involves its vital interests or independence, and consequently is of such a nature as to be excepted from arbitration.

ARTICLE 16 *b*

The high contracting Powers agree not to avail themselves of the preceding article in the following cases:

1. Disputes concerning the interpretation or application of conventions already concluded or to be concluded and enumerated below:

(*a*) Treaties of commerce and navigation.
(*b*) Conventions regarding the international protection of workmen
(*c*) Postal, telegraph (including wireless), and telephone conventions.
(*d*) Conventions concerning the protection of submarine cables.
(*e*) Conventions concerning railroads.
(*f*) Conventions and rules concerning means of preventing collisions at
(*g*) Conventions concerning the protection of literary and artistic works
(*h*) Conventions concerning industrial property (patents, trade-marks, and trade names).
(*i*) Conventions concerning regulation of commercial and industrial companies
(*k*) Conventions concerning monetary and metric systems (weights and measures
(*l*) Conventions concerning reciprocal free aid to the indigent sick.
(*m*) Sanitary conventions, conventions concerning epizooty, phylloxera, and other similar pestilences.
(*n*) Conventions relating to matters of private international law.
(*o*) Conventions concerning civil or criminal procedure.
(*p*) Extradition conventions.
(*q*) Diplomatic and consular privileges.

2. Establishment of boundary marks.

3. Disputes concerning pecuniary claims for damages when the principle of indemnity is recognized by the parties.

4. Questions relating to debts.

[1] *Actes et documents*, vol. ii, p. 881, *annexe* 19.
[2] See also annex 25, *post*, p. 479.

ANNEX 16[1]

PROPOSITION OF THE AMERICAN DELEGATION[2]

PLAN FOR OBLIGATORY ARBITRATION

ARTICLE 1

Differences of a legal nature or relating to the interpretation of treaties existing between two or more of the contracting States which may arise in the future, and which can not be settled by diplomatic means, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of July 29, 1899, subject, however, to the condition that they do not involve either the vital interests or independence or honour of any of the said parties, and that they do not concern the interests of other States not parties to the dispute.

ARTICLE 2

Each signatory Power shall be the judge of whether the difference which may arise involves its vital interests, independence, or honour, and consequently is of such a nature as to be comprised among those cases which are excepted from obligatory arbitration, as provided in the preceding article.

ARTICLE 3

In each particular case the high contracting parties (the signatory Powers) shall conclude a special *compromis* (special protocol) conformably to the constitutions or laws of the high contracting parties (signatory Powers), defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure and the details to be observed in the matter of the constitution of the arbitral tribunal.

ARTICLE 4

The present convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all of the Powers which were represented at the International Peace Conference at The Hague.

ARTICLE 5

In the event of one of the high contracting parties denouncing the present convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

[1] *Actes et Documents*, vol. II, p. 883, *annexe* 20.

[2] The American delegation submitted a redraft (ibid., p. 884, *annexe* 21) of this proposition, but the only change was a revision of Article 5 to read as follows: 'each of the high contracting parties shall have the right to denounce this convention. This denunciation may involve either the total withdrawal of the denouncing Power from the convention or the withdrawal as to a single other Power designated by the denouncing Power. In both cases the convention shall continue to exist so far as it has not been denounced. The denunciation, whether in whole or in part, shall not be effective until six months after [illegible] notification thereof to the Netherland Government, immediately communicated by the latter to [illegible] other contracting Powers.' See also annex 27, *post*, p. 452.

ANNEX 17[1]

PROPOSITION OF THE SWEDISH DELEGATION

DRAFT INTENDED TO REPLACE ARTICLES 14 TO 19 OF THE CONVENTION OF JULY 29, 1899

Replace Articles 15 to 19 by the following:

ARTICLE 15

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the arbitral award.

ARTICLE 16

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.

The signatory Powers agree to resort to arbitration in the case of disputes which may arise among them, and which could not be settled by diplomatic means, subject however to the condition that they do not involve the vital interests or independence of the parties in dispute.

ARTICLE 17

Each of the parties in dispute is judge of whether the difference which may arise involves its vital interests or independence, and consequently, is of such a nature as to be comprised among those cases which, according to the preceding article, are excepted from obligatory arbitration.

ARTICLE 18

The signatory Powers agree not to avail themselves of the exceptions contained in Article 17 in the following cases, wherein arbitration shall in all instances be obligatory:

1. In case of pecuniary claims for damages when the principle of indemnity is recognized by the parties in dispute.

2. In case of pecuniary claims when it is a question of the interpretation or application of conventions of every kind between the litigant parties.

3. In case of pecuniary claims arising from acts of war, civil war or so-called pacific blockade, the arrest of foreigners or the seizure of their property.

ARTICLE 19

The preceding articles do not detract from general or special treaties which at present provide a more extended recourse to arbitration by the signatory Powers.

These Powers reserve to themselves the right of concluding, either before the above articles become effective or later, new agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

ANNEX 18[2]

PROPOSITION OF THE BRAZILIAN DELEGATION

AMENDMENT TO ARTICLE 16 OF THE CONVENTION OF JULY 29, 1899

1. In questions where they do not reach an agreement by diplomatic means or through good offices and mediation, if these questions do not affect the independence, territorial integrity or vital interests of the parties, their institutions or internal laws, or the interests

[1] *Actes et documents*, vol. ii, p. 885, *annexe* 22.

[2] Ibid., p. 886, *annexe* 23

of third Powers, the signatory Powers bind themselves to resort to arbitration before the Permanent Court at The Hague, or if they prefer, through the nomination of arbitrators of their choice.

2. It is understood that the signatory Powers always reserve the right not to resort to arbitration until after good offices and mediation if they are willing to resort to the latter methods of conciliation first.

3. In disputes relating to inhabited territories, recourse shall not be had to arbitration except with the prior consent of the peoples interested in the decision.

4. Each interested party shall decide finally whether the dispute involves its independence, territorial integrity, vital interests or institutions.

ANNEX 19[1]

DECLARATION OF THE DELEGATION FROM THE DOMINICAN REPUBLIC

Whereas, at the Third International American Conference held at the City of Rio de Janeiro, it was decided by the delegations attending, representing nineteen signatory Powers, among which was the Dominican Republic, to ratify their adhesion to the principle of arbitration, and, in the interest of promoting the growth and realization of so high an ideal, and of making it a matter of practice among all States, to recommend to the said signatory Powers that they instruct their representatives to the Second Hague Conference to endeavour to collaborate in the making of a general convention of arbitration which should become thereby a bond of brotherhood and concord, and the rule of conduct for all civilized nations;

Whereas, for the realization of so high and humanitarian an idea, which is the ideal of international justice and the aspiration of all men of high intentions, it is necessary to give to arbitration the greatest scope, so that it may include all differences which might arise among States, the solution of which could with difficulty be reached by diplomatic means,—which implies necessarily that arbitration should be obligatory in all cases of differences or disputes between two or more States;

In the face of the actual facts and difficulties which lead to the belief that so great an ideal is not practical at this time, and anticipating the day when all nations, harmonizing their different interests to accord with the highest interests of humanity and real civilization of the world, shall agree upon the means of realizing such an aspiration, the delegation from the Dominican Republic expresses its desire for unrestricted international obligatory arbitration.

ANNEX 20[2]

DECLARATION OF THE DANISH DELEGATION

Since the First Peace Conference the Danish Government, in accordance with the wish expressed by Article 19 of the Convention of July 29, 1899, for the pacific settlement of international disputes, has concluded obligatory arbitration conventions with the following Powers, to wit: the Netherlands, Russia, Belgium, France, Great Britain, Spain, Italy, and Portugal.

In the conventions of February 12, 1904, with the Netherlands, December 16, 1905, with Italy, and March 20, 1907, with Portugal, absolutely no reservation was made with regard to the matters of dispute which should be submitted to arbitration.

The text of the convention with the Netherlands provides in brief: 'the high contracting parties bind themselves to submit to the Permanent Court of Arbitration all differences and all disputes between them which may not have been settled by diplomatic means', and the text of the conventions with Italy and Portugal says: 'The high contracting parties bind themselves to submit to arbitration all differences of whatever

[1] Ibid., p. 886, *annexe* 24. [2] Ibid., p. 887, *annexe* 25.

character which may arise between them and which may not be settled by diplomatic means.'

These last two conventions also contain the following provision regarding the special *compromis* to be signed in advance of the arbitration: 'if there is no special *compromis* the arbitrators shall pass judgement upon the basis of the claims formulated by the two parties.'

The Netherland Government, by the conclusions of these conventions, has sufficiently set forth its point of view and its desires in this matter, and the Danish delegation has the honour to call the attention of the subcommission to the texts above cited.

ANNEX 21[1]

PROPOSITION OF THE SWISS DELEGATION[2]

MODIFICATIONS OF THE CONVENTION OF JULY 29, 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

ARTICLE 16

Adopt the addition of paragraph 2 as proposed by the delegation from Austria-Hungary (*procès-verbal* of the committee of examination A, session of August 6).

ARTICLE 16 *a*

The signatory Powers declare that treaty provisions concerning matters enumerated below appear to be particularly suitable for submission to obligatory arbitration, arbitration treaties and arbitration clauses in treaties already concluded, or to be concluded, being reserved:

1. Commerce and navigation.
2. International protection of workmen.
3. Posts, telegraphs, and telephones.
4. Protection of submarine cables.
5. Railroads.
6. Means of preventing collisions at sea.
7. Protection of literary and artistic works.
8. Industrial property.
9. Regulation of industrial and commercial companies.
10. Money, weights, and measures.
11. Reciprocal free aid for the indigent sick.
12. Epidemics, epizooty, etc.
13. Private international law.
14. Civil and criminal procedure.
15. Extradition.
16. Diplomatic and consular privileges.

etc., etc.

ARTICLE 16 *b*

The signatory Powers which would be willing, under reciprocal conditions, to accept obligatory arbitration for all or a part of the above-named matters, shall send notice of these matters through the International Bureau established at The Hague to the other signatory Powers of the present Convention.

Obligatory arbitration shall be established for one signatory Power with regard to another as soon and so far as these Powers shall have given notice of their adoption of the same matters appearing in the list in Article 16 *a*.

[1] *Actes et documents*, vol. II p. 888, *annexe* 27.

[2] See also annex 22, *post*, p. 477.

ARTICLE 19

Independently of the general or special treaties which now provide obligatory recourse to arbitration for the signatory Powers, *and independently of the obligation of Articles 16 a and 16 b*, the said Powers reserve the right to conclude either before the ratification of this act or later, new agreements, general or private, with a view to extending obligatory arbitration to all *other* cases which they deem it possible to submit to it.

ANNEX 22 [1]

PROPOSITION OF THE SWISS DELEGATION [2]

MODIFICATIONS OF THE CONVENTION OF JULY 29, 1899, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

(Revision)

ARTICLE 16

Adopt the addition of paragraph 2 as proposed by the delegation from Austria-Hungary (*procès-verbal* of the committee of examination A, session of August 6).

ARTICLE 16 *a*

Independently of the general or special treaties which now provide or shall provide in the future for obligatory arbitration between the contracting States, the signatory Powers to the present Convention which, under reciprocal conditions, would be willing to accept obligatory arbitration for all or any one of the matters enumerated below, shall make known their decision through the Netherland Government to the other signatory Powers to the present Convention:

Commerce and navigation.
2. International protection of workmen.
3. Posts, telegraphs, and telephones.
4. Protection of submarine cables.
5. Railroads.
6. Means of preventing collisions at sea.
7. Protection of literary and artistic works.
8. Industrial property.
9. Regulation of industrial and commercial companies.
10. Money, weights, and measures.
11. Reciprocal free aid for the indigent sick.
12. Epidemics, epizooty, etc.
13. Private international law.
14. Civil and criminal procedure.
15. Extradition.
16. Diplomatic and consular privileges.
etc., etc.

Obligatory arbitration shall be established for one signatory Power with regard to another as soon and so far as these Powers shall have given notice of their adoption of the same matters appearing in the above list.

ARTICLE 16 *b*

Arbitration treaties and arbitration clauses in treaties already concluded or to be concluded shall be reserved.

[1] *Actes et documents*, vol. II, p. 889, *annexe* 28.

[2] See also annex 21, *ante*, p. 470.

ANNEX 23[1]

PROPOSITION OF THE BRITISH DELEGATION[2]

NEW ARTICLES TO BE ADDED TO THE CONVENTION OF JULY 29, 1899

ARTICLE 16 *a*

The high contracting parties agree not to avail themselves of the preceding articles in the following cases:

1. Disputes concerning the interpretation of treaty provisions relating to:
   (*a*) Customs tariffs.
   (*b*) Measurement of vessels.
   (*c*) Equality of foreigners and nationals as to taxation and imposts.
   (*d*) Right of foreigners to acquire and hold property.
2. Disputes concerning the interpretation or application of the conventions listed below:
   (*a*) Conventions regarding the international protection of workmen.
   (*b*) Conventions concerning railroads.
   (*c*) Conventions and rules concerning means of preventing collisions at sea.
   (*d*) Conventions concerning the protection of literary and artistic works.
   (*e*) Conventions concerning the regulation of commercial and industrial companies.
   (*f*) Conventions concerning monetary and metric systems (weights and measures).
   (*g*) Conventions concerning reciprocal free aid to the indigent sick.
   (*h*) Sanitary conventions, conventions concerning epizooty, phylloxera, and other similar pestilences.
   (*i*) Conventions relating to matters of private international law.
   (*j*) Conventions concerning civil or criminal procedure.
3. Disputes concerning pecuniary claims for damages, when the principle of indemnity is recognized by the parties.

ARTICLE 16 *b*

It is understood that the stipulations providing for obligatory arbitration under special conditions which appear in treaties already concluded or to be concluded, shall remain in force.

ARTICLE 16 *c*

The provisions of Article 16 *a* cannot in any case be relied upon when it is a question of the interpretation or application of extraterritorial rights.

ANNEX 24[3]

PROPOSITION OF THE BRITISH DELEGATION[4]

NEW ARTICLES TO BE ADDED TO THE CONVENTION OF JULY 29, 1899

(Revision)

ARTICLE 16 *a*

The high contracting parties agree to submit to arbitration without reserve disputes concerning:

A. Interpretation or application of treaty provisions concerning the following matters:
   1. Customs tariffs.
   2. Measurement of vessels.
   3. Wages and estates of deceased seamen.

[1] *Actes et documents*, vol. II, p. 893, *annexe* 31.
[2] *Actes et documents*, vol. II, p. 894, *annexe* 32.
[3] See also annexes 24, *infra*, and 29, *post*, p. 489.
[4] See also annexes 23, *supra*, and 29, *post*, p. 489.

4. Equality of foreigners and nationals as to taxation and imposts.
5. Right of foreigners to acquire and hold property.
6. International protection of workmen.
7. Means of preventing collisions at sea.
8. Protection of literary and artistic works.
9. Regulation of commercial and industrial societies.
10. Monetary systems; weights and measures.
11. Reciprocal free aid for the indigent sick.
12. Sanitary regulations.
13. Regulations concerning epizooty, phylloxera, and other similar pestilences.
14. Private international law.
15. Civil or commercial procedure.

B. Pecuniary claims for damages when the principle of indemnity is recognized by the parties.

ARTICLE 16 *b*

It is understood that the stipulations providing for obligatory arbitration under special conditions which appear in treaties already concluded or to be concluded, shall remain in force.

ARTICLE 16 *c*

Article 16 *a* does not apply to disputes concerning provisions of treaties regarding the enjoyment and exercise of extraterritorial rights.

ANNEX 25 [1]

PROPOSITION OF THE PORTUGUESE DELEGATION [2]

AMENDMENTS AND ADDITIONS TO THE CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

(Revision)

NEW ARTICLE REPLACING ARTICLE 16

The high contracting parties agree to submit to arbitration differences of a legal nature, and especially those relating to the interpretation of treaties existing between the signatory Powers, which may arise among them and which can not be settled by direct diplomatic negotiation, subject however to the condition that they do not involve either the vital interests or independence of the parties in dispute.

ARTICLE 16 *a*

It is understood that each of the contracting Powers has the exclusive right to determine whether any difference which may arise involves its vital interests or independence and consequently is of such a nature as to be excepted from arbitration.

ARTICLE 16 *b*

The high contracting parties agree to submit to arbitration without reserve disputes concerning:

A. Interpretation and application of *treaty provisions* concerning the following subjects:

1. Customs tariffs.
2. Taxes against vessels (dock charges, lighthouse and pilot dues), salvage charges and taxes imposed in case of damage or shipwreck.
3. Measurement of vessels.
4. Equality of foreigners and nationals as to taxation and imposts.

[1] *Actes et documents*, vol. II, p. 895, *annexe* 34.

[2] See also annex 15, *ante*, p. 472.

5. The right of foreigners to pursue commerce and business, to practise the liberal professions, whether it be a case of a direct grant, or by being placed on an equality with nationals.

6. Right of foreigners to acquire and hold property.

7. International protection of workmen.

8. Means of preventing collisions at sea.

9. Protection of literary and artistic works.

10. Patents, trade-marks, and trade names.

11. Regulation of commercial and industrial companies.

12. Monetary systems; weights and measures; geodetic questions.

13. Reciprocal free aid to the indigent sick; conventions providing for repatriation.

14. Emigration.

15. Sanitary regulations.

16. Regulations concerning epizooty, phylloxera, and other similar pestilences.

17. Private international law.

18. Civil or criminal procedure.

B. Surveying of the boundaries fixed by a treaty when it does not concern inhabited territories.

C. Pecuniary claims for damages when the principle of indemnity is recognized by the parties.

D. Contract debts.

ANNEX 26[1]

NOTE OF HIS EXCELLENCY MR ASSER, CONCERNING INTERNATIONAL OBLIGATORY ARBITRATION

It seems to me to follow from the discussions in the committee of examination that a divergence of opinion exists with regard to the very nature of the international arbitration which it is proposed to make obligatory in certain cases.

According to some, international arbitration is destined in cases between States to be what ordinary tribunals are in cases between individuals. According to this conception, international arbitration has for its purpose the application of law to a special case which has given rise to a dispute between two or more States. The arbitral award may have for its object the sentencing of the defendant to perform or permit a certain act, to pay a sum of money, etc., or perhaps the determination of frontiers between States or any other special regulation with regard to which a disagreement has arisen.

If it is a question of the interpretation of a convention, this interpretation is given with reference to a special case; if the same difference arises later in another case the new arbitrators are at liberty to decide it according to their judicial ideas. The precedent does not bind them, unless there is ground for pleading *res judicata*.[2]

In other words, the arbitral tribunal cannot render an award which is legally binding in the future, any more than can national tribunals (*arrêt de règlement*).

According to this idea of arbitration, it could not be applied except in cases where States themselves are litigant parties, and where it is a question of obtaining a judgement with regard to their reciprocal obligations or to their rights as States, flowing either from treaties or from some other source of international law.

It is important, therefore, to distinguish between treaty provisions in which one State makes direct promises to another State or its *ressortissants*, and those in which it agrees only to give legal force to certain provisions contained in the Convention. With regard

[1] *Actes et documents*, vol. II, p. 807, *annexe* 35.

[2] See the arbitral decision in the case of the 'Pious Fund of the Californias'.

to the latter, the State (or its Government) has fulfilled the duty which falls upon it by virtue of the treaty, as soon as the provision in question has been given the force of law in the manner prescribed in the State's constitution (either by ratification of the treaty itself, after parliamentary [in the United States, congressional] approval, where it is required, or by the insertion of the treaty provisions in a national law).

The interpretation of these provisions, thus become an integral part of the national legislation, is within the jurisdiction of the national tribunals.

Let me take as an example a case governed by a treaty of private international law.

With regard to an action of divorce the tribunal, *acting in accord with the Convention itself*, interpreted a clause of the Convention in a certain way.

In another divorce case the tribunal of another contracting State gave a different interpretation to the same clause.

It is clear that in a situation such as I have just set forth there is no place for international arbitration. An arbitral decision could not destroy the force of the decision of a national judge in an individual case; and, as has been said, arbitration could not, in the same situation, be invoked to give to the provision in question an official interpretation to have the force of law in the future.

According to the other idea developed in the committee, international arbitration has for its definite purpose legislation for the future, in the sense that judgements are considered as the complement of the treaties themselves. Nothing then is against resort to arbitration with regard to a dispute in which a judgement has been entered, even in a court of last resort, under the national judicial system. While respecting this decision in the special case in question, the arbitrators in some measure take the place of the contracting parties themselves, completing the Convention by their judgement, which, in truth, has the force of an additional protocol.

I do not in any way fail to recognize the usefulness of such an application of international arbitration; I believe especially that in the case of the *unions* which have not yet introduced obligatory arbitration, it would be marked progress.

But it seems to me clear that where it is a question of introducing *universal* obligatory arbitration into international law for the first time, without the reservation as to vital interests or national honour, we should be content with an arbitration of the more restricted scope, first above set forth.

This will not prevent States from concluding special conventions for the organization of a more effective and radical form of international arbitration. When the question of avoiding difficulties which may result from the differing interpretations of the same Convention by the courts of the different contracting States arises, then especially can the new Permanent Court of Arbitration render great service as a court of appeal or a court of regulation.

There already exists an international court intended to ensure the uniform interpretation of a convention; that is the Central Commission for the Navigation of the Rhine, established by the Acts of Navigation of 1831 and 1868. It passes as a court of last resort upon differences arising out of the general regulations concerning the navigation of the Rhine.[1]

To return to the question of the nature of obligatory arbitration to be introduced by the Convention, I believe that the explanation proposed by the subcommittee to be inserted in the *procès-verbal* would remove any doubt in this connexion, especially if a slight change were made in the last part of the phrase.

Instead of saying, 'with the intention of excluding from the operation of obligatory arbitration the treaties in question, so far as they refer to provisions of which the interpretation and application in case of dispute are within the jurisdiction of national courts' (which might still cause misunderstanding), it would perhaps be preferable to say: 'with the intention of excluding from the operation of obligatory arbitration treaty provisions

[1] Except for the strange provision, which diminishes the value of the institution, providing that the party which loses in the first instance has the right to choose as a court of appeal either the competent national court or the international commission

intended to form part of national legislation of which the interpretation and application consequently, in case of dispute, are within the jurisdiction of national courts.'

It has been proposed to indicate here that this restriction does not concern disputes between individuals, but such an amendment does not seem to me worthy of recommendation, since the treaty provisions in question may also be of a *penal* character. In this case it is not a question of a dispute between *individuals*.

I beg to observe in closing that in this note I have presented only my personal opinion.

ANNEX 27[1]

PROPOSITION OF THE AMERICAN DELEGATION[2]

PLAN FOR OBLIGATORY ARBITRATION

(New draft of August 26, 1907)

ARTICLE 1

Differences of a legal nature or relating to the interpretation of treaties existing between two or more of the contracting States which may arise in the future, and which can not be settled by diplomatic means, shall be submitted to arbitration, subject, however, to the condition that they do not involve either the vital interests or independence or honour of any of the said parties, and that they do not concern the interests of other States not parties to the dispute.

ARTICLE 2

Each signatory Power shall be the judge of whether the difference which may arise involves its vital interests, independence, or honour, and consequently is of such a nature as to be comprised among those cases which are excepted from obligatory arbitration, as provided in the preceding article.

ARTICLE 3

Each of the signatory Powers agrees not to avail itself of the provisions of the preceding article in such of the following cases as shall be enumerated in its ratification of this Convention, and which shall also be enumerated in the ratifications of every other Power with which differences may arise; and each of the signatory Powers may extend this agreement to any or all cases named in its ratification to all other signatory Powers or may limit it to those which it may specify in its ratification.

1. Disputes concerning the interpretation of treaty provisions relating to:
   (*a*) Customs tariffs.
   (*b*) Measurement of vessels.
   (*c*) Equality of foreigners and nationals as to taxation and imposts.
   (*d*) Right of foreigners to acquire and hold property.

2. Disputes concerning the interpretation or application of the conventions enumerated below:
   (*a*) Conventions concerning the international protection of workmen.
   (*b*) Conventions concerning railroads.
   (*c*) Conventions and rules concerning means of preventing collisions of vessels at sea.
   (*d*) Conventions concerning the protection of literary and artistic works.
   (*e*) Conventions concerning the regulation of commercial and industrial companies.
   (*f*) Conventions concerning monetary and metric systems (weights and measures).
   (*g*) Conventions concerning reciprocal free aid to the indigent sick.
   (*h*) Sanitary conventions, conventions concerning epizooty, phylloxera, and other similar pestilences.

[1] *Actes et document.*, vol. ii, p. 899, *annexe* 37.
[2] See also annex 16, *ante*, p. 473.

(*i*) Conventions relating to matters of private international law.
(*j*) Conventions concerning civil or criminal procedure.

3. Disputes concerning pecuniary claims for damages, when the principle of indemnity is recognized by the parties.

ARTICLE 4

In each particular case the signatory Powers shall conclude a special act (*compromis*) conformably to the respective constitutions or laws of the signatory Powers defining clearly the subject of the dispute, the extent of the arbitrators' powers, the procedure and the details to be observed in the matter of the constitution of the arbitral tribunal.

ARTICLE 5

It is understood that stipulations providing for obligatory arbitration under special conditions, which appear in treaties already concluded or to be concluded, shall remain in force.

ARTICLE 6

The provisions of Article 3 can in no case be relied upon when the question concerns the interpretation or application of extraterritorial rights.

ARTICLE 7

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

The ratification of each signatory Power shall specify the cases enumerated in Article 3 wherein the ratifying Power will not avail itself of the provisions of Article 2; and it shall specify also with each of the other Powers the agreement provided by Article 3 is made with regard to each of the cases specified.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all of the Powers which were represented at the International Peace Conference at The Hague. A signatory Power may at any time deposit new ratifications including additional cases enumerated in Article 3.

ARTICLE 8

Each of the high contracting Powers shall have the right to denounce the Convention. This denunciation may involve either the total withdrawal of the denouncing Power from the Convention or the withdrawal with regard to a single Power designated by the denouncing Power.

This denunciation may also be made with regard to one or several of the cases enumerated in Article 3.

The Convention shall continue to exist to the extent to which it has not been denounced.

The denunciation, whether in whole or in part, shall not take effect until six months after notification thereof in writing to the Netherland Government, and by it communicated at once to all the other contracting Powers.

ANNEX 28[1]

PROPOSITION OF THE DELEGATION OF AUSTRIA-HUNGARY[2]

RESOLUTION RELATING TO OBLIGATORY ARBITRATION

To-day we have gathered for the sixth meeting of the committee examination to discuss the question of obligatory arbitration, a question which stirs above all others,

[1] *Actes et documents*, vol. II, p. 901, *annexe* 38.

[2] See also ibid., pp. 912, 913, *annexes* 42, 45. These *annexes* were revisions of the 'resolution' embodied in the above annex. These redrafts made no real change in the text of the resolution other than to limit the subject-matter to be referred to the various Governments for study to the 'application of obligatory arbitration to certain international conventions—or parts of conventions'—instead of making it cover the general subject of 'the question of obligatory arbitration'. *Annexe* 45 is quoted in the report, *ante*, p. 418.

and which, among all, seems to me to be in truth the only question which—provided that we find a solution thereof, however unsatisfactory—can impress the assembly of which we are a part with the real character of a peace conference. Then, too, in devoting long hours to the study of this problem, as we have done, we have certainly not frittered away our time, and our efforts have not been entirely useless labour.

The energy which we have devoted to this subject, the care which we have taken to examine it from all sides, the high plane upon which we have exchanged our views in this connexion, all permit us to report very exactly upon the nature and scope of the problem with which we are concerned.

Our eminent president has praised these discussions by saying that there was real intellectual pleasure in listening to them, and I, for my part, am imbued with the same idea. Our president has very properly stated also that this discussion has in some sort and some measure already produced positive results. For I believe I may apply this term to the statement of a well-considered intention on the part of most of our colleagues to accept the principle of obligatory arbitration. I shall also consider as a positive result the conviction which we have reached in this same discussion that only certain categories of international treaties, or certain parts of these treaties, are, in case of divergence of opinion, capable of being submitted to obligatory arbitration. Finally, we can consider as the fruit of our labours the very fact that we have been able to see the difficulties both of a legal and especially of a technical character, which are opposed to the adoption by the Conference itself of the subjects which may, without further restriction be the subject of a provision for obligatory arbitration.

It is with regard to this latter point that I desire to make a further explanation.

With this in mind I stop first, for a moment, upon a question of prime importance which may seem to be simply a question of form, of phraseology, but which, looked at a little more closely, is indeed of the essence, and seems to me on more than one point to lead to a conclusion.

In examining questions to see whether they are capable or not of being the subject of an arbitration convention we are unanimous in dividing them into two main groups: differences of a political nature which necessarily are omitted from a general arbitration clause, and disputes of a legal character, the nature of which on the contrary is not opposed in any way to resort to arbitration.

Now, among the latter we are accustomed to distinguish to some extent between disputes outside the treaty provisions (legal questions) and those which concern the interpretation or application of international treaties. This customary distinction, which I admit, and which has become a part of the draft presented by the Portuguese delegation, seems to me, however, hardly exact, or at least incomplete, and by simply running through the list of treaties and conventions which according to the Portuguese proposition should be submitted without reserve to obligatory arbitration, we may easily perceive that disputes might arise concerning these international agreements, bearing in the greater number of cases not a legal character, but an almost exclusively technical character.

It seems to me that three conclusions follow from this statement:

1. The necessity for more exact phraseology.

2. The incompetence, not from a legal point of view, but, if I may venture to express it thus, from a technical point of view, of the Permanent Court of Arbitration, both of the institution already bearing this name, and of that other which it is intended to create, to pass upon disputes of an essentially technical character and requiring consequently special knowledge and abilities.

3. The incompetence for the same reason of the Conference itself to determine which of the conventions listed in the Portuguese plan would, in case of dispute, lend themselves either in whole or in part to obligatory arbitration, without mentioning the fact that the Conference would have had barely time enough to make a conscientious study of so delicate a matter.

Do not think, gentlemen, that in the course of my argument I am leading to the statement: Well, since the Conference lacks the necessary power and ability to decide this problem, let us give it up!

This conclusion would perhaps be logical, but there is another which, without being logical, I believe coincides much better with the sentiments of all of us.

In my view the most desirable course under the circumstances which I have stated would be for the Conference to adopt a resolution based upon the following ideas:

After having considered this subject with all the attention which it deserves, the Conference can state that there exists within the limits which are still to be clearly and distinctly fixed, certain matters which, in case of dispute, may be required to be submitted to arbitration without reserve. This method of settlement appears to recommend itself particularly for disputes arising from a difference of opinion as to the interpretation or application of certain international conventions—or parts of conventions—which might be taken from the list appearing in the proposition of the Portuguese delegation.

Now, the matters in question having for the greater part a more or less technical character, we could scarcely avoid a preliminary examination before determining which cases, upon occasion, might be included within the domain of obligatory arbitration in the future. It is evident that the Conference is not competent to go ahead in this matter with a full knowledge of all the details which it must consider; such a task should on the contrary be undertaken by experts versed in the matters in question.

Under these circumstances the Conference hands over to the Governments themselves the duty of taking in hand this preparatory work with a view to reaching an international agreement sanctioning, within the limits which they consider wise, the principle recognized by the Conference.

To make evident how important the Conference considers it that the resolution should not become a dead letter, but that it should, on the contrary, be put into practice as soon as possible, it would perhaps be well to determine in the resolution itself a certain period for the respective Governments to study the matter in question, after which the Powers should communicate with each other through the Royal Netherland Government with a view to reaching a solution of the problem.

I have tried to formulate the resolution which I propose to you, and I beg to submit the following text for your consideration, making every reservation as to matters of phraseology:

RESOLUTION

After having conscientiously weighed the question of arbitration, the Conference has finally come to the conclusion that certain matters, carefully specified, are susceptible of submission to obligatory arbitration without any restriction, and that those which lend themselves particularly to this method of settlement are disputes regarding the interpretation or application of certain international conventions—or parts of conventions—appearing among those which are contained in the proposition of the Portuguese delegation.

Most of the matters in question being more or less technical in character, any decision as to the extent to which and the conditions under which obligatory recourse to arbitration might here be introduced, should, however, be preceded by such study as is beyond the competence of the Conference and can be entrusted only to experts, inasmuch as it requires special knowledge and experience. The Conference, therefore, invites the Governments after the close of the Hague meeting to submit the question of obligatory arbitration to a serious examination and profound study. This study must be completed by the ——, at which time the Powers represented at the Second Hague Conference shall notify each other through the Royal Netherland Government of the matters which they are willing to include in a stipulation regarding obligatory arbitration.

I need not add that the plan as it appears to me could not be accepted unless supported by the votes of all, or nearly all, of the delegates.

The resolution which I beg to propose to you would guarantee to a certain extent the application of obligatory arbitration to the matters under discussion; it would at the same time take into account the very proper scruples which the discussion of this subject has aroused in the minds of many of our colleagues, and by ordering a preliminary study of the technical side of the question, it would ensure in the end an agreement of a thoughtful and practical character.

ANNEX 29[1]

PROPOSITION OF THE BRITISH DELEGATION[2]

NEW ARTICLES TO BE ADDED TO THE CONVENTION OF JULY 29, 1899

(Third revision of the proposition)

ARTICLE 16

Differences of a legal nature, and especially questions relating to the interpretation of treaties existing between two or more of the contracting States, which may arise in the future, and which can not be settled by diplomatic means, shall be submitted to arbitration, subject, however, to the condition that they do not involve either the vital interests or independence or honour of any of the said States, and that they do not concern the interests of other States not parties to the dispute.

ARTICLE 16 *a*

Each of the signatory Powers shall have the right to determine whether the dispute which may arise involves its vital interests, independence, or honour, and consequently is of such a nature as to be comprised among those cases which according to the preceding article are excepted from obligatory arbitration.

ARTICLE 16 *b*

The high contracting Powers recognize that in certain disputes provided for in Article 16 there are reasons for renouncing the right to avail themselves of the reservations therein set forth.

ARTICLE 16 *c*

With this in mind they agree to submit to arbitration without reservation disputes concerning the interpretation and application of treaty provisions relating to the following subjects:

1.
2.
3.
4.
etc., etc

ARTICLE 16 *d*

The high contracting Parties also decide [illegible] annex to the present Convention [illegible] enumerating

1. Other subjects which [illegible] present capable of submission to arbitration without reserve.

2. The Powers which [illegible] with one another to make this [illegible] agreement with [illegible] part or [illegible] these subjects.

ARTICLE 16 *e*

It is understood that arbitral [illegible] shall never have more than an interpretative force, with no [illegible] effect [illegible] judicial decisions.

[1] [illegible] document [illegible] See also annexes 23, 24, and 30, at pp. 478 and 487.

ARTICLE 16 *f*

It is understood that stipulations providing for obligatory arbitration under special circumstances which appear in treaties already concluded or to be concluded, shall remain in force.

ARTICLE 16 *g*

Article 16 *a* does not apply to disputes concerning treaties regarding the enjoyment and exercise of extraterritorial rights.

ANNEX 30[1]

PROPOSITION OF THE BRITISH DELEGATION[2]

PROTOCOL CONTEMPLATED IN ARTICLE 16 *d* OF THE BRITISH PROPOSITION[3]

1

Each Power signatory to the present protocol accepts arbitration without reserve in such of the cases listed in the table hereto annexed as are indicated by the letter A in the column bearing its name. It declares that it makes this engagement with each of the other signatory Powers whose reciprocity in this respect is indicated in the same manner in the table.

2

Each Power shall, however, have the right to notify its acceptance of matters enumerated in the table with respect to which it may not already have accepted arbitration without reserve. For this purpose it shall address itself to the Netherland Government, which shall have this acceptance indicated on the table and shall immediately forward true copies of the table as this completed to all the signatory Powers.

3

Moreover, two or more signatory Powers, acting in concert, may address themselves to the Netherland Government and request it to insert in the table additional subjects with respect to which they are ready to accept arbitration without reserve. These additional matters shall be entered upon the table, and a certified copy of the text as this corrected shall be communicated at once to all the signatory Powers.

4

Non-signatory Powers are permitted to adhere to the present protocol by notifying the Netherland Government of the matters in the table with respect to which they are ready to accept arbitration without reserve.

ANNEX 31[1]

PROPOSITION OF THE DELEGATION FROM URUGUAY

DRAFT OF A DECLARATION CONCERNING A COURT FOR OBLIGATORY ARBITRATION

Whereas it has been impossible to establish and maintain peace and justice among the associations of individuals of which nations are composed, except through the right which part of these individuals have assumed to impose these benefits upon all;

[1] *Actes et documents*, vol. II, p. 906, *annexe* 40.

[2] A later draft (ibid., p. 907, *annexe* 41) of this proposition made only two notable changes: 1. The agreement to accept arbitration contained in Article 1 was reformed to read: "in controversies concerning the interpretation and application of conventional stipulations relating to such of the matters", etc. 2. The function of notifying signatory Powers of changes in the table was conferred upon the International Bureau at The Hague. It is quoted in the report, *ante*, pp. 443 and 446.

[3] Annex 29, *supra*.

[1] Ibid., p. 915, *annexe* 47.

Whereas likewise justice and peace will not triumph nor be established in a systematic and permanent manner in the association of nations until a part thereof, sufficiently numerous and powerful, resolve for the benefit of all to ensure international justice which is the basis of peace ;

Whereas we may hope from the progress of public opinion that at a time not far distant it may be possible to secure this agreement among large and small Powers sufficient in number to combine the indispensable prestige of the law with the necessary force, and whereas it is suitable in any case to mark the proper course ;

With the desire to conform to the history of the efforts which the diplomacy of its country has made at all times in favour of the adoption of arbitration as the only and obligatory solution for disputes among nations, the delegation of the Oriental Republic of Uruguay presents for the consideration of the Second Peace Conference the following four declarations :

1. As soon as ten nations (of which half shall have at least 25,000,000 inhabitants each) shall agree to submit to arbitration differences which may arise among them, they shall have the right to form an alliance for the purpose of examining the disagreements and disputes which may arise among them and to intervene when they deem it advantageous to secure the most just solution.

2. The allied nations may establish a court of obligatory arbitration at The Hague (if the Kingdom of Holland is a party to the alliance) or in another city designated for that purpose.

3. The alliance in favour of obligatory arbitration shall intervene only in cases of international disputes, and shall not interfere with internal affairs of any country.

4. All nations which shall conform to the principle of obligatory arbitration shall have the right to become parties to the alliance intended to abolish the evils of war.

CONVENTION (II) RESPECTING THE LIMITATION OF THE EMPLOYMENT OF FORCE FOR THE RECOVERY OF CONTRACT DEBTS[1]

(*For the heading see the Convention for the pacific settlement of international disputes.*[2])

Being desirous of avoiding between nations armed conflicts of a pecuniary origin arising from contract debts which are claimed from the Government of one country by the Government of another country as due to its nationals, have resolved to conclude a Convention to this effect, and have appointed the following as their plenipotentiaries:

[Here follow the names of plenipotentiaries.]

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1

The contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.

This undertaking is, however, not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any *compromis* from being agreed on, or, after the arbitration, fails to submit to the award.

ARTICLE 2

It is further agreed that the arbitration mentioned in paragraph 2 of the foregoing article shall be subject to the procedure laid down in Part IV, Chapter III, of the Hague Convention for the pacific settlement of international disputes. The award shall determine, except where otherwise agreed between the parties, the validity of the claim, the amount of the debt, and the time and mode of payment

ARTICLE 3

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers taking part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications,

[1] *Actes et documents*, vol. 1, p. 620.

[2] *Ante*, p. 292.

of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be sent immediately by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

ARTICLE 4

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

The said Government shall forward immediately to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification, as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 5

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, in the case of the Powers which ratify subsequently or wh adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 6

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them at the same time of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 7

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 3, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 4, paragraph 2) or of denunciation (Article 6, paragraph 1) were received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent to the contracting Powers through the diplomatic channel.

[Here follow signatures.]

Report to the Conference from the First Commission on the Proposition of the Delegation of the United States concerning the Employment of Force for the Recovery of Contract Debts[1]

(Reporter, Baron Guillaume)

I have already had occasion to state[2] that, if the motion of the United States of America relating to the limitation of the employment of armed force for the recovery of contract debts was not discussed at the same time as the other propositions relating to obligatory arbitration, it was because of the divergent views in this respect which came to light in the committee.

Moreover, as his Excellency General Porter expressed the opinion that the text of this stipulation should be the subject of a special arrangement, I believe that I am properly meeting this situation by reserving the account of the discussions to which the American proposition gave rise for the conclusion of my report.

On the 2nd of July, the delegation of the United States of America submitted a proposition concerning limitation of the employment of force for the recovery of ordinary public debts arising from contracts.

This proposition said :[3]

> For the purpose of avoiding between nations armed conflicts of a purely pecuniary origin, arising from contract debts, which are claimed from the Government of one country by the Government of another country as due to its subjects or citizens, and in order to guarantee that all contract debts of this nature which it may have been impossible to settle amicably through the diplomatic channel shall be submitted to arbitration, it is agreed that there cannot be recourse to coercive measures, involving the employment of military or naval forces for the recovery of such contract debts, until an offer of arbitration has been made by the claimant and refused or not answered by the debtor State, or until arbitration has taken place and the debtor State has failed to comply with the award made.
>
> It is further agreed that such arbitration shall conform, as to its procedure, to Chapter III of the Convention for the pacific settlement of international disputes, adopted at The Hague, and that it shall determine the justice and the amount of the debt, the time and manner of its settlement and the guaranty to be given, if there is occasion, while payment is delayed.

His Excellency General Porter accompanied the presentation of this proposition by some comments :[4]

> Expeditions undertaken for the purpose of recovering debts have seldom been successful. The principle of non-intervention by force would be of inestimable benefit to all the interested parties.
>
> Recognition of this principle would be a real relief to neutrals ; for blockades and hostilities seriously threaten their commerce by interrupting all trade. It would also be a warning to a certain class of persons, who are too much disposed to speculate on the needs of a weak and embarrassed Government, and count on the authorities of their own country to assure the success of their operations.

[1] *Actes et documents*, vol. i, p. 553. For the portion of Baron Guillaume's report relating to the pacific settlement of international disputes, see *ante*, p. 309.

[2] *Ante*, p. 374.

[3] *Actes et documents*, vol. ii, p. 910, *annexe* 48.

[4] Ibid., p. 229. An English version of the entire speech of General Porter appears in Scott's *American Addresses at the Second Hague Peace Conference* (Boston, 1910), p. 25.

Debtor States would find it to their advantage, for thereafter money-lenders could only count on the good faith of the Government, the national credit, the justice of local courts, and the economical administration of public affairs, to answer for the success of their transactions.

Arbitration, moreover, would give guarantees to genuine creditors, who would prefer it to the employment of arms.

In the Commission, this project was supported by the delegation of Russia, who considered it consistent with the concepts of justice and peace, with which the First Peace Conference was inspired and to which the present Conference remains sincerely attached. They believe that there is matter in this case, not only for arbitration, but also for international inquiry. A direct agreement might be brought about, making it unnecessary to resort to a tribunal of arbitrators. But, for the purpose of respecting the positions reached, it is important that the agreement should have no retroactive effect.

The delegation of Great Britain finds that the proposition of the United States of America is just and equitable to creditors and debtors alike.

The delegation of Portugal will vote for the proposition of the United States of America with all the more pleasure, inasmuch as it clearly sanctions the principle of obligatory arbitration with respect to one of the points enumerated in the Portuguese proposition.

The delegation of France considers the proposition presented by his Excellency General Porter very interesting. It will consider it with all the more sympathy since it is in a way complementary to other propositions relating to obligatory arbitration.

The delegation of Mexico is favourable to the amendment submitted by the representatives of the United States of America; but it is convinced that a State can intervene in the affairs of another State only under exceptional circumstances to be determined by international law. That is a natural consequence of the principle of the sovereignty and independence of nations. It therefore proposes a modification of the text in accordance with this view.[1]

The delegation of Panama supports the American proposition. It admits the right to resort to coercive means on the case of violence or denial of justice after an arbitral award.

The delegation of the Argentine Republic approves the American proposition, which establishes arbitration for conventions and for contract debts; but it disapproves of admitting the right to resort to coercive measures, if there be occasion, after the arbitral award has been made. It does not admit that war can ever be recognized as a lawful measure. The debtor State would often be ruined with no benefit to the creditors.

It will vote for the American project only with the two following reservations:

1. With regard to debts arising from ordinary contracts between the citizen or subject of a nation and a foreign Government, recourse shall not be had to arbitration except in the specific case of denial of justice by the courts of the country which made the contract, the remedies before which courts must first have been exhausted.

2. Public loans, secured by bond issues and constituting the national debt, shall in no case give rise to military aggression or the material occupation of the soil of American nations.

The delegation of Spain adheres to the principles of moderation, with which the proposition of the United States of America concerning the limitation of the employment of force for the recovery of public debts is inspired.

[1] *Actes et documents*, vol. ii, p. 923, *annexe* 58.

It is in favour of this proposition, whose purpose is to further, within the limits of law, the legitimate and peaceful development of the Spanish American Republics, by protecting them from possible abuses of force.

It will vote for the American proposition with the reservation that it be so worded as to admit of no equivocation.

The delegation of the Dominican Republic likewise approves the principle which dictated the American proposition; but it cannot admit recourse to force except in case the refusal of the debtor State to submit to the arbitral award 'be not actuated by serious circumstances which make it materially impossible to satisfy it'.

It does not understand that the guaranty, mentioned in the project of the United States, is other than pecuniary in nature, in no case involving occupation of territory, and not assailing the sovereignty of the State.

The delegation of Siam, which always supports every measure tending to confirm arbitration, adheres to the American proposition.

The delegations of Germany and Great Britain declare that they accept without reservation the amendment presented by the American delegation.

The delegation of Chile has itself presented a proposition,[1] the aim of which is to submit to arbitration all claims for damages of a pecuniary nature, which it has been impossible to settle amicably, as well as all claims which result from the alleged breaking of contracts.

A State which refused to recognize a regular arbitral award would lose the respect of the other States and would put the adverse party in a better position for the complete exercise of all its rights.

The delegation of Haiti endorses the project of the United States of America concerning the recovery of political debts originating in contracts; but requests that the powers granted to arbitrators be somewhat restricted, and that the fixing of the guaranties be left to the parties to the case. This delegation adds, furthermore, that it does not consider itself as admitting by its adhesion that the employment of force in such cases may be legitimate.

The delegation of Japan endorses in principle the proposition of the United States of America, while reserving the right to declare itself later definitely, when it has before it a complete project concerning obligatory arbitration in general.

The delegation of Peru, while approving the general principle which prompted the American proposition, believes that it is necessary to define and limit its field of action. It proposes an amendment in this sense.[2]

The delegation of Austria-Hungary raises no objection to the contingent stipulation according to which 'the Powers would renounce the right to employ armed force for the recovery of contract debts until an offer to arbitrate had been made by the claiming Power and refused or not answered by the debtor Power, or until arbitration had taken place and the debtor Power had failed to comply with the award made'. It is therefore ready to accept the amendment of the United States of America without reservation.

The delegation of Guatemala likewise accepts the American proposition, but with the reservation that the Government can only admit resort to arbitration if the foreign citizens at odds with it for the recovery of ordinary debts arising from contracts have exhausted the legal remedies which the laws of the country grant them.

[1] *Actes et documents*, vol. ii, p. 918, *annexe* 52.
[2] Ibid., p. 919, *annexe* 53.

The delegation of the Republic of Salvador adheres to the amendment presented by the delegation of the United States, with the following reservations:

1. That in the matter of debts arising from ordinary contracts between States and individuals, recourse shall not be had to arbitration except in the cases of denial of justice, after all the legal remedies of the contracting country have first been exhausted.

2. That public loans constituting national debts can never give rise to military aggressions or to a material occupation of the territory of the American nations.[1]

The delegation of Brazil would as' nothing better than to see war abolished; but, if, while admitting other cases of armed nflict as legitimate, it is desired to create a legal category of absolute immunity in re t to public debts, it believes that there is no justification for this exception.

While approving the pacific tendencies of both his Excellenc · Mr. Drago and the American delegates, his Excellency Mr. Ruy Barbosa does not admit that the right of a Government to intervene on behalf of its citizens should be contested. A State which borrows is not performing a political act, but an act subject to civil law.

To endeavour thus to complete the Monroe Doctrine is to risk compromising it from a practical point of view. Brazil has no desire to injure its credit nor the credit of Latin America.

The formula presented by the delegation of the United States of America mentions frankly a possible appeal to force, and it should be praised for so doing.

The delegation of Brazil would like to see the Conference adopt a provision contemplating the renunciation of the right of conquest. It has drawn up its idea in the following manner, while admitting such modifications as may be deemed proper for its success:

> None of the signatory Powers shall undertake to alter, by means of war, the present boundaries of its territory at the expense of any of the other Powers until arbitration has been proposed by the Power claiming the right to make the alteration and refused, or if the other Power disobeys the arbitral award. If any of these Powers violate this engagement, the change of territory brought about by arms will not be legally valid.

It is not the intention of the Roumanian delegation [2] to oppose the proposition of the United States of America. It cannot adhere, however, because this is not a principle of a general nature to be inserted in the Convention of 1899; it is a special provision, resulting from particular circumstances and events, which have occurred in South America. This provision can in no way be applied in Europe.

It seems strange to insert in the Hague Convention, where it is stipulated that questions pertaining to national honour and the vital interests of States cannot be submitted to arbitration, a new article providing obligatory arbitration for cases where national honour and vital interests may be involved in the highest degree.

The delegation of Italy would be happy to give its entire approval to the proposition of the delegation of the United States; but it finds itself obliged to reserve its decision until enlightened upon certain points.

It inquires why the creditor alone has the right or duty to make an offer of arbitration; it would like to know whether, before submitting the difference to the judgement of arbitrators, all the stages of ordinary judicial procedure must be exhausted.

Why speak of coercive measures rather than mention the mutual obligation of recourse to arbitration?

[1] *Actes et documents*, vol. II, p. 920, *annexe* 56.

[2] *Post*, p. 499.

Is it an omission on the part of the American proposition that the case of the denial of justice is not mentioned?

The delegations of Serbia and Bulgaria adhere to the American project with the same reservations.

While showing itself in sympathy with the principle of arbitration, the delegation of Greece inquires whether it is opportune to include an addition treating of the possible employment of coercive measures in an international agreement, whose purpose appears to be to arrange peaceful means for the settlement of international disputes.

The delegation of Bolivia takes the same point of view.

The delegation of Venezuela asks that differences arising from pecuniary claims be in all cases adjusted by peaceful means, with no possible recourse to coercive measures involving the employment of military or naval forces.[1]

The delegations of Nicaragua, Colombia, Uruguay, and Ecuador, while adhering to the American propositions, declare that they are opposed to any employment of force for the settlement of debts.

The delegation of Ecuador defines its attitude by making the following reservations:

1. Arbitration can only be demanded in case there is a presumption of denial of justice and after having exhausted all the legal remedies of the country.
2. Armed intervention cannot take place after the arbitral award has been made unless the bad faith of the debtor is clearly proved.

The delegation of Sweden cannot give its approval to the American proposition because of the manner in which it is formulated. It seems to give an indirect sanction to the employment of force in all cases which are not expressly provided for.

The delegation of Switzerland, taking another point of view, states that the American proposition would result in the submission to international arbitration of decisions rendered by its national courts in disputes pertaining to private law, which are exclusively under Swiss jurisdiction.

It cannot subscribe to such engagements.

The Swiss courts are competent to decide disputes arising from pecuniary engagements entered into by the State.

Moreover, foreigners enjoy, both by law and international treaties, the same protection and the same guaranties of law in the Confederation as nationals.

The delegation of the Grand Duchy of Luxemburg will abstain from taking part in the vote on the American proposition, because of the peculiar position of its country on account of the Treaty of London, which placed it in a state of permanent neutrality, under the guaranty of the great Powers that signed that treaty.

The discussion in committee of the American proposition was very brief.

The delegation of the United States had introduced certain modifications in the original text of its project; hence it was upon the new reading of the proposition[2] that the arguments were opened by a short declaration of his Excellency General Porter. I report the following portion of it:

> The aim of the proposition is not, directly or implicitly, to endeavour to justify in the case of debts or claims of any nature whatever any procedure which is not based upon the principle of the settlement of international differences by arbitration, of which, in its widest application, the United States is to-day more than ever the sincere advocate.

[1] *Actes et documents*, vol. II, p. 919, *annexe* 54.

[2] Ibid., p. 923, *annexe* 59.

The delegation of Italy appreciates the value of this declaration. Having obtained the enlightenment which it solicited and the principal object of its reservations having been secured, it adheres to the American proposition.

The delegations of Germany, France, and Russia do likewise.

Their Excellencies Messrs. Drago and Milovanovitch consider the term 'contract debts' too vague. It may give rise to misunderstandings, for it may include debts arising from conventions concluded between a State and the nationals of another State as well as those resulting from contracts between State and State. Do the authors of the proposition intend to cover by the words 'contract debts' these two categories of debts?

His Excellency General Porter replies that this distinction between debts existing between States and those which arise between a State and the citizens of another State has little importance in this connexion.

If it is a question of public debts, as well as of the issuing of interest-bearing bonds, the creditors will be sufficiently protected by the general principles of international law.

If, on the contrary, it is a question of contract debts, the protection of the rights of the creditors will be assured by the American proposition.

The delegate of the United States of America cannot consent to suppressing the mention of armed force, as requested by the delegations of Argentine Republic and Serbia; but he desires it to be understood that this extreme method is reserved solely in case of a refusal to execute the arbitral award.

This explanation does not satisfy his Excellency Mr. Drago, who expresses himself in the following terms:

> As to the mention of armed force, which the American delegation believes should be retained in the new reading of its project, I still think that it would be particularly dangerous to insist upon it. The terms which authorize the employment 'of armed force' go much farther than simple retorsion or what is called a 'naval demonstration.'

But there is reason to inquire how far coercive measures of this kind would go. According to John Bassett Moore, the eminent American jurist, Secretary of State Blaine, in taking up the recovery of certain debts from Venezuela in 1881, proposed to the French Government that the United States should take possession of the custom-houses of the South American Republic at La Guayra and Puerto Cabello, and put its agents in charge to collect the customs, which would then be distributed *pro rata* among the various creditors, charging the debtor country ten per cent. additional. The same methods of recovery were later commended by Secretary of State Frelinghuysen.

There is a way of understanding the application of coercive measures which might give rise to controversies and even to conflicts. Would the European or American nations without distinction be authorized to conduct the custom houses of a debtor country in this way; or, on the contrary, would the system of Blaine and Frelinghuysen be followed, according to which this function would devolve solely upon the United States? I ask the question simply to show how difficult it is to define and regulate in advance the employment of force, and how much more preferable it would be to leave each case to be settled according to the circumstances and necessities of the moment. But I must confine myself here simply to pointing out a few facts, as my country has excluded, under every hypothesis, recovery by force when it is a question of public debts, the only kind which could give rise to dangerous differences of opinion.

The Argentine delegation therefore finds itself obliged to retain in their entirety the two reservations which it has made, while confirming its favourable vote on the American proposition.

While approving the humanitarian spirit which has prompted the proposition of the United States of America, the delegation of Switzerland cannot, however, support it, because the conflicts contemplated by this project do not arise directly between States, but spring from private claims presented by individuals. These claims are by their very nature subject to the jurisdiction of the State upon whom claim is made and to its jurisdiction alone. The Swiss courts offer foreigners the same guaranties of impartiality as nationals.

His Excellency Mr. Martens inquires whether it is the idea of the authors of the proposition to limit its application to cases where the citizens of a State, who are creditors of another State, apply to their Government for the purpose of recovering the amount of what is due to them? Is it thoroughly understood that it depends absolutely upon the interested Government to intervene in this dispute between its nationals and a foreign State, and even, if need be, to take their place before the foreign State?

His Excellency General Porter replies in the affirmative and the delegation of Russia takes note thereof.

The delegation of Belgium rejoices to see that the American proposition places force in the service of law; it cannot refuse its sympathies to such a conception; but it will nevertheless be obliged to abstain from voting, because the disputes contemplated by the American project might, under certain circumstances, be of a kind to affect the vital interests of States, and this would render recourse to arbitration undesirable to certain Governments. It inquires, moreover, whether the fixing of the time, of the method of payment and of the guaranties is in the province of arbitration.

The proposition of the United States is voted by 12 votes to 1.

Voting for: The delegations of Germany, United States of America, Argentine Republic, Austria-Hungary, Brazil, France, Great Britain, Italy, Mexico, Portugal, Russia, and Serbia. *Voting against:* The delegation of Switzerland. Sweden was not represented.

Here is the text of this proposition, as it was adopted by the committee:

> In order to prevent armed conflicts between nations, of a purely pecuniary origin growing out of contract debts claimed from the Government of one country by the Government of another country as due to its nationals, the signatory Powers agree not to resort to armed force for the collection of such contract debts.
>
> This stipulation, however, shall not apply when the debtor State rejects or ignores a proposal of arbitration, or, in case of acceptance, makes it impossible to establish the *compromis*, or, after arbitration, fails to comply with the award.
>
> It is further agreed that the arbitration here considered shall conform to the procedure provided by Chapter III of the Convention for the pacific settlement of international disputes adopted at The Hague, and that it will determine, in so far as the parties should not have agreed thereupon, the validity and the amount of the debt and the time and mode of settlement.[1]

In the First Commission the delegation of Venezuela requested that the second paragraph of the proposition of his Excellency General Porter be worded differently.

It should say:

> This undertaking is not applicable when a debtor State, which has accepted an offer to arbitrate, prevents any *compromis* from being agreed on, or, after the arbitration, fails to submit to the award.

[1] This draft was accepted by the Conference without change. *Actes et documents*, vol. 1, p. 336. For the action of the General Drafting Committee, see *ante*, p. 223.

'In this way,' said Mr. Gil Fortoul, 'the competence of national courts, where it is recognized by the contracting parties, is excluded from discussion; recourse to arbitration would be put again in its former place, where alone it is admissible—that is to say where the contract debt becomes a matter of dispute between two States—and there would be no occasion, it seems to me, for the reservations of a considerable number of States, whose national legislation is, in substance, the same as in the Venezuelan Republic which legislation is modelled, I believe, on that of the United States of America.'

The delegation of Bolivia cannot give complete assent to the American proposition, which implies, in its opinion, legalization of a certain category of wars, or at any rate of interventions, prompted by controversies which do not relate to the honour or vital interests of the creditor States.

The delegation of Guatemala adheres to the proposition of his Excellency General Porter, which it considers as not referring in any way to the loans of States and public debts properly so called.

Guatemala reserves, moreover, the right to accept arbitration only when foreign citizens at odds with the Government for the recovery of debts arising from contracts with it, have exhausted all legal remedies granted by the laws of the country.

The Swiss delegation cannot subscribe to a proposition whose tendency certainly has all its sympathy, but which submits to international arbitration differences which, by their very nature, are exclusively under national jurisdiction.

The delegations of Argentine Republic, Peru, and Paraguay retain the reservations which they previously formulated.

The delegation of the Dominican Republic will vote in favour of the project, but makes reservations as to the stipulation relative to the impossibility of bringing about an understanding between the parties in respect to the conclusion of a *compromis*.

The delegations of Austria-Hungary, Japan, and Italy declare that they accept without reservation the proposition of the United States of America.

This proposition is finally accepted by 37 votes and 6 abstentions.

The delegation of Venezuela voted in favour of the first paragraph of the project and against the other two.

The abstentions were: Belgium, Greece, Luxemburg, Roumania, Sweden, and Switzerland.

Now that the First Commission comes to submit, for your approval, the fruit of its deliberations, I ask permission, gentlemen, to call your attention to the importance of its work.

In fulfilment of one of the tasks assigned to the Conference by the Russian circular of April 3, 1906, we have undertaken a minute and exhaustive revision of the Convention of July 29, 1899, for the pacific settlement of international disputes.

We are confident, and you will agree with us, that numerous improvements have been introduced in the international act; gaps have been filled; the forms have been made easier and more flexible; a judicious set of rules of procedure have completed the provisions relative to the institution of international commissions of inquiry, which has already given the world irrefutable proof of its efficacy. All these modifications have been unanimously adopted.

The First Commission has likewise voted unanimously, with six abstentions, a pro-

position presented by the delegation of the United States of America concerning the limitation of the employment of force for the recovery of ordinary public debts arising from contracts.

But the Commission did not stop there. Giving a broad interpretation to the terms of the programme of the Conference, it frankly took up the important question of obligatory arbitration.

At the very beginning of our deliberations nearly all the delegations declared that they were absolutely in sympathy with the principle of obligatory arbitration. There were no divergent views upon this point. The First Commission is unanimous in stating this to you.

All the delegations have likewise recognized the fact that certain differences, especially those relating to the interpretation and application of international conventional stipulations, are particularly susceptible of submission to obligatory arbitration.

These points are definitively won. We hope, gentlemen, that you will be good enough to sanction them by your votes, and that you will recognize the importance of these statements, which will form—we are confident—the basis of future beneficent agreements.

If it has been impossible to solve at the present time certain legal problems in a way to satisfy all opinions; if the Commission has been divided upon the question of timeliness—some desiring to come to an immediate decision; others asking that the questions be left for further consideration—the Commission has none the less marched resolutely towards progress in the cause of obligatory arbitration and the extension of the field of its application.

The lengthy study undertaken by the First Commission and the committees which were formed in its midst constitutes—we are justified in stating—a veritable monument erected to law, justice, and the spirit of peace and international concord. The fruits of these debates will not be lost. They will serve as a basis for the crystallization of a humanitarian and just idea. Its progress will be swift and continuous, because it is advancing towards an ideal: Law.

Consequently, the First Commission proposes to the Conference the adoption of the three following projects:

1. A project for the revision of the Convention for the pacific settlement of international disputes.
2. A proposition concerning the limitation of the employment of force for the recovery of ordinary public debts arising from contracts.
3. A draft declaration relating to obligatory arbitration.

ANNEX[1]

PROPOSITION OF THE DELEGATION FROM ROUMANIA

The delegation from Roumania in the name of the Royal Government has the honour to propose that the proposition of the delegation of the United States of America concerning the limitation of the employment of force for the recovery of public debts, be not inserted as a new article in the Convention for the pacific settlement of international disputes of 1899, but that it form the subject of a special agreement among the interested Powers without connexion with that Convention.

[1] *Actes et documents*, vol. II, p. 920, *annexe* 55.

CONVENTION (III) RELATIVE TO THE OPENING OF HOSTILITIES[1]

(*For the heading see the Convention for the pacific settlement of international disputes*[2])

Considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning ;

That it is equally important that the existence of a state of war should be notified without delay to neutral Powers ;

Being desirous of concluding a Convention to this effect, have appointed the following as their plenipotentiaries.

Here follow the names of plenipotentiaries.]

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions :

ARTICLE 1

The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

ARTICLE 3

Article 1 of the present Convention shall take effect in case of war between two or more of the contracting Powers.

Article 2 is binding as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention.

ARTICLE 4

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

[1] *Actes et documents*, vol. 1, p. 623.

[2] *Ante*, p. 202.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 5

Non-signatory Powers may adhere to the present Convention.

The Power which wishes to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

The said Government shall at once forward to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, stating the date on which it received the notification.

ARTICLE 6

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 7

In the event of one of the high contracting parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 8

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 4, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 5, paragraph 2) or of denunciation (Article 7, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Report to the Conference from the Second Commission on Opening of Hostilities [1]

(Reporter, Mr. Louis Renault)

The Russian programme contains the following topic:

> Additions to be made to the provisions of the Convention of 1899 relative to the laws and customs of war on land—besides others, those concerning: *the opening of hostilities*, and *the rights of neutrals on land*.

It was the duty of the Second Commission to study this part of the programme; the present report, however, deals only with 'the opening of hostilities'.

The question whether there is an obligation upon a Government intending to make war to give notice to its adversary before beginning hostilities has been discussed for years and has given rise not only to lengthy theoretical expositions but also to frequent recriminations between belligerents. It would be a vain task, from the point of view that we must take here, to review the practice in the various wars since the beginning of the last century in an effort to determine whether there is, according to positive international law, any rule on this subject. We have only to ask ourselves whether it is advisable to lay one down, and if so, in what terms.

As to the first point, there can be no doubt. It is clearly desirable that the uncertainty seen in various quarters should cease. Everybody is in favour of an affirmative answer to the first question placed before us by the president of the second subcommission, his Excellency Mr. Asser, in his *questionnaire*.[2]

The subcommission has had before it a proposition of the French delegation,[3] and an amendment thereto offered by the Netherland delegation.[4] The proposition and its amendment were alike in requiring a warning to be given before opening hostilities and

[1] The report was presented to the Second Commission in the name of a committee of examination thus made up: president, his Excellency Mr Asser; members: Major-General von Gundell, Brigadier-General Davis, Major-General Baron Giesl von Gieshingen, his Excellency Mr. A Beernaert, his Excellency Mr. van den Heuvel, his Excellency Mr. de Bustamante, his Excellency Mr. Brun, Mr. Louis Renault, reporter; his Excellency Lord Reay, Lieutenant-General Sir Edmond R. Elles, his Excellency Mr. Tsudzuki, his Excellency Mr. Eyschen, his Excellency Lieutenant-General Jonkheer den Beer Poortugael, his Excellency Samad Khan, Momtas-es-Saltaneh, his Excellency Mr. Beldiman his Excellency Mr. Carlin, Colonel Borel. *Actes et documents*, vol. I, p. 131.

[2] *Post*, p. 507.

[3] *Actes et documents*, vol. III, p. 254, *annexe* 20.

[4] *Post*, p. 508.

also a notification to neutrals. The difference between them lay in the interval between the warning and hostilities, which the Netherland delegation proposed to fix definitely. Some special questions have also been raised regarding the notification to neutrals. We shall give you an explanatory statement on these several points.

The French proposition was worded as follows :

ARTICLE 1

The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay.

The main provision of this proposal, which was inspired by a resolution [1] passed by the Institute of International Law at its meeting at Ghent in September, 1906, is easily justified. Two distinct cases are provided for. When a dispute occurs between two States, it will ordinarily lead to diplomatic negotiations more or less lengthy, in which each party attempts to have its pretensions recognized, or at least to secure partial satisfaction. If an agreement is not reached, one of the Powers may set forth in an ultimatum the conditions which it requires and from which it declares it will not recede. At the same time it fixes an interval within which a reply may be made and declares that, in the absence of a satisfactory answer, it will have recourse to armed force. In this case there is no surprise and no equivocation. The Power to which such an ultimatum is addressed can come to a decision with a full knowledge of the circumstances ; it may give satisfaction to its adversary or it may fight.

Again, a dispute may arise suddenly, and a Power may desire to have recourse to arms without entering upon or prolonging diplomatic negotiations that it considers useless. It ought in that case to give a direct warning of its intention to its adversary, and this warning ought to be explicit.

When an intention to have recourse to armed force is stated conditionally in an ultimatum, a reason is expressed, since war is to be the consequence of a refusal to give the satisfaction demanded. This is, however, not necessarily the case when the intention to make war is made manifest directly and without a previous ultimatum. The proposal set out above requires that reasons be assigned in this case also. A Government ought not to employ so extreme a measure as a resort to arms without giving reasons. Every one, both in the countries about to become belligerents, and also in neutral countries, should know what the war is about in order to form a judgement on the conduct of the two adversaries. Of course this does not mean that we are to cherish the illusion that the real reasons for a war will always be given ; but the difficulty of definitely stating reasons, and the necessity of advancing reasons not well substantiated or out of proportion to the gravity of war itself, will naturally arrest the attention of neutral Powers and enlighten public opinion.

The warning should be previous in the sense of preceding hostilities. Shall a given length of time elapse between the receipt of the warning and the beginning of hostilities ? The French proposition specifies no interval, which implies that hostilities may begin

[1] *Resolutions of the Institute of International Law* (New York, 1916), p. 164.

as soon as the warning has reached the adversary. The time limitation before war is begun is thus less determinable than in the case of an ultimatum. In the opinion of the French delegation the necessities of modern warfare do not allow of a requirement that the party desiring to take the aggressive should grant further time than what is absolutely indispensable to let its adversary know that force is to be employed against it.

The principle of the French proposal met with no objection and the text was voted almost unanimously by the subcommission, after the delegations of Germany, Great Britain, Japan, and Russia had expressly declared themselves in accord with it.

The delegation of the Netherlands desired to supplement the principle as follows:

> The contracting Powers recognize that hostilities between themselves must not commence until the lapse of twenty-four hours after an explicit warning, having the form of a reasoned declaration of war, or of an ultimatum with conditional declaration of war, has officially come to the attention of the adversary's Government.

The difference between this and the French proposal lies in requiring a fixed interval between the receipt of the warning and the opening of hostilities. The need for this delay was explained by Colonel Michelson, speaking for the Russian delegation, in these words:

> The problem of such a delay is intimately connected with the relation which exists between the peace and war establishments of every country. Consequently a result of its adoption would be a more or less considerable reduction of expenditures. The time may not be so far distant after all when we shall be able to distinguish between the troops and other preparations for war which every country in its own sovereign judgement deems requisite in its political situation, and those that it is compelled to maintain only through the necessity of being constantly in readiness for fighting. By establishing a certain interval between the rupture of peaceful relations and the beginning of hostilities, an opportunity would be afforded to such countries as may desire it to realize certain economies during times of peace. It is undeniable that these economies would be beneficial in every way, and could not fail to bring about a great relief from the burden of peace armies, a relief all the more acceptable because it would in no way affect the right of each nation to fix its own forces and armament solely in accordance with its own views and needs.
>
> There is still another advantage to be derived from the proposed delay. It would leave to friendly and neutral Powers some precious time which they could use in making efforts to bring about a reconciliation, or to persuade the disputants to submit their causes of difference to the high Court of Arbitration here. But while speaking of this subject of a delay, we must not lose sight of what is at present possible. The idea of any considerable delay is not yet developed in the consciences of the people of the nations. Consequently it would perhaps not be wise to go too far with our desires, in order that we may not get beyond what is really possible in practice at the present day. So let us content ourselves with accepting the delay of twenty-four hours which has been proposed by the delegation of the Netherlands. Let us leave to the future the work of the future, and merely express our hope that in the future the benefits of a still longer delay will be secured.

While the force of this reasoning is undeniable, it did not convince the majority of the subcommission. It did not appear consistent with military exigencies of the present day to fix such an interval; a great advance is gained, however, in securing the admission of the need of a previous warning. Let us hope that in the future we shall make a further advance; but let us not proceed too rapidly. It is noteworthy that the Institute of International Law,[1] in its resolution referred to above, considered that it could not go so far as to suggest a definite interval, although in such a matter as this an assembly of jurists

[1] *Resolutions of the Institute of International Law* (New York, 1916), p. 104.

might be expected to be less conservative than an assembly of diplomatists and military and naval men. It limited itself to saying: 'Hostilities shall not commence before the expiration of a delay sufficient to make it certain that the rule of previous and explicit notice cannot be considered as evaded.'

An obligation to make a declaration of war include the reasons therefor awakened some scruples as being contrary to provisions in some constitutions. Thus the Cuban delegates made the following statement: 'In view of the fact that paragraph 12 of Article 59 of the constitution of Cuba mentions among the powers of Congress that of declaring war, it is not possible for the delegation to subscribe to any act that does not reserve to our Congress the right to determine the form and conditions of such a declaration.' On the other hand, General Porter declared that the French proposal was not inconsistent with the provisions of the American federal constitution, under which Congress has the power to declare war. Indeed, there seems to be some misunderstanding on this point. We should make a distinction between two acts that are often confused because the same expression is used to describe both: namely, the act of deciding on war and the act of communicating this decision to the adversary. According to the constitutions the decision belongs to the sovereign or head of the State, either acting alone or in conjunction with the representatives of the people; but the notification is essentially for the executive. Since the notification closely follows the decision, they are combined under the term 'declaration', and this is especially the understanding where there is externally only one sovereign act. Bearing this in mind, it is easily shown that the French proposition voted by the subcommission is not at all inconsistent with constitutional provisions of the kind indicated. The liberty of a congress to decide on war in whatever way it chooses is not touched. Can it be supposed that war will be determined upon lightly, even though the formal resolution may not indicate the reasons, and is it too much to ask of a Government which, in execution of such a decision, declares war that it give its reasons therefor? We do not think so.

According to the second article of the French proposal, 'the existence of a state of war must be notified to the neutral Powers without delay'. As a matter of fact, war not only modifies the relations existing between belligerents, but it also seriously affects neutral States and their citizens; it is therefore important that these be given the earliest possible notice. It is hardly to be supposed that, with the present rapid spread of news, much time will elapse before it is everywhere known that a war has broken out, or that a State will be able to invoke its ignorance of the existence of a war in order to evade all responsibility. But as it is possible, in spite of telegraph and cable lines and radiotelegraphy, that the news might not of itself reach those concerned, precautions must be taken. Accordingly two amendments were offered. The first, from the Belgian delegation, was as follows: 'The existence of a state of war must be notified to the neutral Powers. This notification, which may be given even by telegraph, shall not take effect in regard to them until forty-eight hours after its receipt.'[1] The other, offered by the British delegation, in an article contained in a proposal submitted to the Third Commission and referred to this subcommission, said: 'A neutral State is bound to take measures to preserve its neutrality only when it has received from one of the belligerents a notification of the commencement of the war.'[2]

[1] *Actes et documents*, vol. III, p. 254, *annexe* 21.

[2] Ibid., p. 1095, *annexe* 44; *post*, p. 870.

The Belgian amendment was intended merely to put neutral States in a position to discharge their obligations, but as it might be differently interpreted, if taken literally, it was modified. It did not, however, even as amended, receive the approval of the Commission.

The view which has been adopted is that it is impracticable to fix any delay. The governing idea is a very simple one. A State can be held to duties of neutrality only when it is aware of the existence of the war creating such duties. From the moment when it is informed, no matter by what means (provided there is no doubt of the fact), it must not do anything inconsistent with neutrality. Is it at the same time obliged to prevent acts contrary to neutrality that might be committed on its territory? The obligation to do so presupposes the ability. What can be required of a neutral Government is that it take the necessary measures without delay. The interval within which the measures can be taken will vary, naturally, according to circumstances, extent of territory, and facility of communication. The interval of forty-eight hours, as was proposed, might be, in a given case, too long or too short. There is no need of establishing a legal presumption that the neutral is or is not responsible. It is a question of fact which can be determined usually with but little difficulty.

The subcommission therefore confined itself to the following draft:

> The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph.

In the committee of examination it was pointed out that the rule phrased in this way is too positive, since it implies that a neutral Government which through some circumstance or other had not received the notification provided for, even though it is unquestionably aware of the existence of a war, could evade all responsibility for its acts, simply by relying on the absence of a notification. The essential point would seem to be that a Government must be aware of the existence of a state of war in order to take necessary measures. Proof is easy when a notification is given; but if there has been no notification, the belligerent who complains of a violation of neutrality must clearly establish that the existence of the war was with certainty known in the country where the alleged unlawful acts took place.

After a discussion the majority of the committee decided to add the following clause:

> However, it is understood that neutral Powers cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

This text was accepted by the Commission and seems to take all interests sufficiently into account.

It has been asked what form ought to be given to the provisions thus adopted. Shall they be placed in a special convention or declaration? Or shall they be embodied in the Regulations of 1899 on the laws and customs of war on land? Without wishing to trespass on the field of the drafting committee, it is proper to say that the latter mode may be dismissed from consideration since the provisions are of a general character applying to naval war as well as to war on land. Besides, provisions respecting the duties of neutrals do not ordinarily fall within the scope of regulations intended to serve as instructions for troops. We might consider combining all the provisions concerning neutrals adopted by the Second and Third Commissions; but it should be borne in mind that our Article 2

is closely related to Article 1 and ought not to be separated from it. The drafting committee, however, will have the final decision.

We have the honour, therefore, to submit to the Conference the two following propositions:

ANNEX 1[1]

DRAFT OF REGULATIONS RELATING TO THE OPENING OF HOSTILITIES

Text submitted to the Conference

ARTICLE 1

The contracting Powers recognize that hostilities between themselves must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may however be given by telegraph. However it is understood that neutral Powers cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

ANNEX 2[2]

QUESTIONNAIRE PREPARED BY HIS EXCELLENCY MR. T. M. C. ASSER, PRESIDENT OF THE SECOND SUBCOMMISSION OF THE SECOND COMMISSION, TO SERVE AS A BASIS FOR DISCUSSION

1

Is it desirable to establish an international understanding relative to the opening of hostilities?

(On the supposition of an affirmative response to this question:)

2

Is it best to require that the opening of hostilities be preceded by a declaration of war or an equivalent act?

3

Is it best to fix upon a time which must elapse between the notification of such an act and the opening of hostilities?

4

Should it be stipulated that the declaration of war or equivalent act be notified to neutrals?

And by whom?

5

What should be the consequences of a failure to observe the preceding rules?

6

What is the diplomatic form in which it is best to set out the understanding?

[1] *Actes et documents*, vol. I, p. 136, *annexe* C. This project was adopted unanimously by the Conference, September 7. For its subsequent history in the Drafting Committee, see *infra*, p. 223.

[2] Ibid., vol. III, p. 233, *annexe* 1.

ANNEX 3 [1]

PROPOSAL OF THE NETHERLAND DELEGATION. AMENDMENTS TO THE PROPOSAL OF THE FRENCH DELEGATION

ARTICLE 1

The contracting Powers recognize that hostilities between themselves must not commence until the lapse of twenty-four hours after an explicit warning, having the form of a reasoned declaration of war, or of an ultimatum with conditional declaration of war has officially come to the attention of the adversary's Government.

ARTICLE 2

The existence of a state of war must be notified to the neutral Powers without delay, and shall not begin with regard to them until after the notification thereof has officially come to their attention.

[1] *Actes et documents*, vol. iii, p. 254, *annexe* 22.

CONVENTION (IV) RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND[1]

(For the heading see the Convention for the pacific settlement of international disputes.[2])

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events which their solicitude could not avert :

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization ;

Thinking it important, with this object, to revise the general laws and customs of war, either with the view of defining them with greater precision, or of confining them within such limits as would mitigate their severity as far as possible ;

Have deemed it necessary to complete and render more precise in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the high contracting parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice ;

On the other hand, the high contracting parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgement of military commanders.

Until a more complete code of the laws of war has been issued, the high contracting parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

[1] *Actes et documents*, vol. i, p. 626. For the corresponding Convention (II) of 1899, see *ante*, p. 126.
[2] *Ante*, p. 292.

The high contracting parties, wishing to conclude a fresh Convention to this effect, have appointed as their plenipotentiaries, to wit :

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following :

ARTICLE 1

The contracting Powers shall issue instructions to their armed land forces, which shall be in conformity with the ' Regulations respecting the laws and customs of war on land ', annexed to the present Convention.

ARTICLE 2

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 3

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

ARTICLE 4

The present Convention, duly ratified, shall replace, as between the contracting Powers, the Convention of July 29, 1899, respecting the laws and customs of war on land.

The Convention of 1899 remains in force as between the Powers which signed it, and which do not also ratify the present Convention.

ARTICLE 5

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 6

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 7

The present Convention shall come into force, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 8

In the event of one of the contracting Powers wishing to denounce the presence Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 9

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 6, paragraph 2) or of denunciation (Article 8, paragraph 1) were received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Annex to the Convention

Regulations Respecting the Laws and Customs of War on Land

SECTION I.—ON BELLIGERENTS

CHAPTER I.—*The Qualifications of Belligerents*

ARTICLE 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions :

1. That they be commanded by a person responsible for his subordinates ;
2. That they have a fixed distinctive emblem recognizable at a distance ;
3. That they carry arms openly ; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination 'army'.

ARTICLE 2

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of War*

ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits ; but they can only be placed in confinement as an indispensable measure of safety, and only while the circumstances which necessitate the measure continue to exist.

ARTICLE 6

The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connexion with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ARTICLE 11

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and when necessary in neutral countries which have received belligerents in their territory. It is the function of this bureau to reply to all inquiries about the prisoners, to receive from the various services concerned all the information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The bureau must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped or died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ARTICLE 16

Information bureaus enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

ARTICLE 17

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be refunded by their Government.

ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The Sick and Wounded*

ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

SECTION II.—ON HOSTILITIES

CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments*

ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden:

(*a*) To employ poison or poisoned weapons;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army;

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion ;

(*d*) To declare that no quarter will be given ;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering ;

(*f*) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention ;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war ;

(*h*) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

It is likewise forbidden a belligerent to force the nationals of the hostile party to take part in the operations of war directed against their country, even if they were in its service before the commencement of the war.

Article 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Article 25

It is forbidden to attack or bombard, by any means whatever, towns, villages, dwellings or buildings that are not defended.

Article 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Article 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Article 28

It is forbidden to give over to pillage a town or place even when taken by storm.

Chapter II.—*Spies*

Article 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies : Soldiers and civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

Article 30

A spy taken in the act shall not be punished without previous trial.

Article 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

Chapter III.—*Parlementaires*

Article 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him.

Article 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

Article 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

Chapter IV.—*Capitulations*

Article 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

Chapter V.—*Armistices*

Article 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

Article 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

Article 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the populations and between them.

Article 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

Article 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

Section III.—On Military Authority over the Territory of the Hostile State

Article 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 43

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE 44

It is forbidden a belligerent to force the population of occupied territory to furnish information about the army of the other belligerent, or about its means of defence.

ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

ARTICLE 46

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ARTICLE 47

Pillage is formally forbidden.

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash ; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

ARTICLE 54

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

ARTICLE 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

ARTICLE 56

The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

Report to the Conference from the Second Commission on amendments to the Regulations of 1899 respecting the laws and customs of war on land[1]

(Reporter, Baron Giesl von Gieslingen)

In conformity with the duty assigned to it, the first subcommission of the Second Commission has had to examine the amendments proposed by several delegations to the Regulations of 1899 respecting the laws and customs of war on land, as well as the question of the renewal of the Declaration of July 29, 1899, to prohibit the launching of projectiles and explosives from balloons.

Before proceeding to a review of all those amendments that were not withdrawn during the course of the discussion, wherein we shall give our reasons for the proposals which the Second Commission has the honour to submit to the vote of the Conference, it seems advisable to offer a few brief remarks on the general subject.

As was said by the president in his opening address, 'The work of 1899 is satisfying. ... It constitutes a body of rules which the high contracting parties engage themselves to impose upon their troops and which thus forms a powerful conventional obligation.'

Thanks to the harmony which has reigned in our assembly, the discussions resulted in an almost unanimous agreement, and, since the first session of the Second Conference, the adhesion of Switzerland and of China has made it almost complete.

The amendments which have been proposed arise, not from the need of recasting the Regulations of 1899, but from that of improving them by the addition of some matters of detail. They have been retouched, but not altered in any essential particular.

It may be remarked that it was only at the last moment that amendments were forthcoming. The order of the day of the first meeting contained none. But, during the course of the meetings, some were filed by the delegations of the Netherlands, Germany, Austria-Hungary, Russia, and Spain; and these were followed by many others, emanating from the delegations of Japan, Italy, Cuba, Denmark, and Belgium.[2]

These amendments had reference to Articles 1, 2, 4, 5, 6, 13, 14, 17, 22, 23, 27, 35, 45, 46, 52, 53, and 57. Those, however, which related to Article 57, on the treatment of interned belligerents and the care of wounded in neutral countries, were referred to the second subcommission, as that subcommission was charged with the study of all questions concerning neutrality, and its programme already included the proposal to add to the Regulations in force a new section on the treatment of neutral persons in belligerent territory.

Indeed, it seemed to the first subcommission that the questions bearing directly on neutral persons, or concerning the rights and duties of neutral States, should not

[1] This report was made in the name of the Second Commission by Major-General Baron Giesl von Gieslingen, the reporter of the first subcommission. It had been submitted to the Second Commission by a committee of examination presided over by his Excellency Mr. Beernaert, and composed of their Excellencies Baron Marschall von Bieberstein, Mr. Horace Porter, Marquis de Soveral, Mr. T. M. C. Asser, Mr. C. Brun, Samad Khan, Momtas-es-Saltaneh, Mr. A. Beldiman, Mr. Carlin, as members of the Bureau, and Major-General von Gündell, Major-General Baron Giesl von Gieslingen, General Amourel, General Sir Edmond R. Elles, Major-General Yoshiforu Akiyama, Lieutenant-General Jonkheer den Beer Poortugael, and General Yermolow. *Actes et documents*, vol. i, p. 96.

[2] Ibid. vol. iii, pp. 242–248, *annexes* 2–15.

appear in regulations governing the relations of belligerents with each other or with the inhabitants of invaded or occupied territory, as such regulations are intended to be communicated to troops in the shape of instructions in time of war.

Furthermore, inasmuch as the amendments which were proposed by the delegations of Germany,[1] Japan,[2] Netherlands,[3] and Austria-Hungary [4] relative to Articles 1, 4 [illegible] 13, 14, 35, 45, and 46 did not find acceptance after debate, either in the first subcommission or in its committee of examination, it has not been considered necessary to deal with them in this report, and the Conference is not called upon to make any decision as to them.

I

AMENDMENTS TO THE REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

ARTICLE 2. *German Amendment* [1]

This amendment relates to risings in mass. It requires that, to be regarded as belligerents, the population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, must, in addition to respecting the laws and customs of war as stipulated in the old text, *carry arms openly*.

It seemed to the subcommission that this amendment had no other effect than to make the original text more definite without modifying its meaning to the prejudice of the population concerned.

The amendment was carried by 30 votes to 3, with 2 delegations, those of Switzerland and Montenegro, not voting.

The Commission gave its sanction to this vote without discussion.

ARTICLE 5. *Cuban Amendment* [5]

The Cuban delegation proposed that the conditions required by Article 5 for the internment of prisoners of war be completed by a clause stipulating that they can be continued 'only while the circumstances which necessitate the measure continue to exist'.

This addition was adopted unanimously by the subcommission and the Commission.

ARTICLE 6. *Spanish and Japanese Amendments* [6]

The Spanish delegation proposed to modify the first paragraph so as to exempt officers who are prisoners of war from being compelled to work. A German additional amendment, which was accepted by the Spanish delegation, provides, in favour of non-commissioned officers, that prisoners of war can only be employed as labourers *according to their rank* [7] as well as according to their aptitude.

These changes were adopted without opposition, as well as an amendment proposed by Japan which provided that 'if there are no rates in force', the work for the State must be paid for 'at a rate suitable for the work executed'.

[1] *Actes et documents*, vol. III, p. 242, *annexe* 2.
[2] Ibid., pp. 243, 245, *annexes* 4, 9.
[3] Ibid., p. 243, *annexe* 5.
[4] Ibid., p. 245, *annexe* 10.
[5] Ibid., p. 244, *annexe* 7.
[6] Ibid., pp. 244-245, *annexe* 8.
[7] This phrase, which appeared in the 1899 regulations, was omitted on the Spanish amendment. EDITOR

ARTICLE 14. *Japanese and Cuban Amendments* [1]

Article 14 relative to the information bureau for prisoners of war was the subject of two amendments filed by the delegations of Japan and Cuba, which were both adopted unanimously without discussion.

The first inserts after the second sentence of the first paragraph the following words :

> The individual return shall be sent to the Government of the other belligerent after the conclusion of peace ; the bureau must state in it the regimental number, name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.

The second relates to prisoners released on parole, exchanged or escaped, and is inserted in the final clauses of the first and second paragraphs, which are thus made to read as follows :

> It is kept informed of internments and transfers as well as releases on parole, exchanges, escapes, admissions into hospital and deaths.
>
> It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have *been released on parole, or exchanged, or who have escaped or* died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 17. *Japanese Amendment* [2]

The amendment proposed by the Japanese delegation was intended to replace Article 17 with the following text :

> The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government.

This change was due to a desire to avoid the different interpretations which could be given to the text in force, and to the necessity of making more precise the definition of the term ' full pay ' in that text.

The new wording, however, could permit a Government either to give nothing or to grant excessive pay ; and it was therefore sent to the committee.

The committee, after acquainting themselves with the interpretations that the domestic regulations of different countries give to the phrase ' full pay ', found it indispensable to omit the words ' if necessary ' in order to make the article obligatory.

It was also deemed necessary, for the sake of consistency, to take into account the corresponding article of the Geneva Convention of 1906, dealing with the salaries of the medical personnel when prisoners (Chapter 3, Article 13), which secures to them the same pay and allowances from the captor as the latter gives to persons of the same grade in his own army.

In consequence, the committee proposed to the subcommission the following formula :

> The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its army are entitled, the amount to be refunded by their Government.

As the Japanese delegation concurred in this text, the Commission adopted it unanimously and submits it to the Conference.

[1] Ibid., pp. 243–245, *annexes* 5, 10. [2] Ibid., p. 245, *annexe* 10.

ARTICLES 22 AND 44. *The German proposition. The Austro-Hungarian, Netherland, and Belgian amendments* [1]

The amendment offered by the German delegation, especially on account of the Austro-Hungarian amendment attached to it, gave rise to lengthy discussions.

The German delegation proposed to insert in Chapter I of Section II of the Regulations, between the 22nd and 23rd articles, a new article worded thus :

NEW ARTICLE 22 *a*

It is forbidden to compel ***ressortissants*** of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

The amendment asked by the delegation of Austria-Hungary consists in inserting after ' to take part ' the words ' as combatants '.

The new German proposal was a development of the principle accepted in 1899, as regards the forced participation of the population of occupied territory in military operations against their country, by extending to all ***ressortissants*** the prohibition of which the Regulations did not expressly give them the benefit. It extended it even to foreign subjects who might have been in the service of the hostile party before the commencement of the war.

It is on account of the general application of this article that the German delegation believed it incumbent upon it to propose its insertion in Section II of the Regulations relating to the means of injuring the enemy, and the omission of the present Article 44 in Section III under the heading of ' Military authority over the territory of the hostile state '.

The committee of examination, to which the amendment was sent after a debate in the subcommission, accepted the German text without objection, saving a slight correction of form at the end of the article, replacing ' if they were enrolled in its service ' by the wording ' if they were in its service . . .'

The question of the place to be given to this new article was reserved for the drafting committee as being more especially within its competence.

The German proposition had an extensive character ; the Austro-Hungarian amendment had quite a different meaning, as it permitted the compulsion of the population to render assistance of every kind short of fighting, and especially the employment of forced guides and the furnishing of military information. The delegation of Austria-Hungary desired to draw a clear distinction between 'operations of war ', properly so called, in which the population of the hostile State cannot be compelled to take part, and certain ' military services ' which, according to it, in certain cases, a belligerent should be free to impose on the inhabitants.

It is on this subject that differences arose and led to lengthy debates both in the subcommission and in the committee.

The Austro-Hungarian point of view was not shared by the majority. The committee reported, on the contrary, a vote favouring in principle a Netherland amendment of an opposite tendency on the same subject. This amendment was worded thus :

[1] *Actes et documents*, vol. III, pp. 242, 243, 247, *annexes* 2, 3, 4, 14.

ARTICLE 44 *a*

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defence of their country.

These two amendments came again before the subcommission and general discussion was renewed.

It entered a new phase following a proposal of the delegation of Russia suggesting acceptance of the German text of Article 22 *a*, without the Austro-Hungarian addition, and placing it in a new chapter under Section II. This proposal was made on condition that the old text of Article 44 be preserved, instead of being suppressed as the German delegation had proposed, or replaced by the new Article 44 *a* as proposed by the Netherland delegation and consented to by the German and Austro-Hungarian delegations.

Another attempt at agreement combined the German proposal 22 *a* and the Netherland proposal 44 *a* in a single text as follows:

> To replace Article 44 (whatever the place to which it may be assigned) and Article 44 *a* proposed by the Netherlan' delegation by the following text:
>
> > It is forbidden to force the inhabitants of occupied territory to take part personally either directly or indirectly, collectively or individually, in military operations against their country and to demand of them information in view of such operations.

After a long discussion, this rendition, which was proposed by the Belgian delegation, was adopted by the subcommission by a majority of 3 votes (18 against 15).

This small majority and a desire to reach a more complete agreement led the bureau to refer the question to the committee a second time. After a new examination, the question was raised whether it would not be best, in view of the almost unanimous agreement that had been reached on the German proposal, to withdraw the Belgian amendment that combined it with the Netherland amendment. As the delegation of Belgium did not object to this, the committee found two alternatives before it: on the one hand, the adoption pure and simple of Article 22 *a*, with or without addition and suppression of the Article 44 now in force; on the other, the adoption of the German and Netherland amendments as two distinct Articles—22 *a* and 44 *a*.

The latter solution has appeared the better, with two changes in wording, to wit: 'against their country' in place of 'against their *own* country', in Article 22 *a*, and 'the inhabitants' in place of 'the population' in Article 44 *a*, which would then read: 'It is forbidden to force the inhabitants of an occupied territory to furnish information about the hostile army or its means of defence.'

As to the place for these two articles in the Regulations, the committee thought that Article 22 *a* might be placed in Article 23 as a last paragraph; but it was aware that it was for the drafting committee to decide that point.

When the Commission on the third reading came to give its decision on this second solution as just outlined, the German text (Article 22 *a*) was carried without objection and the Netherland text (Article 44 *a*) by a vote of 23 against 0, with 1 not voting.

These two new texts, therefore, are now submitted to the Conference for its approval.

ARTICLE 23

German Amendment [1]

The German delegation has proposed to add to Article 23, as now in force, a new paragraph thus worded:

> (It is especially forbidden) to declare abolished, suspended, or inadmissible the private claims of the ***ressortissants*** of the hostile party.

This addition was considered as defining in very felicitous terms one of the consequences of the principles admitted in 1899. It was approved unanimously, with a slight change in the text by inserting the words 'in a court of law' after the word 'inadmissible'.

ARTICLE 27

Greek Amendment

In order to bring the recommendations of the Second Commission into harmony with those of the Third Commission relating to naval bombardments, the delegation of Greece suggested the inclusion of 'historic monuments' in the list of buildings that under the terms of Article 27 should be spared as far as possible in case of bombardment.

This amendment was carried unanimously.

ARTICLE 52

Russian Amendment [2]

During the fourth meeting of the subcommission, his Excellency Mr. Tcharykow proposed to complete Article 52 by a provision that commanders of military forces, when in occupied territory, should be authorized to provide, as soon as possible during the continuance of hostilities, for the redemption of receipts given for contributions in kind called for by the needs of the army of occupation.

This new proposal was sent to the committee, where it was recognized as being within the spirit of Article 52. After a short discussion with a view to avoid the term 'redemption', agreement was reached on the following text to become the last paragraph of Article 52:

> Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, ***and payment shall be arranged as soon as possible.***

The Commission adopted this wording, and submits it to the Conference.

ARTICLE 53

Austro-Hungarian Amendment and Russian Subamendment [3]

The delegation of Austria-Hungary proposed to complete the provisions of Article 53, relative to the seizure of means of transportation and communication by adding the words 'on land, at sea, and in the air'.

The wording proposed was as follows:

> Railway plant, telegraphs, steamers and other ships, vehicles of all kinds, in a word all means of communication operated on land, at sea and in the air for the transmission

[1] *Actes et documents*, vol. III, p. 242, *annexe* 2. [2] Ibid., p. 248, *annexe* 15.
[3] Ibid., p. 244, *annexes* 7, 8.

of persons, things, and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

The delegation of Russia asked, besides, to add to the enumeration in this text the words 'as well as teams, saddle animals, draft and pack animals' after the words 'vehicles of all kinds'. This addition was suggested as being analogous with Articles 14 and 17 of the new Geneva Convention of 1906, which mentions teams at the same time as vehicles.

The delegation of Austria-Hungary accepted this amendment.

While fully appreciating the need of defining as precisely as possible the scope of the text, the committee thought that such a nomenclature might cause inconvenience, as any enumeration is unsafe because incomplete. It was believed preferable to adopt a general formula not lending itself to any ambiguity, and thus worded: 'All means of communication and of transport'. The military delegate of Russia himself agreed with this way of looking at the matter, on condition that the text as proposed could not have a restricted meaning, and it was approved unanimously. The second paragraph of Article 53 would commence then with the words:

> All means of communication and of transport operated on land, at sea and in the air, etc.

At this point the military delegate of Japan referred to the reservations which had been stated by his delegation in the subcommission concerning the addition of the words 'at sea', as such a provision appeared to him to trench upon the programme of the Fourth Commission. However, the committee considered it advisable to retain them, as the right of maritime capture is applicable in land warfare in the case of ships seized in a port by a body of troops, especially as regards those destined for river navigation.

The amendment relating to Article 53 led the senior delegate of Switzerland to inquire whether its provisions can be taken to apply to the property of neutral persons domiciled in belligerent territory.

The committee was of the opinion that this question was included in the programme of the second subcommission; it was already occupied with a German proposal regarding the treatment of neutral persons,[1] and the first subcommission had sent to it all the matters relative to neutrals comprised in the fourth section of the Regulations (Articles 57 to 60), as not being properly placed in instructions intended for troops.

The text adopted by the Commission and submitted to the Conference is therefore worded as above.

ARTICLE 53

Danish Amendment[2]

A second amendment relating to the same article, and moved by the delegation of Denmark, proposed to insert at the end of the 1899 text the following provisions:

> Submarine cables connecting an occupied or enemy[3] territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

[1] *Post*, p. 566.

[2] *Actes et documents*, vol. III, p. 246, *annexe* 12.

[3] See Mr. Renault's report on the Final Act, *ante*, p. 253.

When this amendment first came up for discussion, the delegation of Great Britain asked for an adjournment of its discussion, but at a later session disclaimed having any objection to its adoption. It was then carried without any opposition, both in the subcommission and the Commission, and it is submitted to the Conference for approval.

To the amendments proposed to the Regulations of 1899, within the scope of the programme of the first subcommission, there was added a new proposition by the German delegation.[1]

Indemnification for Violation of the Hague Regulations respecting the Laws and Customs of War on Land

Article 1

A belligerent party which shall violate the provisions of these Regulations to the prejudice of neutral persons shall be liable to indemnify those persons for the wrong done them. It shall be responsible for all acts committed by persons forming part of its armed forces. The estimation of the damage caused and the indemnity to be paid, unless immediate indemnification in cash has been provided, may be postponed, if the belligerent party considers that such estimate is incompatible, for the time being, with military operations.

Article 2

In case of violation to the prejudice of the hostile party, the question of indemnity will be settled at the conclusion of peace.

This interesting proposition was calculated to give a sanction to the requirements laid down by the First Peace Conference, which it is the duty of the second commission to complete and make precise. As the provisions of the Regulations respecting the laws and customs of war must be observed not only by the commanders of belligerent armies, but, in general, by all officers, commissioned and non-commissioned, and soldiers, the German delegation thought it well to propose that the Convention should extend to the law of nations, in all cases of infraction of the Regulations, the principle of private law according to which the master is responsible for his subordinates or agents.

The principle of the German proposition did not meet with objection. But a discussion occurred on the subject of the distinction it made between the populations of belligerent States and those of neutral States. In both cases, it was said, there is a violation of rights and, at least as a rule, the reparation should be the same. Now, with respect to the former, the text proposed limits itself to saying that the 'questions' concerning them must be settled when peace is arranged; therefore, no right is recognized in them.

The military delegate of Germany declared that he by no means intended to make any difference in legal right between 'neutral persons' and 'persons of the hostile party', the text proposed having no other purpose than to regulate the method of paying the indemnities. There had therefore been a misunderstanding.

The committee came to the conclusion that it was best to retain only the first part of the proposition and to give it the following form:

A belligerent party which shall violate the provisions of the present Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

[1] *Actes et documents*, vol. III, p. 247, *annexe* 13.

This draft was concurred in by the German delegation, and met with no opposition in the Commission, although the British delegation felt that it ought to make reservations on the subject.

The Commission has left to the drafting committee the work of assigning a place for this article, in the event that the Conference definitively decides to adopt it.[1]

. . . . . .

These propositions have been brought together in a table annexed to this report, in order to facilitate voting in the Conference on the individual amendments, which will be found in the column opposite the corresponding articles of the 1899 Regulations.[2]

ANNEX[3]

THE REGULATIONS OF 1899 AND THE AMENDMENTS PROPOSED

Text of Regulations respecting the laws and customs of war on land, annexed to the Convention of July 29, 1899	*Amendments proposed to the Conference by the Second Commission*
ARTICLE 2	ARTICLE 2
The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they respect the laws and customs of war.	The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if *they carry arms openly and* they respect the laws and customs of war.
ARTICLE 5	ARTICLE 5
Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.	Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety, *and only while the circumstances which necessitate the measure continue to exist.*
ARTICLE 6	ARTICLE 6
The State may utilize the labour of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connexion with the operations of the war. Prisoners may be authorized to work for the public service, for private persons, or on their own account. Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army.	The State may utilize the labour of prisoners of war according to their rank and aptitude, *officers excepted*. The tasks shall not be excessive and shall have no connexion with the operations of the war. Prisoners may be authorized to work for the public service, for private persons, or on their own account. Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, *or, if there are no rates in force, at a rate suitable for the work executed.*

[1] See Mr Renault's report on the Final Act, *ante*, p. 223.

[2] For the portion of Baron Giesl von Gieslingen's report which deals with the bombardment of undefended places, the launching of projectiles from balloons and the other subjects of the Declarations of 1899, see *post*, p. 889.

[3] *Actes et documents*, vol. i, p. 107, *annexe* B.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. It is kept informed of internments and transfers, as well as of admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be refunded by their own Government.

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

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It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the field of battle or left by prisoners who have *been released on parole, or exchanged, or who have escaped or* died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 17

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its own army are entitled, the amount to be refunded by their Government.

ARTICLE *22 a*

'It is forbidden to force ressortissants of the hostile party to take part in the operations of war directed against their country, even if they were in its service before the commencement of the war.'

ARTICLE 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden :

(*a*) To employ poison or poisoned weapons ;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion ;

(*d*) To declare that no quarter will be given ;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering ;

(*f*) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention ;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

ARTICLE 25

It is forbidden to attack or bombard towns, villages, dwellings or buildings that are not defended.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

ARTICLE 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden :

(*a*) To employ poison or poisoned weapons ;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion ;

(*d*) To declare that no quarter will be given ;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering ;

(*f*) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention ;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war ;

(*h*) *To declare abolished, suspended or inadmissible in a court of law the private claims of ressortissants of the hostile party.*

ARTICLE 25 [1]

It is forbidden to attack or bombard *by any means whatever* towns, villages, dwellings or buildings that are not defended.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, *and historic monuments*, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 44 *a*

It is forbidden to force the inhabitants of occupied territory to furnish information about the hostile army or its means of defence.

[1] For that part of the Commission's report dealing with this article, see *post*, p. 889.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given.

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, *and payment shall be arranged as soon as possible.*

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

All means of communication and of transport operated on land, at sea and in the air for the transmission of persons, things and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

Submarine cables connecting an occupied or enemy territory with a neutral territory shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.

NEW ARTICLE

RELATIVE TO INDEMNIFICATION FOR VIOLATION OF REGULATIONS CONCERNING THE LAWS AND CUSTOMS OF WAR ON LAND

A belligerent party which shall violate the provisions of the present Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

CONVENTION (V) RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN CASE OF WAR ON LAND [1]

(For the heading see the Convention for the pacific settlement of inte... nal disputes.[2])

With a view to laying down more clearly the rights and duties of neutral Powers in case of war on land and regulating the position of the belligerents who have taken refuge in neutral territory;

Being likewise desirous of defining the meaning of the term 'neutral', pending the possibility of settling, in its entirety, the position of neutral individuals in their relations with the belligerents;

Have resolved to conclude a Convention to this effect, and have, in consequence, appointed the following as their plenipotentiaries:

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

CHAPTER I.—*The Rights and Duties of Neutral Powers*

ARTICLE 1

The territory of neutral Powers is inviolable.

ARTICLE 2

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

ARTICLE 3

Belligerents are likewise forbidden:

(*a*) To erect on the territory of a neutral Power a wireless telegraphy station or any apparatus for the purpose of communicating with belligerent forces on land or sea;

(*b*) To use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

ARTICLE 4

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.

[1] *Actes et documents*, vol. i, p. 638.

[2] *Ante*, p. 292.

ARTICLE 5

A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of neutrality unless the said acts have been committed on its own territory.

ARTICLE 6

The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

ARTICLE 7

A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

ARTICLE 8

A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

ARTICLE 9

Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

A neutral Power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

ARTICLE 10

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

CHAPTER II.—*Belligerents Interned and Wounded tended in Neutral Territory*

ARTICLE 11

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

ARTICLE 12

In the absence of a special convention, the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ARTICLE 13

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

ARTICLE 14

A neutral Power may authorize the passage over its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

Wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ARTICLE 15

The Geneva Convention applies to sick and wounded interned in neutral territory.

CHAPTER III.—*Neutral Persons*

ARTICLE 16

The nationals of a State which is not taking part in the war are considered as neutrals.

ARTICLE 17

A neutral cannot avail himself of his neutrality:

(*a*) If he commits hostile acts against a belligerent;

(*b*) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

ARTICLE 18

The following acts shall not be considered as committed in favour of one of the belligerents in the sense of Article 17, letter (*b*):

(*a*) Supplies furnished or loans made to one of the belligerents, provided that

the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories ;

(*b*) Services rendered in matters of police or civil administration.

CHAPTER IV.—*Railway Material*

ARTICLE 19

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent Power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

CHAPTER V.—*Final Provisions*

ARTICLE 20

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 21

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 22

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 23

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 24

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them at the same time of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 25

A register kept by the Netherland Ministry of Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 21, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 22, paragraph 2) or of denunciation (Article 24, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Report to the Conference from the Second Commission on Rights and Duties of Neutral States in Case of War on Land[1]

(Reporter, Colonel Borel)

Mr. President and Gentlemen:

The question of the rights and duties of neutrals is too intimately connected with the codification of the laws and customs of war on land to have passed unnoticed at the time of the First Peace Conference. His Excellency Mr. Eyschen, the first delegate of Luxemburg, called attention to it [2] in the subcommission which was instructed to prepare what afterwards became the Regulations of 1899; and although the Commission felt constrained to confine itself to an examination of the questions contained in the text of the Declaration of Brussels, the Conference, at its suggestion, expressed and inserted in its Final Act the recommendation that 'the questions of the rights and duties of neutrals may be inserted in the programme of a conference in the near future'.

This vœu has been realized and we are submitting a report on the task entrusted to us of examining the question thus bequeathed to the Second Peace Conference.

The subject-matter to be dealt with falls very naturally into two parts. First of all, there must be determined the situation which war creates for neutral States as such, their rights and their duties with regard to the Powers in conflict. In the second place, consideration must be given to individuals from neutral States and to the kind of control to which they may properly be subjected in their relations with the belligerents. Each of these two questions will be made the subject of a separate report.

As to the rights and duties of neutral States, the Commission had before it a project emanating from the French delegation,[3] on which were grafted various amendments presented by other delegations,[4] and also some points referred to it for examination by other commissions or subcommissions.[5] We shall have occasion to mention them separately in the course of the present report.

No more than the authors of the Regulations of 1899, have we dreamed of settling in numerous articles all the controversies that arise in theory; we have confined ourselves to regulating some questions whose practical importance has been demonstrated by experience, and which appear possible of solution in accordance with the ideas generally accepted to-day.

The proposition of the French delegation accorded with this idea, and General Amourel speaking for them, said: 'This proposition doubtless will be criticized for failing to provide for everything. It is quite possible that the Powers may be obliged to add to it provisions

[1] This report was presented by the Second Commission through Colonel Borel, reporter of the second subcommission. It had been submitted to the Second Commission by a committee of examination composed of his Excellency Mr. Asser, chairman, General von Gundell, General Davis, General Baron Guyot von Giesslingen, his Excellency Mr. Beernaert, his Excellency Mr. van den Heuvel, his Excellency Mr. Lou Tseng-tsiang, his Excellency Mr. de Bustamante, his Excellency Mr. Brun, Mr. Louis Renault, his Excellency Lord Reay, General Sir Edmond R. Elles, his Excellency Mr. Tsudzuki, his Excellency Mr. Eyschen, his Excellency General Jonkheer den Beer Poortugael, his Excellency Samad Khan, Momtàs-es-Saltaneh, his Excellency Mr. Beldiman, his Excellency Mr. Carlin, and Colonel Borel, reporter. *Actes et documents*, vol. i, p. 136. See the report on the Final Act, *ante*, p. 220, regarding the contents of Convention V.

[2] *Ante*, p. 146.

[3] *Actes et documents*, vol. iii, p. 256, *annexe* 24; *post*, p. 552.

[4] *Actes et documents*, vol. iii, pp. 256–260, *annexes* 25–31. *Annexes* 25–30 are included in the synoptic table, *post*, pp. 552–555. *Annexe* 31, a proposal of the Danish delegation, is quoted in the body of this report, *post*, p. 547.

[5] *Actes et documents*, vol. iii, p. 260, *annexe* 32; *post*, p. 547.

setting forth all the conditions under which they intend, when occasion arises, to exercise their neutrality. But if our proposition could meet with unanimous approval, the Powers would have as a point of departure an established and already familiar groundwork common to all, possessing the great superiority of having originated in calm and free discussion.'

At the outset a question of considerable importance presented itself to the Commission. Should the new provisions be considered as addressed exclusively to the neutral States and as tracing their line of conduct for them, or should they be given, as far as possible, the more extensive character of general provisions applicable to all parties?

The latter point of view was the one taken by the proposals of the delegation of Belgium,[1] and it was advocated by that delegation as follows:

> The object of several of the duties of neutral States is to prevent them from tolerating within their territory improper conduct on the part of belligerents.
>
> It is well, therefore, not to confine ourselves to an assertion that neutrals are bound to prevent such acts. It is important to declare that the obligations of neutrals in this regard flow from an inhibition of general application which logically concerns belligerents primarily before affecting neutrals.

The Commission having accepted without objection the idea of the Belgian delegation, the project begins with the duties of belligerent Powers, enumerating the acts from which these States must abstain and those which should not be performed in their behalf. It next lays down the corresponding obligation of the neutral State, taking care to distinguish the acts which are not included in this obligation and in regard to which the neutral State has no other duty towards the belligerents than that of impartiality. It finally deals also with a few isolated points, the regulation of which appeared possible and desirable.

Thus much said, we will review the articles of the project,[2] giving the necessary explanation with each.

ARTICLE 1

> The territory of neutral States is inviolable.

On the motion of the Belgian delegation [1] the Commission thought it well to put at the head of the project this provision, which consecrates the first and fundamental effect of neutrality during war.

ARTICLE 2

> Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral State.

This article, adopted on the motion of the British delegation,[1] is the direct consequence of the principle enunciated in Article 1. There would be a violation of the territory of a neutral State in the act of a belligerent using this territory for the passage of either troops or convoys of munitions of war or supplies. The prohibition contained in Article 2 is addressed to the belligerents themselves; it is not in conflict with Article 7, which refers only to commercial enterprises of individuals.

ARTICLE 3

> Belligerents are likewise forbidden:
>
> (*a*) To erect on the territory of a neutral State a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or sea;

[1] *Post*, p. 552.

[2] *Post*, p. 550.

(*b*) To use any installation of this kind established by them before the war on the territory of a neutral State for purely military purposes, and which has not been opened for the service of public messages.

The provisions of this article follow directly from the principle affirmed in Article 1. The inviolability of the territory of a neutral State is incompatible with the use of this territory by a belligerent in aid of any of the objects contemplated by Article 3.

Here, likewise, there can be no conflict between the provisions of Article 3 and those contained in Article 8 below. The first of these articles contemplates the installation by belligerent parties of stations or apparatus on the territory of the neutral State or the use of stations or apparatus established by them in time of peace on this territory, for purely military purposes without opening them to public service. Article 8, on the other hand, treats of public service utilities operated in a neutral country, either by the neutral State or by companies or individuals.

The Japanese delegation, which had proposed the provision under letter *b*, had in view in a general way all installations established before the war by a belligerent on neutral territory. The restriction of the prohibition to those installations alone that have been established for purely military purposes and have not been opened for the service of public messages was voted on motion of the Russian delegation.[1] The wording of the last part of letter *b*, 'and which has not been opened for the service of public messages', was borrowed from the radio-telegraphic convention of 1906. By adopting this wording, on the motion of the British delegation, the Commission placed the latter delegation as well as the Japanese delegation in a position to declare that they abandoned the reserves previously stated by them with respect to Articles 3, 8, and 9.

Article 4

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral State to assist the belligerents.

While borrowing this article from the French proposal,[2] the Commission gave it the tenor of a general prohibition. What it prohibits is the formation of a corps of combatants to assist a belligerent, and also the creation and operation of recruiting agencies, the opening of which might be attempted on neutral territory for the same purpose.

The Japanese delegation had asked that belligerents be forbidden to make use of neutral territory for the purpose of establishing 'bases of supplies'. The reply was made that a prohibition of that kind would run the risk of being utterly illusory for the simple reason that, as a matter of fact, belligerent States will always be able to obtain supplies from the neutral territory through agents and other intermediaries. Moreover, the commerce of the inhabitants of neutral countries with belligerents is free, and Article 7 of the project states specifically that the neutral State is not obliged to prevent it. Confronted by this objection the Japanese delegation did not insist on its motion.

Article 5

The neutral State must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to suppress acts in violation of neutrality unless the said acts have been committed on its own territory.

[1] *Actes et documents*, vol. III, p. 267, *annexe* 35.

[2] *Post*, p. 552.

Article 5 is the logical and necessary counterpart of Articles 2 to 4. It is not sufficient to lay down the prohibitions mentioned in the preceding articles; it is also necessary to determine and state precisely (and that is just what the project herewith submitted does) the duty of the neutral State in regard to prohibited acts that are or might be committed on its territory. This duty is very simple, but it does not always appear in exactly the same form.

A violation of neutrality by one or other of the belligerents will be prevented by material means by the neutral State, all rights of the latter State being reserved as to claims on its part arising from such acts and as to the damages it will be entitled to demand. Acts contrary to neutrality committed on neutral territory by individuals fall, on the other hand, under the jurisdiction of the neutral State, and particularly under the penal provisions that it may have thought proper to enact.

Why does Article 5, in its second paragraph, use the general terms 'acts in violation of neutrality', while the project only mentions as such those acts enumerated in Article 4? The reason is simple; as stated above, it would be impossible to make here a complete enumeration of all acts that might be considered in violation of neutrality, and therefore it must be left to the neutral State to do as much more as it deems necessary, in this respect, either in its neutrality proclamation or otherwise. On the other hand, it was not inappropriate to settle by a precise text the controversy that had arisen on the subject of what might be called the territorial extent of the duties and jurisdiction of the neutral State in the matter of acts in violation of its neutrality. Is the neutral State called upon to proceed against its *ressortissants* for acts committed by them outside of its territory? The present project settles the question in the negative and enunciates the principle that, even in what concerns its *ressortissants*, the duty of the neutral State is limited by its frontiers. It is called upon only to suppress acts committed on its territory, without having to distinguish within these limits whether the act in violation of its neutrality has been committed by its national or a foreigner.

On this subject the Japanese delegation raised the question whether it would not be well to extend the obligation of the neutral State to the territories where it has jurisdiction.

While granting the justice, theoretically, of this idea, the Commission was obliged to recognize that any attempt to make it the subject of a provision in a convention would encounter difficulties of verbiage and application that had better be avoided. As a matter of fact, under the hypothesis being discussed, the situations would only be exceptional, if not abnormal, in which the real facts of the case would furnish the only criterion for determining, not only the neutral State really responsible, but also the extent of its duties.

Article 6

> The responsibility of a neutral State is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

On this point a difference of opinion arose in the Commission.

The German proposal,[1] concerning neutrals on the territory of the belligerents, enunciated the double principle: (1) that neutrals henceforth must not serve, even voluntarily, in the belligerent forces; (2) that neutral States should forbid their *ressortissants* to enlist in belligerent forces.

[1] *Actes et documents*, vol. iii, p. 208, *annexe* 36; *post*, p. 568.

This last clause—had it prevailed—would have been inconsistent with the provisions of Article 6, which differs from the French proposal[1] only by a slightly different wording.

But, in view of the opposition it encountered, the German delegation abandoned its proposal as far as it concerns war service which *ressortissants* of neutral States freely offer or consent to.

Article 2 of the French proposal was expressed in the following terms:

> A neutral State must not allow, in its territory, the formation of corps of combatants, nor the opening of recruiting agencies to assist a belligerent. *But its responsibility is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one or other of the belligerents.*

It will be noticed at once that the Commission separated the two sentences of this article,[2] making two distinct articles of them, one of which, Article 4, states a prohibition that the neutral State is bound to enforce (Article 5, paragraph 2), while the other, Article 6, specifies an act with respect to which a neutral State may remain indifferent. But the antithesis that the French proposal exhibited very clearly by uniting these two sentences in one article, as above, nevertheless subsists and merits notice here. To appreciate the exact sense and scope of Article 6 it is well to compare it with the text of Article 4. It goes without saying that the neutral State must prevent its frontier being crossed by corps or bands which have already been organized on its territory without its knowledge. On the other hand, individuals may be considered as acting in an isolated manner when there exists between them no bond of a known or obvious organization, even when a number of them pass the frontier simultaneously.

Moreover, it makes no difference whether these individuals acting separately are or are not citizens of the neutral State. Article 6 makes no mention of their nationality. It therefore applies also to the *ressortissants* of the belligerent State returning to their fatherland to perform their military duty.

Article 7

> A neutral State is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

The rule enunciated in this article is justified in itself, independently of the reasons of a practical kind in its favour. Theoretically, at least, neutral States and their populations are not to suffer from the consequences of a war in which they do not participate. Therefore the duties imposed on them by the war and the restrictions placed on their liberty of action should be reduced to the minimum of what is strictly necessary. There is no reason for prohibiting or interfering with the commerce of a neutral State even in regard to the articles mentioned in the text of the article above. Any obligation in this matter laid upon the neutral State would cause the greatest difficulties in actual practice and would create inadmissible interference with commerce.

Article 3 of the French project,[1] corresponding to the Article 7 under discussion, mentions only the export, by the subjects of the neutral State, of arms, munitions of war, etc. It

[1] *Post*, p. 552.

[2] *Post*, p. 550.

was on the motion of the Belgian delegation,[1] supported by the French delegation, that the Commission adopted the more general text, embracing the transport as well as the export and making no mention of the nationality of the merchants interested, which is, indeed, quite beside the question.

ARTICLE 8

A neutral State is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

Mention of this article has already been made in the commentary on Article 3. We are here dealing with cables or apparatus belonging either to a neutral State or to a company or individuals, the operation of which, for the transmission of news, has the character of a public service. There is no reason to compel the neutral State to restrict or prohibit the use by the belligerents of these means of communication. Were it otherwise, objections of a practical kind would be encountered, arising out of the considerable difficulties in exercising control, not to mention the confidential character of telegraphic correspondence and the rapidity necessary to this service.

Through his Excellency Lord Reay, the British delegation requested that it be specified that 'the liberty of a neutral State to transmit messages, by means of its telegraph lines on land, its submarine cables or its wireless apparatus, does not imply that it has any right to use them or permit their use in order to render manifest assistance to one of the belligerents'.

The justice of the idea thus stated was so great as to receive the unanimous approval of the Commission.

ARTICLE 9

Every measure of restriction or prohibition taken by the neutral State in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

A neutral State must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

While declaring that a neutral State does not have to forbid or restrict either the commercial operations referred to in Article 7, or the use of the cables or apparatus mentioned in Article 8, the project does not, needless to say, detract from the right of the said neutral State to take, on its own account, such restrictive or prohibitive measures in these matters as it may deem necessary or useful. Its liberty in this respect remains entire, with but one condition, namely, that the measures so taken be applied impartially to the belligerents. The additional article proposed by the German delegation,[2] corresponding to Articles 8 and 9 of the project, contained this condition, but only as regards the restrictions or prohibitions relative to the employment of cables or apparatus used in transmitting messages. But similar measures might very well be taken by a neutral State with regard to the commerce spoken of in Article 7, and they too should, in such cases, be impartially applied to the belligerent parties. Therefore the Commission thought it advisable to give to this rule of impartiality the general scope found in Article 9.

[1] *Post*, p. 552. [2] *Post*, p. 555.

The German proposition just mentioned was explained in the following terms by his Excellency Baron Marschall von Bieberstein, the first delegate of Germany:

> One single proviso ought to be made to the principle that neutral States are at liberty to regulate the use of their telegraph systems by belligerents. The duty of impartiality inherent in the notion of neutrality imposes an absolute requirement upon them to preserve perfect equality of treatment towards the belligerents. Any restrictions that a neutral State may deem it expedient to impose on the freedom of the telegraphic communications of one of the parties should therefore be similarly applied to the correspondence of the other belligerent.
>
> It is well understood that the rules which we are proposing are to apply equally to States where the operation of the telegraph lines forms a branch of the public administration and to those where it is left to companies or to private persons. In the former it devolves upon the Government itself to perform the duties incumbent upon it; in the latter the State would be responsible for the acts of the companies or individuals and would have to prevent any violation of neutrality on their part.

The majority of the Commission concurred in the opinion expressed by the German delegation. It seemed to the majority that in a service like the transmission of messages by means of ordinary or wireless telegraphy, or telephone, the neutral State not only ought itself to maintain impartiality as between the belligerents, but it ought also to take such action that its example would be followed by the companies or private owners of telegraph or telephone lines or wireless apparatus.

Article 10

> A neutral State which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.
>
> The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral State.

The French project,[1] from which the first paragraph of this article is taken, said only: 'Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free.'

While accepting this principle, the Commission completed the text in the following respects:

(1) The expression 'prisoners of war' is intended to exclude from the benefits of Article 10 individuals wanted for a breach of common law and falling within the terms of provisions of a treaty of extradition.

(2) In the second place, the Commission, by adopting an amendment moved by the British delegation,[1] expanded the first paragraph of Article 10 to include not only prisoners that escaped from the territory of the belligerent who held them, but also those that escaped from enemy territory occupied by the said belligerent. The simplified wording which the Commission has taken from the Belgian amendment,[1] includes both these classes without distinction.

(3) In the Commission, the Swiss delegation had expressed fear that the absolute terms of the French proposition might have the appearance, at least, of creating in favour of the fugitives a formal right to enter the territory of a neutral State and remain there at liberty. It asked[1] that the right be reserved to the neutral State, either to exclude them or to deny

[1] *Post*, p. 552.

them a longer sojourn as soon as it considered it proper to do so. It hastened to add that, in its opinion, a neutral State would not, in general, fail to welcome prisoners of war taking refuge in its territory, and that the suggested reservation only referred to the exceptional cases where the neutral State might be forced by circumstances to allow sentiments of humanity to be outweighed by legitimate considerations of its police or of some other kind.

The Commission considered that this reservation could be accepted as a matter of course, and it is very clearly expressed by the second sentence of the first paragraph under consideration.

(4) This second sentence was inserted in Article 10 at the instance of the Belgian delegation.[1] Their proposal was modified, however, in one respect.

The Belgian amendment was worded as follows :

> A neutral State which receives prisoners, escaped or brought by troops taking refuge in its territory, *may leave them at liberty or assign them a place of residence.*

The French delegation, through Mr. Louis Renault, pointed out to the Commission that to assign a place of residence to a fugitive amounted in reality to subjecting him to internment, for which there is no justification. Moreover, the option allowed the neutral State might be dangerous, from the point of view of its duty of strict impartiality towards the belligerents, and might expose it to recriminations that it would be better to avoid.

In reply to these objections his Excellency Mr. van den Heuvel insisted that there was no intention to claim for the neutral State an arbitrary latitude of judgement such as had just been properly criticized, and that the Belgian proposition was only intended to reserve to that State the right of taking such action that certain special circumstances might make necessary, as, for instance, a considerable number of fugitives. Moreover, does not the right of the neutral State to decline to receive or to allow these individuals to remain on its territory, imply of itself a right to subordinate the hospitality that it consents to grant them to some condition such as an assignment of a place of residence, especially since the fugitives always are free to decline it ?

In order to cover these various observations the Commission substituted for the option of the neutral State as proposed in the Belgian motion a simple exception, the wording of which indicates that the assignment of a place of residence will be only an exceptional measure.

(5) The second paragraph of Article 10 deals with a question that the Brussels Conference discussed without solution, and that the Regulations of 1899 also left unanswered. Ought prisoners of war brought into the territory of a neutral State by belligerent troops who take refuge there, to become free, or should they be interned like the troops ? Upon the motion of the Netherland delegation[1] the Commission declared for the first solution. The only obstacle to the freedom of the prisoners here referred to lies in the actual power that the belligerent forces which captured them are exercising over them, and this actual power vanishes the moment the captor takes refuge in the territory of a neutral State.

Moreover, troops taking this extreme step, do so in order to escape from an enemy who

[1] Ibid.

is pressing them, and from a capitulation whose effect would of course be to free the prisoners in their power.

The Russian delegation had at first contested paragraph 2 of Article 10, and made a reserve thereto. Nevertheless, it subsequently declared that for the sake of harmony it would withdraw this reserve and would adhere to the project in its entirety, without, however, admitting that the principle accepted by the Commission is theoretically well founded.

Is the solution of the question as contained in the second paragraph of Article 10 inconsistent with the requirements either of Article 59 of the Regulations of 1899, or of Article 15 of the Convention adopted by the Conference on July 20, 1907, which makes applicable to naval warfare the principles of the new Convention of Geneva of July 6, 1906? This question came up in the Commission. It should be answered, without contradiction, in the negative.

What Article 59 of the Regulations of 1899 refers to is the sending into neutral territory of wounded or sick belonging to belligerent forces. The sanitary establishments of the belligerents will have recourse to this measure to rid themselves of the sick and wounded that are an incumbrance to them and thus to recover the mobility necessary to the accomplishment of their task. Such a procedure has been permitted for reasons of humanity, but it should not serve later on as a further advantage for the belligerent to whom the wounded or sick that are sent into neutral territory belong, and that is why the neutral State was obligated by Article 59 to keep them, from whichever side they come, and to prevent their returning to their own army.

The same situation occurs under the hypothesis of Article 15 of the Convention adopted July 20, 1907. A vessel carrying sick, wounded or shipwrecked men should be able to dispose of them as soon as possible, in order to return to its naval duty. Therefore, it will often be led to disembark them in the nearest neutral port. Higher humanitarian interests require that this procedure be authorized, and, as a general rule, a neutral State will not evade this duty of welcoming the unfortunates thus entrusted to it. But, if it receives them, it will, in the absence of an arrangement to the contrary with the belligerent States, have to keep them in such a way that they cannot again take part in the operations of the war.

There is thus a plain distinction between the two examples that have just been explained, and the situation, provided for in paragraph 2 of Article 10 of the project, of an army constrained to seek refuge in neutral territory in order to escape pursuit by the enemy. An analogous situation would be that of a vessel retiring into a neutral port to escape the enemy and disembarking its prisoners of war during its disarmament or even before the disarmament. In this case also the principle of the second paragraph of Article 10 is applicable; prisoners landed in a neutral port, except in the case mentioned in Article 15 of the Convention adopted July 20, 1907, become free from the moment they touch the soil of the neutral State.

What becomes of the war material captured by troops and brought with them into the territory of a neutral State? This question was put by the Dutch delegation,[1] which made the following motion: 'War material captured from the enemy by an armed force and brought with it while taking refuge on neutral territory shall be restored by the Government

[1] *Post*, p. 555.

thereof to the State from which it was taken after the conclusion of peace.' But the Netherland delegation did not insist on its motion in the face of the objection made to it. On the one hand, the case of war material captured from the enemy cannot be assimilated to the case of prisoners of war. The capture of *matériel* creates for the captor an immediate right of ownership, which places this *matériel* on the same footing as the captor's own *matériel*. On the other hand, even if the captor's right to the property should become uncertain, owing to his taking refuge in the neutral territory, there would be no reason for making the neutral State the judge of the question and for imposing on it the invidious duty of examining the *matériel* brought into its territory by a belligerent force to see what has been taken from the enemy and what belongs to the force under some other title.

Article 11

> The fact of a neutral State resisting, even by force, attempts to violate its neutrality cannot be regarded as an act of hostility.

This article repeats, with a verbal change, an amendment proposed by the Dutch delegation,[1] and explained in the following language of his Excellency General Jonkheer den Beer Poortugael:

> It is unfortunate enough that a neutral State should be obliged to resort to armed force to secure respect for its rights and especially to perform its duties, without having such a measure regarded as a hostile act. A neutral State will never have recourse to this necessary step unless positively forced thereto by the belligerents. No imputation of having committed a hostile act can be laid to it, since the responsibility for the action taken does not rest with it.

In the Commission it was remarked that the Netherland proposition seems superfluous. 'It is clear', said his Excellency Mr. van den Heuvel, 'that if a neutral State has rights and duties to fulfil it ought to have means of carrying them out. Therefore, if it employs those means no one can regard it as a grievance.' On the other hand, Colonel Borel claimed that a State whose neutrality has been violated has the right of treating this violation as a *casus belli* and of attaching thereto such consequences as it deems proper.

Without denying the correctness of these observations, the Commission agreed that the Netherland proposition had its justification in the case where the neutral State would prefer to limit itself to resisting the attempt to violate its neutrality, and to presenting in addition its grievances through the diplomatic channel. In such a case it is not inadvisable to say plainly, as does Article 11, that the use of force by the neutral State with the sole object of resisting an attempt to violate its neutrality cannot be invoked as a *casus belli* by the State responsible for this necessity of a recourse to this extreme measure.

Here is the place to mention the proposal of the Danish delegation[2] referred to us for examination by the Third Commission and drawn up as follows:

> If, in order to prepare in due time for the defence of its neutrality, a neutral State mobilizes its military forces, even before receiving notice from one of the belligerents of the commencement of a war, this act shall not be considered as an unfriendly act towards either of the parties in dispute.

[1] Ibid.

[2] *Actes et documents*, vol. III, p. 290, *annexe* 31.

This proposition deals with the following difficulty:

When a war is about to break out, a State which intends to remain neutral may have an interest in not waiting for the declaration and notification of the war before taking the steps necessary for enforcing respect for its neutrality in the armed conflict about to take place. In such a case it is important that it have the assurance of an international stipulation that the measures decreed by it for the accomplishment of its duty as well as for the safeguarding of its rights cannot in any wise be deemed by either of the future belligerents as an unfriendly act towards it.

The Commission was unanimous in thinking that every sovereign State has the indisputable right to take, in its own territory, all measures for its defence that it considers expedient, and that the exercise of this right, which flows quite naturally from its sovereignty, can less than ever give rise to criticism or complaint when, under the circumstances, the State in question has recourse thereto for an object as legitimate as that of ensuring its neutrality, and thus of performing its duties. It seemed that, far from gaining anything by the Danish proposition, this truth could only be weakened by a stipulation that would have the appearance at least of restricting its scope to certain specified circumstances. Moreover, the point was made that it was impossible and hardly correct in the text of an international treaty like the one being prepared, to attach the official description of 'neutral' to an undetermined State at a time when, war not yet having been the subject of notification, nor even declared, there are no belligerents and no neutrals, and the future attitude of each State is still theoretically uncertain so far as the others are concerned.

The foregoing statements were, upon the request of the senior delegate of Denmark, inserted by the Commission in its report, and, in taking note thereof, he admitted that they were of a nature to satisfy his Government, and he accordingly did not insist that his proposal be put to a vote as a new provision for insertion in express terms in the project.

The first subcommission of the Second Commission had referred to us for examination an amendment emanating from the Japanese delegation,[1] by the terms of which Article 57 of the Regulations of 1899 on the laws and customs of war was to be supplemented by the two new provisions following:

ARTICLE 57 *a*

> Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to re-enter their country except with the consent of the adverse party and under the conditions stipulated by it.

ARTICLE 57 *b*

> A parole given to a neutral State by the persons mentioned in Article 57 *a* shall be, in case of violation, deemed equivalent to one given to the adverse party.

Article 57, paragraph 3, of the Regulations leaves it to the neutral State to decide whether interned officers may be left at liberty on giving their parole *not to leave the neutral territory without permission*. It does not say upon what conditions a permission to leave this territory should be predicated; neither does it provide any penalty for violation of the

[1] *Actes et documents*, vol. III, p. 260, *annexe* 32.

parole. Finally, it does not mention either non-commissioned officers or private soldiers. The Japanese delegation proposed to fill this gap by deciding: (1) that the interned men, without distinction of rank, cannot be liberated nor permitted to re-enter their country except with the consent of the adverse party under conditions fixed by it; (2) that the parole given in such cases to the neutral State would be equivalent to a parole given to the adverse party.

Without ignoring the merits of this proposal the Commission preferred to continue the existing text of the Regulations. It considered that permission given to an interned man to return temporarily to his country is something too exceptional to require regulation in express terms. There was no difficulty, moreover, in recognizing that the Japanese proposal conforms to recent precedents and contains a useful hint for a neutral State desirous of remaining entirely free from responsibility. In the name of the Japanese delegation, his Excellency Mr. Tsudzuki declared himself satisfied with this statement, which, on his request, the Commission decided to insert in the present report.

It only remains for us to mention the fact that during the discussion of the French proposition concerning the rights and duties of neutral States, the Chinese delegation declared that it accepted the propositions that became Articles 4, 5 (paragraph 2), 7 and 10 (paragraph 1) of the project of the Commission, but that it reserved its vote with regard to the others.

A last word on the subject of the form that the project submitted to the Conference should assume. Without wishing to prejudge the question, which is under the jurisdiction of the General Drafting Committee, the Second Commission believes nevertheless that it can and should emphasize the fact that the project cannot be joined to the provisions collected in 1899 in the Regulations on the laws and customs of war on land. The principles enunciated are in no way regulations, like those provisions, addressed to the military forces of belligerents and calculated to be made the subject of instructions for the armies of the signatory Powers. It seems, rather, that a separate special arrangement, which might also contain Articles 57 to 59 inclusive of the 1899 Regulations, would be the most appropriate form to be given to the project now before the Conference.

Perhaps some will pronounce this project imperfect and incomplete. Such as it is, however, it has the merit of expressing in definite form a series of fundamental principles sanctioned by the almost unanimous consent of the nations. This will assure to neutral States the benefits of a position in which not only their duties but also their rights with regard to belligerents are clear. In the absence of any other merit, that one alone would be sufficient, it would seem, to justify us in commending the project to the considerate examination and vote of the Conference.

ANNEX 1[1]

DRAFT ARRANGEMENT RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL STATES ON LAND

Text submitted to the Conference

ARTICLE 1

The territory of neutral States is inviolable.

ARTICLE 2

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral State.

ARTICLE 3

Belligerents are likewise forbidden to:

(*a*) Erect on the territory of a neutral State a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or sea.

(*b*) Use any installation of this kind established by them before the war on the territory of a neutral State for purely military purposes, and which has not been opened for the service of public messages.

ARTICLE 4

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral State to assist a belligerent.

ARTICLE 5

The neutral State must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to suppress acts in violation of neutrality unless the said acts have been committed on its own territory.

ARTICLE 6

The responsibility of a neutral State is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

ARTICLE 7

A neutral State is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

ARTICLE 8

A neutral State is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

[1] *Actes et documents*, vol. i, p. 148, *annexe* E. This project received the unanimous approval of the Conference, September 7. Ibid., p. 125. Respecting a change in the order of Articles 10 and 11, see *ante*, p. 220.

ARTICLE 9

Every measure of restriction or prohibition taken by the neutral State in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

A neutral State must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

ARTICLE 10

A neutral State which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral State.

ARTICLE 11

The fact of a neutral State resisting, even by force, attempts to violate its neutrality cannot be regarded as an act of hostility.

ANNEX 2[1]

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF
AND DUTIES OF

I *FRENCH* *Proposition*[2] *Annexe 24*	II *ENGLISH* *Proposition*[3] *Annexe 25*	III *SWISS* *Proposition*[4] *Annexe 26*
ARTICLE 1 A neutral State cannot be responsible for acts of its subjects of which a belligerent complains unless the acts have been committed on its own territory.	ARTICLE 1 Idem.	ARTICLE 1 *A neutral State is not called upon to repress acts in violation of neutrality except when the said acts have been committed on its own territory.*
ARTICLE 2 A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of certain of its citizens crossing the frontier to offer their services to one or other of the belligerents.	ARTICLE 2 Idem.	ARTICLE 2 A neutral State must not allow in its territory the formation of corps of combatants nor the opening of recruiting agencies to assist a belligerent. But its responsibility is not engaged by the fact of *persons* crossing the frontier *separately* to offer their services to one or other of the belligerents.
ARTICLE 3 A neutral State is not called upon to prevent its subjects from exporting arms, munitions of war, or, in general, from furnishing anything which can be of use to an army, for the account of one or other of the belligerents.	ARTICLE 3 Idem.	
ARTICLE 4 Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free.	ARTICLE 4 Prisoners who, having escaped from the territory of the belligerent which held them *or from enemy territory occupied by a belligerent*, arrive in a neutral country shall be left free.	ARTICLE 4 Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country shall be left free *if the neutral State receives them and allows them to remain, which it is not obliged to do.*

[1] *Actes et documents*, vol. iii, p. 261, *annexe* 33. [2] Ibid., p. 256. [3] Ibid., p. 257.

EXAMINATION RELATIVE TO THE DRAFT REGULATIONS ON THE RIGHTS NEUTRAL STATES ON LAND

IV *NETHERLAND* *Proposition* [4] *Annexes 27 and 28*	V *GERMAN* *Proposition* [4] *Annexe 29*	VI *BELGIAN* *Proposition* [5] *Annexe 30*
		ARTICLE 1 The territory of neutral States is inviolable.
		ARTICLE 8 *A neutral State is not bound to suppress acts in violation of neutrality committed by its nationals outside its own territory.*
		ARTICLE 3 *Corps of combatants cannot be formed nor recruiting agencies opened on neutral territory to assist a belligerent.* *The responsibility of a neutral State is not engaged by the fact of persons crossing the frontiers separately to offer their services to one of the belligerents.*
		ARTICLE 5 A neutral State is not called upon to prevent *the export or transport, with a belligerent country as destination*, of arms, munitions of war, or in general of anything which can be of use to an army.
ARTICLE 4 Prisoners who, having escaped from the territory of the belligerent which held them, arrive in a neutral country, *and those who arrive there as prisoners of war of an armed force that has taken refuge in the neutral territory* shall be left free.		ARTICLE 4 *A neutral State which receives prisoners, escaped or brought by troops taking refuge in its territory, may leave them at liberty or assign them a place of residence.*

[4] Ibid., p. 258.

[5] Ibid., p. 250.

ANNEX 2 (*continued*)

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF AND DUTIES OF

I *FRENCH* *Proposition* *Annexe 24*	II *ENGLISH* *Proposition* *Annexe 25*	III *SWISS* *Proposition* *Annexe 26*
	ARTICLE 5 A neutral State is bound to prevent the erection on its territory of a wireless telegraph station or any other apparatus for the purpose of communicating with belligerent forces on land or on sea.	
	ARTICLE 6 All passage is prohibited across neutral territory of troops, munitions of war, or war supplies for the account of a belligerent.	

EXAMINATION RELATIVE TO THE DRAFT REGULATIONS ON THE RIGHTS NEUTRAL STATES ON LAND (*continued*)

IV *NETHERLAND* *Proposition* *Annexes 27 and 28*	V *GERMAN* *Proposition* *Annexe 29*	VI *BELGIAN* *Proposition* *Annexe 30*
	ARTICLE 4 *a* A neutral State is not called upon to forbid or restrict, on behalf of the belligerent parties, the use of cables and telegraphs, including wireless telegraphy, located in its territory. Every prohibitional restriction shall be applied indifferently to both parties. The provisions of the two preceding paragraphs are also applicable to cables and telegraphs, with or without wire, belonging to companies or private individuals.	ARTICLE 6 A neutral State is not called upon to forbid or restrict *the use, for communicating with belligerent parties, of telegraph or telephone cables* or of wireless telegraphy apparatus *belonging to it or to companies or to private individuals.* *The* prohibitions or restrictions *which may be established* must be applied *impartially* to both belligerent parties.
		ARTICLE 7 *The installation on neutral territory is forbidden* of a wireless telegraphy station or any other apparatus for the purpose of communicating with the belligerent forces on land or on sea.
ARTICLE 5 War *materiel* which an armed force captured from the enemy and which it takes with it when taking refuge in neutral territory shall be restored by the Government of such territory to the State from which it was captured after the conclusion of peace.		
		ARTICLE 2 Passage is forbidden across neutral territory of troops *or of convoys of either munitions of war or supplies destined for* a belligerent.
NEW ARTICLE If a neutral State, in order to fulfil duties imposed by neutrality, is obliged to have recourse to arms, this act shall not be deemed a hostile act.		

First Report to the Conference from the Second Commission upon an Arrangement on Neutral Persons in the Territory of Belligerents[1]

(Reporter, Colonel Borel)

Mr. President and Gentlemen:

The question of neutrals embraces not only the rights and duties of neutral States as such; it comprises also another problem—that which concerns the *ressortissants* of neutral States dwelling in the territory of belligerent States, and consists in ascertaining what status it may be possible and desirable to give these persons in their relations with the belligerents.

The project presented on this subject by the German delegation [2] tended, through the adoption of precise rules, to remove the uncertainty which now exists in this regard on a number of points. It was based on the idea that neutrals in the territory of belligerents should remain as far as possible, unaffected by the war. They shall not take part in it and they shall suffer the effects of it only so far as unavoidable. Thus creating a special status for neutrals, the German project began with a definition of a neutral and of the conditions that deprive him of this quality. A second chapter treated of the services rendered by neutrals; and a third, of the goods belonging to them in the territory of belligerents.

We shall now show to what extent the Commission has adopted these proposals, which were combined in a Chapter V [3] and were intended to be an addition to the Regulations of 1899. While retaining this heading provisionally, and the numbering of the proposed articles, we had no thought of anticipating the decision of the Conference as to the definite form to be given to the project and the place to be assigned thereto in its completed work.

Chapter I.—*Definition of a Neutral*

Article 61

The nationals of a State which is not taking part in the war shall be considered as neutrals.

The term '*ressortissants*' which appeared in Article 61 of the German proposition [2] was criticized as possibly including other persons than nationals, for example, aliens domiciled in the territory of a State. Although the word '*ressortissants*' seems clearly to refer only to persons belonging to a State by virtue of the juridical tie of nationality,

[1] This report was made by Colonel Borel, reporter of the second subcommission, on behalf of the Second Commission. It had been presented to the Second Commission by a committee of examination composed of his Excellency Mr. Asser, chairman, General von Gundell, General Baron Giesl von Gieslingen, his Excellency Mr. Beernaert, his Excellency Mr. van den Heuvel, his Excellency Mr. Lou Tseng-tsiang, his Excellency Mr. de Bustamante, his Excellency Mr. Brun, Mr. Louis Renault, his Excellency Lord Reay, General Sir Edmond R. Elles, his Excellency Keiroku Tsudzuki, his Excellency Mr. Eyschen, his Excellency General Jonkheer den Beer Poortugael, his Excellency Samad Khan, Momtas-es-Saltaneh, his Excellency Mr. Beldiman, his Excellency Mr. Carlin, Colonel Borel, reporter. *Actes et documents*, vol. i, p. 150.

[2] Ibid., vol. iii, p. 268, *annexe* 36; *post*, p. 500.

[3] Ibid., vol. i, p. 160, *annexe* G. Its articles are quoted in this report. For the action of the Conference on this draft, see *post*, p. 570.

the Commission has here used the word ' nationals ', which can cause no misunderstanding whatever.[1]

With respect to individuals having a double citizenship, every State has the right to ignore the fact that any of its nationals is also a ***ressortissant*** of another State.

ARTICLE 62

A neutral cannot longer avail himself of his neutrality :

(*a*) If he commits hostile acts against a belligerent party ;

(*b*) If he commits acts in favour of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality than a ***ressortissant*** of the other belligerent State could be for the same act.

A neutral who does not observe his duties of neutrality thereby loses the quality of neutral, but does not render himself liable for any special crime of violation of neutrality. His acts, if they are illegal, will be judged on their own merits independently of the circumstance that their perpetrator belongs to a neutral State. The neutral committing them will not be treated by the belligerent State against whom he is acting with more severity than a ***ressortissant*** of the enemy country would be for the same act.

As expressing this idea clearly, the Commission preferred to the German proposal, which spoke of ' violation of neutrality ' committed by a neutral, the wording proposed by the Swiss delegation,[2] to which the German delegation agreed.

In the course of the discussion the Commission agreed, without opposition, to the request of the delegation of Haiti, that simple comments published in newspapers, even though unfavourable to one of the belligerent parties, should not be, by this fact alone, considered as a hostile act in the sense of Article 62 *a*.

ARTICLE 63

The following acts shall not be considered as committed in favour of one of the belligerent parties in the sense of Article 62, letter *b* :

(*a*) Supplies furnished or loans made to one of the belligerent parties, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from one of these territories ;

(*b*) Services rendered in matters of police or civil administration.

The exception provided for by Article 63, paragraph *a*, cannot be extended to all supplies furnished and to all loans made by a neutral to one of the belligerents. Thus, in case of a war between State A and State B, if a neutral residing in A or the territory occupied by that State were to furnish supplies to B, or subscribe to a loan issued by that State, he would by so doing commit an act in favour of B, falling under the application of Article 62, paragraph *b*, and he would lose in A's eyes his quality as a neutral as a result of the sale or loan. It would be the same if the neutral, without being resident in A or in territory occupied by that State, were to deliver to B supplies coming from A or from the territory that State occupies.

[1] Westlake (2nd ed., vol. i, p. 103) says that the term *ressortissants* ' includes persons, if any, over whom jurisdiction is claimed by reason of domicile as well as proper subjects or nationals '.

[2] *Post*, p. 566.

Chapter II.—*Services rendered by Neutrals*

Article 64

Belligerent parties shall not require of neutrals services directly connected with the war.

Exception is made of sanitary services or sanitary police service absolutely demanded by the circumstances. These services shall, as far as possible, be paid for in cash; if not, a receipt shall be given and payment effected as soon as possible.

Articles 64 to 66 of the German project were calculated to establish a distinction between war services and services not considered as such.

As to the former, Article 64 prohibited belligerents both from requiring and accepting them from neutrals, and Article 65 imposed on neutral States the obligation of forbidding their *ressortissants* to enter the ranks of one of the belligerent parties. The other services, on the contrary, which are not considered as services of war, could, by the terms of Article 66, be accepted but not required from neutrals.

In the Commission several delegations opposed the German proposals as to services freely offered or consented to by neutrals.

There is no reason, it was said, to prevent neutrals from taking service with a belligerent, and it would be inadmissible to forbid the latter to accept services so offered. Still less should an attempt be made to impose upon a neutral State a duty to forbid its citizens taking service in the ranks of a belligerent. A measure of this kind is not one of the duties of a neutral State. These duties, as his Excellency Mr. Léon Bourgeois remarked, may be summed up as an obligation not to act. It could not be carried out when the neutrals live, not in the territory of their own country, but in that of one or the other of the belligerent parties.

In view of these objections the German delegation withdrew its proposals in so far as they concerned voluntary services on the part of neutrals.

This action had the following results:

(1) That Article 65 of the German project regarding the neutral State is abandoned as no longer having any object;

(2) That as no difference any longer existed between war services and services not so considered, this distinction could be omitted and Articles 64 and 66 of the German proposition could be combined into a single text—that of Article 64 of the present project.

This article is intended to apply only to services directly connected with the war and is limited to saying that a belligerent cannot require them of neutrals; that is to say, impose them on neutrals against their will. Exception is made, however, of sanitary services or sanitary police service absolutely demanded by circumstances. This means exceptional assistance that ought to be required by reason of the very necessity which demands them. The Commission thought it superfluous to add in the last paragraph of Article 64, as was proposed by the delegation of Austria-Hungary,[1] 'services of a religious nature and services rendered in the interest of domestic order'. In short, the character of these services is too exclusively humanitarian or of general utility for them to be considered as directly connected with war. They therefore do not fall within the first paragraph of Article 64.

[1] *Post*, p. 508.

ARTICLE 65

The provision of Article 64, paragraph 1, does not apply to persons belonging to the army of a belligerent State through voluntary enlistment.

Nor does it apply to persons belonging to the army of a belligerent State under the legislation of that State.

In the course of the discussion of the German proposals [1] two special reserves were made with respect to the provision now appearing as Article 64, paragraph 1, of our project:

(1) Without opposing the principle of this article the Netherland delegation [2] made the point that it could not be applied to persons belonging to the army of a State by virtue of a voluntary enlistment previous to the war. The nationality of these persons is not a reason for exempting them from the performance of the very military duty for which their services were offered and accepted in the terms of a voluntary and valid contract. The Commission recognized the truth of this observation and has covered the case in Article 65 of its project.

(2) The other reserve had reference to the legislation of some States which require military service of foreigners domiciled in their territory, doing so either as a general rule or only in the case of those foreigners who do not prove that they have performed [illegible] military duty in their own country.

Not wishing to trespass on the domain of national domestic legislation, the committee of examination considered it preferable not to devote an express exception to this case, as it might, in appearance at least, have the character of official recognition. But, on motion of the delegations of Great Britain [3] and Belgium [3], the Commission decided otherwise by 12 votes to 9, with 13 abstentions. After this vote, the delegation of Switzerland made a reserve, as noted by the Commission in the record, with respect to paragraph 2 of Article 65.

In conclusion, let us recall that the new Article 22 *a*,[4] inserted in the Regulations of 1899 on August 17, 1907, by a vote of the Conference, expressly and absolutely saves individuals in the service of a foreign Power from ever being forced to take part in the operations of war directed against their own country.

CHAPTER III.—*The Property of Neutrals*

Under this heading the German draft contained, besides Articles 70 to 72 (now 66 to 68), of which we shall speak shortly, four other articles, couched as follows in the final form given them by the committee of examination:

ARTICLE 66

No war tax shall be levied upon neutrals.

A war tax is deemed to be any tax levied expressly for war purposes.

Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.

[1] *Post*, p. 596. [2] *Post*, p. 599. [3] *Post*, p. 595.

[4] This Article 22 *a* became the last paragraph of Article 23. *Ante*, p. 516.

ARTICLE 67

The property of neutrals shall not be destroyed, damaged, or seized, unless absolutely necessary by reason of the exigencies of the war. In case of destruction or damage, the belligerent is only bound to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or of its own are likewise given the benefit of an indemnity and reciprocity is guaranteed.

ARTICLE 68

The belligerent parties shall make compensation for the use of real property belonging to neutrals in the enemy country, the same as in its own country, provided that reciprocity is guaranteed in the neutral State. Nevertheless, this indemnity shall in no case exceed that which the legislation of the enemy country provides in case of war.

ARTICLE 69

Movable property belonging to a neutral in the territory of a belligerent party can be expropriated or made use of by it for a military purpose only by an immediate payment of an indemnity in specie.

These provisions were energetically opposed in the Commission by the delegates of France, Great Britain, the Netherlands, and Russia. It is inadmissible, they said, to create for neutrals an advantageous status that finds no sound basis either from the point of view of the State in which they dwell or of the other belligerent party. Exempt from military service by reason of his foreign citizenship, a neutral established abroad is subject to all other charges that are levied from the citizens of the country where he has his domicile. The State whose hospitality has been extended to him is the less called upon to make a distinction in his favour since the charges from which it is desired to relieve him have most often the character of general taxes affecting the entire population and whose collection does not lend itself to distinctions of persons. As to the position of neutrals with regard to an invader who occupies the territory where they live, that is already regulated by the provisions of the Convention of 1899 on the laws and customs of war on land—a convention that makes no distinction between neutrals and the nationals of the invaded State and, as a consequence, places them all on the same footing. Besides, how could the neutral complain? Does he not by coming to establish himself in a country consent in advance to submit to its laws and taxes and to share in this respect the lot of the citizens in whose midst he lives?

Finally, the German proposition would encounter in practice very great difficulties of execution. Thus, to repeat the expression of his Excellency Mr. Léon Bourgeois, the war taxes referred to in Article 66 can hardly be imposed and collected except *ratione loci* and not *ratione personae*, whether the invader collects them himself or whether he has the local authority do so.

Besides these general objections an additional point was made of the peculiar difficulties that the application of the provisions of the German project could not fail to encounter in certain countries as to the points under discussion. 'Every English colony,' said the British delegation, 'has a very considerable population of foreigners who have dwelt there for a long time, most of them having been born there. They consider it as their own country, although they have not formally renounced their old nationality, and they have no desire whatever to benefit by the exemptions that are here proposed.

to be granted them.' Likewise, the Japanese delegation made the point that in the Far East a number of countries have not legislated on the subject of nationality and that entire populations may be found there whose citizenship is quite uncertain or might be changed at any moment by decisions too interested to be acceptable.

On the other hand, arguments in support of the German proposition were presented, particularly by the delegations of the United States and Switzerland. These we shall now briefly summarize.

The sole and immediate object of the project is to favou foreigners as against the native population of the country where they live. It is inspired by that more general and even loftier influence that guides the work of the Conference and aims to minimize, so far as possible, the evil effects of war and to diminish, so far as circumstances permit, the number of persons called upon to suffer its hardships and burdens. It is impossible to deal here with the citizens of the belligerent States. It is to them that their own country makes its appeal to sustain its efforts in the war; it is to them that the invading enemy addresses his requisitions as authorized by the Regulations of 1899. But side by side with these populations, necessarily involved in the struggle, are foreigners, found in the territory of a belligerent State only because of the fact of their domicile, who have no bond with this State and who are neutrals because their own country is a neutral to the conflict. If it is truly desired to continue faithful to the humanitarian movement which has already inspired a number of the provisions of the Articles of 1899 and which aims to lessen the evils of war and the number of its victims, must we not act accordingly in behalf of these neutrals for whom the struggle is a thing apart and who have neither share nor responsibility in it? Can we ignore, in this matter, the difference that the very tie of nationality creates between them and the citizens of the country in which they live, a tie which does not exist for them, or, to be more exact, which binds them to a foreign and neutral State? And if it be urged that it is scarcely fair that foreigners in a State should, in case of war, be treated better than the citizens, can this feeling, which is more human than just on the whole, cause us to forget that the citizens of this same State, when abroad, would enjoy the benefits of the proposed plan in the far more numerous wars to which their country will be not a party, but a neutral? As to the difficulties of execution indicated, they can scarcely be considered as insurmountable. It is for those interested individuals to prove their nationality; and it would not be necessary to recognize as neutrals persons not furnishing this proof in an entirely satisfactory manner.

These considerations led to the adoption by the committee of examination by a vote of 6 to 5, with 1 abstention, of the proposal to establish in favour of neutrals the rules stated in the Articles 66 to 69 above. The Commission, on the contrary, dropped them; by 18 votes to 11, and 10 not voting.[1]

Before this vote, and conditioned upon its result in the negative, the French delegation had proposed[2]:

(*a*) as Article 66, to take the place of the committee's Articles 66 to 69:

> The property of neutrals shall be dealt with by each belligerent: first, on his own territory, like the private property of its nationals; secondly, on hostile territory, like the private property of the *ressortissants* of the hostile State.

[1] Ten delegations did not respond when called upon.
[2] *Actes et documents*, vol. iii, p. 285, *annexe* 47.

(*b*) to keep, as Article 67, Article 70 of the committee's draft.

(*c*) to word Articles 71 and 72 of the committee's draft as follows, with a corrected numbering :

ARTICLE 68

Neutral vessels and their cargo may be requisitioned and used on the same conditions as railway material.

ARTICLE 69

The indemnity to be paid to neutrals for destruction, requisition, damage or use shall, as far as possible, be paid in cash ; if not so paid, the amounts due shall be stated in receipts and their payment shall be effected as soon as possible.

The French delegation had formulated these propositions with the idea of presenting a text on the basis of which the Commission could arrive at unanimity. But the German delegation observed that it could not support it, because the new text as proposed was not consistent with treaty provisions which Germany had concluded with a number of States and which sanctioned, with others, the same principle as Article 66 of the committee's draft. Thereupon the French delegation, as the unanimity it desired could not be attained, withdrew its proposal.

Having furnished this preliminary account of the history of these provisions, we pass to a brief review of and comment on the articles preserved by the Commission.

ARTICLE 66

Railway material belonging to neutral States or to companies or to private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to its country of origin.

A neutral State may likewise, in case of necessity, retain and utilize to an equal extent material of the belligerent Power found on its territory.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

With reference to Article 70 of the German proposal [1], which in part became Article 66 of the project of the committee, the delegation of Luxemburg [2] had proposed an amendment as follows : ' This permission [to expropriate or make use of, for military purposes, movable property of neutrals in the country of the belligerent who requires them] does not extend to the means of public transportation coming from neutral States, belonging to these States or their grantees, and recognizable as such.'

Before this proposition came up for discussion the delegation of Luxemburg followed it with a subsidiary amendment [2] to complete the same Article 70 by the following provisions :

The maintenance of pacific relations, more especially of the commercial and industrial relations existing between the inhabitants of belligerent States and neutral States, merits particular protection on the part of the civil and military authorities.

On the outbreak of hostilities, belligerents shall accord a sufficient delay to enable transportation material belonging to neutral States or to their grantees to be taken back to their country of origin.

Requisitions on means of transportation belonging to neutral States or to their grantees shall not be made except in case of imperative necessity.

[1] *Post*, p. 566. [2] *Post*, p. 573.

> The quantity of material to be requisitioned, as well as its use, shall be reduced to a minimum. Such material shall be returned within a short time to its country of origin.
>
> Whenever public transportation material belonging to a neutral State or to its grantees is requisitioned by a belligerent State, material belonging to the latter or to its grantees found in neutral territory may likewise be held there by way of due compensation.

The minutes of the sixth and seventh sessions of the second subcommission show in detail the very interesting discussion to which the propositions of the delegation of Luxemburg gave rise.

We may be permitted therefore to confine ourselves here to the following observations :

(1) The principle enunciated by the first paragraph of the above subsidiary amendment received unanimous consent ; but the Commission thought that a better form for it would be that of a general resolution to be inscribed as a preamble at the head of the new contractual provisions concerning neutrals. If the Conference concurs in this view, it will be the duty of the General Drafting Committee to give the proposed resolution the place and wording that are most suitable.

(2) In the course of the discussion the Commission agreed at once that in regard to neutral railroad material in occupied territory, the question is regulated by Article 54 of the Regulations of 1899, which contains the provision that ' railroad material originating in neutral States, whether belonging to those States or to private companies or persons, will be sent back to them as soon as possible '. The report of the subcommission[1] which prepared the 1899 Regulations gives this article the following comment :

> His Excellency Mr. Beernaert had suggested ordering *immediate restitution of this material* [that is to say, the material contemplated by Article 54] *with a prohibition of using it for the needs of the war* ; but the subcommission agreed with the drafting committee in thinking that it was sufficient to lay down the principle of restitution within a short time for the sole purpose of pointing out that the material belonging to neutrals *cannot be the object of seizure*.

Did the authors of the Regulations of 1899 by these last words intend to formulate a general principle prohibiting belligerents from requisitioning railway material belonging to neutrals ? So his Excellency Mr. van den Heuvel maintained, but the majority of the Commission took the opposite view as expressed by Mr. Louis Renault and others.

Article 54 does not absolutely forbid a belligerent to utilize the material of neutrals found in the territory occupied by its army. It is limited to imposing upon him the obligation to send back this material as soon as possible to the rightful possessor.

(3) On the question of principle raised by the Luxemburg amendments various opinions came to light in the Commission and its committee of examination. Some delegations utterly denied that a belligerent has a right of requisitioning and utilizing neutral material found in its territory. Among those who admitted this right within the limits of Article 70, some claimed in favour of the neutral State an indemnity as well as the right of retaining, to an equal extent, material belonging to the belligerent. Others were willing to grant to the neutral State only the indemnity without the right of retaining material, or only this right of retention to the exclusion of any indemnity.

It is impossible to reconcile these various opinions, which are contradictory on more than one point. The project contains what may be called an intermediate solution. The first paragraph of Article 66, which the German delegation proposed in order to take

[1] Report of Mr. Edouard Rolin Jaequemyns, *ante*, p. 153.

into account the amendments presented by the delegation of Luxemburg, does not deny the belligerents the right of requisitioning and utilizing material belonging to neutral States or their grantees, but it restricts it to the cases where such a step is demanded by an imperative necessity.

For example, when mobilization takes place, it would be literally impossible to proceed to a separation of all the railway material belonging to neutral States or their grantees. Even were it thus set apart, this material could nevertheless not be sent to its country of origin as long as the military transportation superseded and checked all other schedules. This situation of *force majeure* might occur even before the opening of hostilities. It could also arise when States are mobilizing their forces with the aim of enforcing respect for their neutrality during a war that has already been declared or one that is imminent.

All that can be done here is to restrict the right of requisition to the narrow limits stated in Article 66, paragraph 1, and to recognize the right of the neutral State to the retention reserved to it in the second paragraph of the same article. This right could not be considered as having the character of reprisals. The neutral State will have recourse to it because, deprived of the material retained by the belligerent, it, in its turn, has to requisition the material that it finds in its territory to ensure its domestic as well as its international railroad service. It will exercise this right only to the same extent and will be careful, by preserving an even balance between the belligerents, to observe its duty of impartiality which is too inherent in neutrality to require the express mention proposed by the Serbian delegation.[1] Finally, the project imposes on the State making use of the right of requisition, the obligation to pay to the rightful possessors of the material an indemnity proportionate to the material utilized and to the time it is held. In this provision the project merely sanctions a principle which is already practised everywhere in times of peace and whose application cannot, it seems, cause any difficulty.

Article 67

> Neutral vessels and their cargo can be expropriated or utilized by a belligerent party if they belong to the river shipping in its territory or in the enemy's territory. Exception is made of the vessels in a regular maritime service.
>
> In case of expropriation the indemnity shall be equal to the full value of the vessel or cargo, increased by 10 per cent. In case of use it shall be the ordinary freight charge increased by 10 per cent. These indemnities shall be paid immediately and in specie.

Two principles are laid down in Article 67, which regulates also lake shipping, but not that of a seaport.

The first of these is that the belligerents may, for a military purpose and under the conditions fixed by paragraph 2, expropriate or utilize neutral vessels belonging to the river shipping in their territory or in that of the enemy. The second is that this right does not belong to them as regards vessels, even if found on a river, whose regular service is maritime and not river. In either case the cargo is subject to the same rules as the vessel itself.

In the Commission, reserves with respect to this Article 67 were made by the delegations of Austria-Hungary, China, France, Great Britain, Japan, Russia, and Turkey, as appears in the record of the proceedings.

[1] *Post*, p. 573.

ARTICLE 68

When railway material or vessels belonging to neutrals and utilized under the provisions of Articles 66 and 67 shall have suffered, by the sole reason of their use for a military purpose, any damage in excess of ordinary wear and tear, the belligerent party shall pay for this damage a special indemnity over and above what is due for utilizing them.

The total indemnity for goods destroyed under the same conditions shall be the same as that which would have been paid for their expropriation.

It is not sufficient to provide for a bailment indemnity in favour of the owners of neutral goods utilized by a belligerent in the cases dealt with in Articles 66 and 67. A further indemnity will be due if these goods are damaged by the use made of them. In case of destruction by reason of this use, the indemnity will be that which would have been paid for an expropriation of the goods destroyed.

In stating the right to this special indemnity, Article 68 expressly subordinates it to the condition that the goods to which it applies shall have been destroyed or damaged solely by the use made of them for a military purpose.

Article 68 was made, on the part of the delegations of China, France, Great Britain, Japan, Russia, and Turkey, the subject of reserves, of which the Commission made record.

Such, Mr. President and Gentlemen, is the project as it has issued from our deliberations. To be sure, it does not come up to the wishes and proposals of more than one delegation; but the discussion summed up in this report shows how opinions are still divided on the points that have been eliminated from our definitive text. Within the modest limits which circumstances have impelled us to set for it, the project submitted to the Conference constitutes a real and important advance, as compared with the present state of the subject. For every day its own work suffices, and we can leave to the future the care of smoothing away the difficulties that are now experienced, and of facilitating an agreement among the nations on the solutions reached, as well as of thus preparing the way for a more complete international agreement than that which we to-day propose to you for your sanction.

ANNEX 1[1]

PROPOSITION OF THE DELEGATION OF GREAT BRITAIN

AMENDMENT TO THE DRAFT DRAWN UP BY THE COMMITTEE OF EXAMINATION

ARTICLE 65

After the words 'of a belligerent State' insert the words 'either in virtue of the legislation of that State, or'.

ANNEX 2[2]

PROPOSITION OF THE DELEGATION OF BELGIUM

AMENDMENT TO THE DRAFT DRAWN UP BY THE COMMITTEE OF EXAMINATION

ARTICLE 65

The provision of the first paragraph of the preceding article is not applicable to persons belonging to the army of a belligerent State by the fact of a voluntary engagement, nor to those who have been incorporated in it by virtue of the legislation of that State and who do not prove any particular nationality or have not satisfied the obligations imposed by the recruiting laws in their countries.

[1] *Actes et documents*, vol. III, p. 284, *annexe* 45.

[2] Ibid., vol. III, p. 281, *annexe* 40.

ANNEX 3[1]

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMINATION RESPECTING THE LAWS AND

TREATMENT OF NEUTRAL PERSONS IN THE

I *GERMAN* *Proposition*[2] *Annexe* 36	II *AUSTRO-HUNGARIAN* *Proposition*[3] *Annexe* 37	III *SWISS* *Proposition*[4] *Annexe* 38
CHAPTER I *Definition of a neutral person*		
ARTICLE 61 All the ***ressortissants*** of a State which is not taking part in a war are considered as neutral persons.		
ARTICLE 62 A violation of neutrality involves loss of character as a neutral person with respect to both belligerents. There is a violation of neutrality : (*a*) If the neutral person commits hostile acts against one of the belligerent parties; (*b*) If he commits acts in favour of one of the belligerent parties, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2).		ARTICLE 62 A neutral person *can no longer avail himself of his neutrality and of the special privileges resulting therefrom according to the terms of Articles* 64-72 : (*a*) If he commits hostile acts against a belligerent party (*b*) If he commits acts in favour of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties (Article 64, paragraph 2) ***In such a case, the ... [illegible] person shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality, than a 'ressortissant' of the other belligerent State could be for the same act.***
ARTICLE 63 The following acts shall not be considered as committed in favour of one of the belligerent parties in the sense of Article 62, letter *b* : (*a*) Supplies furnished or loans made to one of the belligerent parties, so far as these supplies or loans do not come from enemy territory or territory occupied by the enemy. (*b*) Services rendered in matters of police or civil administration.		

[1] *Actes et documents*, vol. iii, p. 273, *annexe* 43. [2] Ibid. p. 268. [3] Ibid., p. 270.

RELATING TO THE DRAFT OF A NEW SECTION TO BE ADDED TO THE REGULATIONS CUSTOMS OF WAR ON LAND

TERRITORY OF BELLIGERENT PARTIES

IV	V	VI
LUXEMBURG	*SERBIAN*	*NETHERLAND*
Proposition [4]	*Proposition* [5]	*Proposition* [6]
Annexes 39 and 40	*Annexe 41*	*Annexe 42*

[4] Ibid., p. 271.

[5] Ibid., pp. 271, 272.

[6] Ibid., p. 272.

ANNEX 3 (*continued*)

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMINATION RESPECTING THE LAWS AND TREATMENT OF NEUTRAL PERSONS IN THE

I *GERMAN* *Proposition* *Annexe 36*	II *AUSTRO-HUNGARIAN* *Proposition* *Annexe 37*	III *SWISS* *Proposition* *Annexe 38*
CHAPTER II *Services rendered by neutral persons*		
ARTICLE 64 Belligerent parties shall not ask neutral persons to render them war services, even though voluntary. The following shall be considered as war services: Any assistance by a neutral person in the armed forces of one of the belligerent parties, in the character of combatant or adviser, and, so far as he is placed under the laws, regulations or orders in effect by the said armed force, of other classes also, for example, secretary, servant, cook. Services of an ecclesiastical and sanitary character are excepted.	ARTICLE 64 The last sentence of the second paragraph might be worded as follows: Services of a religious or sanitary nature are excepted, and those which pertain to the domain of the sanitary police, as well as all services rendered by neutrals in the interest of internal order.	
ARTICLE 65 Neutral Powers are bound to prohibit their *ressortissants* from engaging to perform military service in the armed force of either of the belligerent parties.	ARTICLE 65 Insert between the words 'bound' and 'to' in the first line: 'immediately upon notification of the existence of a state of war'.	ARTICLE 65 Eliminate Article 65.
ARTICLE 66 Neutral persons moreover shall not be required, against their will, to lend services, not considered war services, to the armed forces of either of the belligerent parties. It will be permitted, nevertheless to require of them sanitary services or sanitary police services, not connected with actual hostilities. Such services shall be paid for in cash, so far as it is possible to do so. If cash is not paid, requisition receipts shall be given.		ARTICLE 66 Rewrite the second paragraph as follows: It will be permitted nevertheless to require of them sanitary services or sanitary police services not connected with actual hostilities if *imperatively demanded by the circumstances*. Such services shall be paid for in cash so far as possible. If cash is not paid, requisition receipts shall be

RELATING TO THE DRAFT OF A NEW SECTION TO BE ADDED TO THE REGULATIONS CUSTOMS OF WAR ON LAND (*continued*)

TERRITORY OF BELLIGERENT PARTIES

IV *LUXEMBURG* *Proposition* *Annexes* 39 *and* 40	V *SERBIAN* *Proposition* *Annexe* 41	VI *NETHERLAND* *Proposition* *Annexe* 42
		ARTICLE 64 After the first paragraph add another, as follows: Not to be included under this rule are: *ressortissants* of a neutral State who, at the time of the outbreak of war, are found in the ranks of the army of a belligerent under the terms of a previous voluntary enlistment.

ANNEX 5 (*continued*)

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMINATION RESPECTING THE LAWS AND TREATMENT OF NEUTRAL PERSONS IN THE

I *GERMAN* *Proposition* *Annexe 36*	II *AUSTRO-HUNGARIAN* *Proposition* *Annexe 37*	III *SWISS* *Proposition* *Annexe 38*
CHAPTER III *Property of neutral persons*		
ARTICLE 67 No war tax shall be levied on neutral persons. A war tax is deemed to be any requisition levied expressly for a war purpose. Existing imposts, duties and tolls, or taxes especially levied by one of the belligerent parties, in the enemy territory occupied by it, for the needs of the administration of that territory, are not deemed to be war taxes.		
ARTICLE 68 Neutral property shall not be destroyed, damaged or impaired unless necessary by reason of the exigencies of war. In this case, the belligerent party is only obliged to pay an indemnity in its own country or in the enemy country, when the *ressortissants* of another neutral country or of his own nationals likewise enjoy indemnification and reciprocity is guaranteed.		ARTICLE 68 Rewrite the article as follows : Property of a neutral person shall not be destroyed damaged or impaired unless necessary by reason of the exigencies of war. *In such a case the belligerent party is held to complete indemnification of the owner*
ARTICLE 69 The belligerent parties shall make compensation for the use of neutral real property, in the enemy country, the same as in its own country, provided that reciprocity is guaranteed in the neutral State. In no case, however, shall this indemnity exceed that provided by the legislation of the enemy country in case of war.		

RELATING TO THE DRAFT OF A NEW SECTION TO BE ADDED TO THE REGULATIONS CUSTOMS OF WAR ON LAND (*contin l*)

TERRITORY OF BELLIGERENT PARTIES

IV	V	VI
LUXEMBURG	*SERBIAN*	*NETHERLAND*
Proposition	*Proposition*	*Proposition*
Annexes 39 and 40	*Annexe 41*	*Annexe 42*

ANNEX 3 (*continued*)

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMI
RESPECTING THE LAWS AN

TREATMENT OF NEUTRAL PERSONS IN T

I *GERMAN* *Proposition* *Annexe* 36	II *AUSTRO-HUNGARIAN* *Proposition* *Annexe* 37	III *SWISS* *Proposition* *Annexe* 38
ARTICLE 70		
Belligerent parties are authorized to expropriate or use for any military purpose, through immediate payment therefor in specie, all neutral movable property found in its country. They may do the same in enemy country, within the limits and under the conditions specified in Article 52.		

RELATING TO THE DRAFT OF A NEW SECTION TO BE ADDED TO THE REGULATIONS CUSTOMS OF WAR ON LAND (*continued*)

TERRITORY OF BELLIGERENT PARTIES

IV *LUXEMBURG* *Proposition* *Annexes 40 and 40 bis*	V *SERBIAN* *Proposition* *Annexe 41*	VI *NETHERLAND* *Proposition* *Annexe 42*
ARTICLE 70 Add a paragraph 2, as follows : This authorization does not extend to means of public transportation leading from neutral States and belonging to said States or to their grantees, recognizable as such. or, as a subsidiary proposal : The maintenance of pacific relations, especially of commercial and industrial relations, existing between the inhabitants of belligerent and neutral States, merits particular protection on the part of the civil and military authorities. On the outbreak of hostilities, belligerents shall accord a sufficient delay to enable transportation material belonging to neutral States or to their grantees to be taken back to their country of origin. Requisitions on means of transportation belonging to neutral States or to their grantees shall not be made except in case of imperative necessity. The quantity of material to be requisitioned, as well as its use, shall be reduced to a minimum. Such material shall be returned within a short time to its country of origin. Whenever public transportation material belonging to a neutral State or to its grantees is requisitioned by a belligerent State, material belonging to the latter or to its grantees found in neutral territory may likewise be held there by way of due compensation.	ARTICLE 70 Add to the end of the last paragraph of the subsidiary proposal of Luxemburg : A neutral State is required, however, to exercise this detention of transportation material at the same time and in the same measure with respect to all belligerent parties.	

ANNEX 3 (*continued*)

SYNOPTIC TABLE OF PROPOSITIONS PRESENTED TO THE COMMITTEE OF EXAMINATIO
RESPECTING THE LAWS AN

TREATMENT OF NEUTRAL PERSONS IN TH

I *GERMAN* *Proposition* *Annexe 36*	II *AUSTRO-HUNGARIAN* *Proposition* *Annexe 37*	III *SWISS* *Proposition* *Annexe 38*
ARTICLE 71 Neutral vessels and their cargoes can be expropriated or used by a belligerent party only if these vessels are used for river navigation within its territory or within the enemy territory. In case of expropriation the indemnity shall equal the entire valuation of the vessel or of the cargo plus ten per cent. In case of use, it shall equal the ordinary charges plus ten per cent. These indemnities shall be paid immediately and in specie.	ARTICLE 71 Insert between the words ' navigation ' and ' within ' in the fifth line of the first paragraph : ' or small coasting trade '.	
ARTICLE 72 Indemnity for the destruction or injury of neutral personal property, due solely to its use for military purposes, shall likewise be settled in conformity with the principles laid down in Articles 70 and 71.		

RELATING TO THE DRAFT OF A NEW SECTION TO BE ADDED TO THE REGULATIONS CUSTOMS OF WAR ON LAND (*continued*)

TERRITORY OF BELLIGERENT PARTIES

IV	V	VI
LUXEMBURG	*SERBIAN*	*NETHERLAND*
Proposition	*Proposition*	*Proposition*
Annexes 39 and 40	*Annexe 41*	*Annexe 42*

Supplemental Report to the Conference on Neutral Persons in the Territory of Belligerents [1]

(Reporter, Colonel Borel)

Mr. President and Gentlemen:

In the meeting of September 7, after voting without opposition the draft [2] presented by the Second Commission on the rights and duties of neutral States, the Conference entered upon an examination of the same Commission's draft [3] relative to neutral persons in the territory of belligerents, and it had already voted the first three articles when on the motion of his Excellency the senior delegate of Germany it decided to recommit the project to the Commission for further study. In taking this decision after the reserves made by several delegations at the time of voting on paragraph 2 of Article 65, the Conference took into account the observations which his Excellency Baron Marschall von Bieberstein at the beginning of the meeting had made on the draft, and especially on the contradiction pointed out between Article 64 and paragraph 2 of Article 65 of Chapter II concerning services rendered by neutrals.

The Commission met on September 9 to review the project and was obliged to recognize that this contradiction actually existed and that it was not possible to preserve paragraph 2 of Article 65, as to retain it would have taken away all the practical value from the principle of Article 64 which the Commission had intended to lay down as a fundamental rule at the head of Chapter II. Paragraph 2 of Article 65 might have been suppressed; but then the delegations of some countries which even nowadays impose military service on aliens domiciled in their territory would not have failed to formulate reserves with regard to Article 64, and it is assuredly necessary to avoid as far as possible introducing into international conventions any provisions which an important minority of the contracting parties oppose.

There remained a compromise proposition drawn up by the Belgian delegation, which is couched in these terms:

> It (the provision of Article 64, paragraph 1) is also not applicable to persons belonging to the army of a belligerent State by virtue of legislative provisions exempting military service from resident foreigners who do not satisfy the military obligations of their own countries.

After a discussion this proposal was not accepted. Independently of the difficulties of execution which it risked provoking, it did not do away with the objections based on principle to Article 65, paragraph 2, of the project and could not therefore realize the aim desired by its authors.

It is indeed impossible to reconcile to-day by a single provision two systems so diametrically opposed as those now before us. On this point the ways leading to a general understanding have yet to be prepared, and we shall indicate presently the recommendations that the existing situation suggests to us for this purpose. Just now the only means of causing the contradiction indicated above to disappear consists in eliminating at the same time the two Articles 64 and 65 which have brought it about, and it is upon this solution that, to our great regret, we have been obliged to decide.

[1] This report was made by the Second Commission through Colonel Borel, the reporter of the second subcommission. *Actes et documents*, vol. 1, p. 176.

[2] *Ante*, p. 550. [3] *Ante*, pp. 556 *et seq.*

But while thus omitting Chapter II by reason of the reserves made thereon, how could we leave in the project Articles 67 and 68 which likewise evoked reserves on the part of six or seven delegations? Such a procedure would hardly be permissible, and rather than follow it, the Commission has preferred to give up those two articles, especially as their importance is secondary to that of Article 66.

Finally, there remains from the whole project the last-mentioned article and Articles 61 to 63 already voted by the Conference, and we propose that you adopt them without further seeking to add other provisions upon which it seems impossible to reach a general agreement at this time.

If this decision is taken, it will belong to the drafting committee to see whether the four articles, which of themselves could scarcely form a special arrangement, should be inserted in the Regulations of 1899, or whether they might be placed together with Article 54 of those Regulations after the provisions of the Convention which you have already adopted on the subject of the rights and duties of neutral States. For the moment, we confine ourselves to submitting them to you with a new temporary numbering. Finally, we repeat for the sake of emphasis the recommendation which the Commission has already asked you to express in the sense of a proposition of Luxemburg, as follows:

> The maintenance of pacific relations, more especially of the commercial and industrial relations existing between the inhabitants of the belligerent States and neutral States, merits particular protection on the part of the civil and military authorities.

Mr. President and Gentlemen:

It is not without regret, we must repeat, that the Commission has concluded to cut out from this project four articles whose elaboration had cost long and patient work. It is better, however, to hold to a less result but a sure one accepted by all than to preserve texts that are contradictory or lacking the authority which only a general agreement can give them. To tell the truth, the obstacle which our good-will and our efforts have vainly sought to surmount is the fact that at the present time opinions are still too divergent to permit an international codification. Such a work, which we must thus renounce to-day, remains nevertheless in our eyes highly useful and desirable. And that is why, inspired by the sentiments expressed in the Commission by his Excellency Mr. Eyschen and his Excellency Mr. Nelidow, the president of the Conference, we take the liberty of drawing the attention of the Governments to this very important question of neutral persons in their relations with belligerents. In spite of the unfavourable circumstances which have so appreciably diminished the immediate result, our labours shall not have been in vain if they can bring the Powers to attempt to establish, through arrangements concluded between them, precise and uniform rules regulating the situation of the *ressortissants* of one state in the territory of another with respect to military burdens. By proceeding thus an end would be put to the uncertainty prevailing nowadays in this matter on more than one point, disputes which might arise therefrom would be prevented, and preparation would be made for the day when a new and more fortunate Conference will arrive at a general and complete understanding on the question of neutrals in the territory of belligerents. We think it our duty to emphasize this *résumé* of our whole thought, and we could not better conclude the present report than by proposing that the Conference give form of expression to the *vœux* which appear below.

ANNEX[1]

DEFINITIVE PROPOSALS OF THE SECOND COMMISSION RESPECTING THE TREATMENT OF NEUTRAL PERSONS IN THE TERRITORY OF BELLIGERENT PARTIES

1

The nationals of a State which is not taking part in the war are considered as neutrals.

2

A neutral can no longer avail himself of his neutrality:

(*a*) If he commits hostile acts against a belligerent party;

(*b*) If he commits acts in favour of a belligerent party, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent State as against whom he has abandoned his neutrality than a *ressortissant* of the other belligerent State could be for the same act.

3

The following acts shall not be considered as committed in favour of one of the belligerent parties in the sense of Article 2, letter *b*:

(*a*) Supplies furnished or loans made to one of the belligerent parties, provided that the person who furnishes the supplies or who make the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from one of these territories;

(*b*) Services rendered in matters of police or civil administration.

4

Railway material belonging to neutral States or to companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to its country of origin.

A neutral State may likewise, in case of necessity, retain and utilize to an equal extent material of the belligerent State found in its territory.

Compensation shall be paid, by one party or the other, in proportion to the material used, and to the period of usage.

VŒUX[2]

The Conference expresses the *vœu*:

1. That in case of war, the responsible authorities, civil as well as military, shall make it their special duty to ensure and safeguard the maintenance of pacific relations, more especially of the commercial and industrial relations between the inhabitants of the belligerent Powers and neutral States;

2. That the high Powers should seek to establish, through agreements between themselves, uniform contractual regulations determining, with respect to military charges, the relations of each State toward foreigners residing within its territory.

[1] *Actes et documents*, vol. I, p. 170, *annexe* C. The four articles became, with a few minor changes, Articles 10 to 13 of Convention V.

[2] These *vœux* were adopted by the Conference without remark in the plenary session of September 14. *Actes et documents*, vol. I, pp. 164, 165. For their subsequent history in the General Drafting Committee, see *ante*, p. 222. On their wording in the Final Act, *vœux* nos. 2 and 3, *ante*, p. 210.

CONVENTION (VI) RELATIVE TO THE STATUS OF ENEMY MERCHANT SHIPS AT THE OUTBREAK OF HOSTILITIES[1]

(For the heading see the Convention for the pacific settlement of international disputes.[2])

Anxious to ensure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities, have resolved to conclude a Convention to this effect, and have appointed the following persons as their plenipotentiaries :

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions :

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ARTICLE 2

A merchant ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, cannot be confiscated.

The belligerent may only detain it, without payment of compensation, but subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention

[1] *Acts and documents*, vol. i, p. 644. [2] *Ante*, p. 202.

on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such cases provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war.

Article 4

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

Article 5

The present Convention does not affect merchant ships whose build shows that they are intended for conversion into war-ships.

Article 6

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

Article 7

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 8

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

The said Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, stating the date on which it received the notification.

ARTICLE 9

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 10

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 11

A register kept by the Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 7, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 8, paragraph 2) or of denunciation (Article 10, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with certified extracts from it.

In faith of which the plenipotentiaries have appended to the present Convention their signatures.

Done at The Hague October 18 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[There follow signatures]

Extract from the General Report of the Fourth Commission[1]

(Reporter, Mr. Henri Fromageot)

III

DAYS OF GRACE

The third question in the programme of the Fourth Commission relates to the 'days of grace to be granted to vessels in which to leave neutral ports or enemy ports after the outbreak of hostilities'.[2]

As is known, it has been the custom of belligerent States, since the Crimean war of 1854, to permit enemy ships in or entering their ports to leave on the outbreak of hostilities, and even to grant them certain days of grace in which to depart in safety instead of confiscating them.

The reason for this measure, which is at present entirely optional, is to 'conciliate the interests of commerce with the necessities of war', and, even after the outbreak of hostilities, 'still to protect, as widely as possible, transactions entered into in good faith and in course of execution before the war'.[3]

This question was submitted to the Commission for consideration by our president, Mr. Martens, in the following form:[4]

> Is it good practice in war to seize and confiscate, upon the outbreak of hostilities, enemy merchant ships stationed in the ports of one of the belligerent States?
>
> Should not these ships be granted the right to depart freely within a fixed time, with or without cargo, from the ports where they happen to be at the beginning of the war?

Four propositions were presented upon this subject.

The delegation of Russia[5] proposed that the granting of days of grace to merchant ships belonging to one of the belligerent Powers and overtaken by war in enemy ports be declared compulsory henceforth, so that they might be able to complete their innocent transactions, to put out to sea without interference, and to reach the nearest national port or a neutral port. A vessel which, on account of *force majeure*, might not be able to take advantage of this permission, could not be confiscated. The Russian proposition added, for a similar reason, that a vessel which had left its last port of departure before the war and was at sea when war broke out, could not be captured; that it could only be detained; and, finally, that the benefit of these provisions should be extended likewise to vessels entering enemy ports.

In support of this proposition, the Imperial delegation emphasized,[6] on the one hand, the necessity of safeguarding, in conformity with equity, commercial transactions entered

[1] *Actes et documents*, vol. I, p. 250. See *post*, p. 603.
[2] *Actes et documents*, vol. I, p. XVII. Russian programme of April 3, 1906, section 3, paragraph 1.
[3] Report preceding the French decree of March 27, 1854 (Pistoye and Duverdy, *Traité des prises maritimes*, Paris, 1855, vol. II, p. 467).
[4] *Actes et documents*, vol. III, p. 1133.
[5] *Post*, p. 588.
[6] Speech of Colonel Ovtchinnikow, July 12, 1907.

into in good faith and in all confidence before the war, and, on the other hand, the practice universally followed since 1854.

However equitable the principle of this measure may appear in itself, attention was nevertheless called to the fact [1] that it was a most delicate matter in practice to lay down a uniformly obligatory rule, and that the sanctioning of such an obligation might eventually work harm to the legitimate interests of belligerents.

Enemy ships, which happen to be in the ports of a belligerent, may, as was said,[2] be vessels subject to service in war. It is difficult, perhaps impossible, always to distinguish them beforehand. Can the belligerent, therefore, be forced in all cases to allow enemy merchant ships, whatever may be their character, to leave his ports, since the right to detain them enables him to deprive his enemy of means of attack and defence which might soon be utilized?

For these reasons the French delegation[3] proposed the continuance of the present optional course. But, fully endorsing the sentiments of equity expressed by Russia and its legitimate concern for the interests of international commerce, which demand that transactions confidently entered into in time of peace should not be cheated of success, the delegation of the Republic admitted the principle that a vessel, which should be refused permission to depart, could not be confiscated, and that it could only be liable to requisition in consideration of an indemnity, like all other property which happens to be in the territory of a belligerent.

The Netherland delegation,[4] while declaring itself in favour of a compulsory rule, proposed an amendment making an exception in the case of vessels admitting of conversion into war-ships.

Finally, the Swedish delegation,[5] with a view to conciliation, proposed a combination of the Russian and French propositions by limiting the project to an expression of the desirability of granting days of grace.

Thus the discussion which took place in Commission bore principally upon the compulsory or optional character of the measure in question.

After having ascertained[6] that there was unanimous agreement that the granting of days of grace be at least considered desirable, the Commission decided[7] not to vote until after the committee of examination had completed its work; and it was of the opinion that for the purpose of facilitating an agreement it was wise to charge this committee with the drafting of a project, which should take into consideration the difficulties concerning merchant ships admitting of conversion into war-ships.[8]

Such were the circumstances under which the committee of examination entered upon its deliberations.[9]

[1] Speech of Captain Ottley (fifth session, Fourth Commission, July 12, 1907); of his Excellency Mr. Lammasch (ibid.); of Mr. Louis Renault (eighth session, July 24, 1907).

[2] Speech of Mr. Louis Renault (eighth session, July 24, 1907; tenth session, July 31, 1907).

[3] *Ibid.*, p. 580.

[4] *Ibid.*, p. 588.

[5] *Ibid.*, p. 589, and remarks of his Excellency Mr. Hammarskjöld (tenth session, Fourth Commission, July 31, 1907).

[6] See remarks of General de Robilant (fifth session, July 12, 1907); of his Excellency Mr. Martens, president (ibid., and tenth session, July 31, 1907); of his Excellency Mr. de Beaufort (eighth session, July 24, 1907); of his Excellency Mr. Hammarskjold (tenth session, July 31, 1907).

[7] Minutes, tenth session, July 31, 1907.

[8] See remarks of Mr. Kriege, tenth session, July 31, 1907.

[9] See *Actes et documents*, vol. III, minutes of committee of examination, second session, August 9, 1907; third session, August 12, 1907; fourth session, August 14, 1907.

Since it had been impossible to come to an agreement upon the principle of obligation,[1] the committee took as the basis of discussion the Swedish compromise proposition. This resulted in the following draft regulations.[2] Except for certain reservations, it received a unanimous vote with two abstentions[3] in Commission.

Title

In the first place the title indicates that the draft regulations concern 'the status of enemy merchant ships at the outbreak of hostilities'. The expression 'days of grace' was abandoned, because it did not seem to come sufficiently within the various hypotheses considered in the following provisions:

Article 1

> When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.
>
> The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

Article 1 contemplates, in its first paragraph, merchant ships belonging to one of the belligerent Powers, which happen to be in an enemy port at the outbreak of hostilities.

In default of an agreement upon the practical possibility of promulgating an obligation at this time, the text indicates that it is desirable that the belligerent, in whose port such vessels happen to be, grant them free departure, either immediately or within a certain time, and supply them thereupon with a pass permitting them to proceed in safety to their port of destination or to such other port of refuge as it may be necessary to designate, for example, if their port of destination is a blockaded enemy port. The provision thus expresses the unanimous opinion of the Commission, while leaving in force the present optional course, which permits a belligerent State, if there be occasion, to refuse to allow the vessels in question to depart.

It appeared to be preferable not to specify that the days of grace would be granted for loading or unloading, so as not to limit the benefit solely to these commercial operations.

The second paragraph contemplates the case of an incoming vessel, which has left its last port of departure before the war began and is in ignorance of the outbreak of hos-

[1] Committee of examination, second session, August 9, 1907. The principle of an obligation when put to vote, resulted as follows: eight States voted for it (Germany, United States, Austria-Hungary, Belgium, Norway, Netherlands, Russia, Serbia); four States voted against it (Argentine Republic, France, Great Britain, Japan); Sweden abstained.

[2] Adopted in committee of examination of Fourth Commission (*Actes et documents*, vol. ..., by thirteen votes and two abstentions. Voting for the project as a whole: Germany (with reservations to Articles 3 and 4, paragraph 2), Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Japan, Norway, Netherlands, Portugal, Serbia, Sweden; abstaining: Russia, United States of America. See fifteenth session of committee, September 13, 1907.

[3] Thirteenth session of Fourth Commission, September 18, 1907. Thirty-nine States took part in the vote; three States (Germany, Montenegro, and Russia) voted with the reservation of Articles 3 and 4, paragraph 2; abstaining: United States of America, Ecuador, and Haiti.

tilities upon its arrival in the enemy port. The second condition seemed to be necessary in order to avoid abuses; for the vessel, although it had put to sea before the war began, may have learned during its voyage of the existence of hostilities, especially if it has been met and searched by a belligerent cruiser. The mention of such search in its ship's journal will establish the fact in this respect.

ARTICLE 2

A merchant ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, or was not granted days of grace in which to leave, cannot be confiscated. It is only liable to detention without payment of compensation, but subject to the obligation to restore it after the war or requisition it on payment of compensation.

Article 2 contemplates the case of an enemy merchant ship that has been unable to depart, either because it has not been allowed to leave, or because it has been prevented by *force majeure* from taking advantage of its permission to leave.

In the present state of the law it is liable to confiscation and subject to the common right of capture.

As has already been explained, this appeared to be somewhat at variance with equity, good faith, and the security necessary in international trade. It could not be admitted, in the present state of modern commerce, that every time there was more or less political tension between States, ship-owners, underwriters, shippers, and all who are interested in maritime commerce should be confronted by the fear that their enterprises, confidently entered upon during peaceful relations, might come to grief through unexpected and brutal confiscation.

But it was likewise seen that the belligerent might have a legitimate interest in not allowing such and such an enemy ship to leave his ports, since such ship might perhaps, sooner or later, serve against it, either as an auxiliary cruiser, blockading its ports or exercising the right of search and of capture, or as a repair-ship, transport, or collier, or simply as a wreck to be sunk for the purpose of blocking the belligerent's passage.

Therefore, if it is not possible in practice to impose such an obligation upon a belligerent State, it is at least indispensable that a belligerent should not, in addition to the option given him to refuse to allow a ship to depart, claim the right to make innocent commerce bear the burden of a loss which could not be foreseen.

Therefore the belligerent is forbidden to confiscate; but, on the other hand, is given the right to detain on condition of restitution after the war, and to requisition on condition of paying an indemnity. This is the solution which it appeared to be equitable to propose.

At the very beginning certain doubts had been expressed as to the extent of the indemnity; but it is easy to see, in this respect, that, like all indemnities, this one should cover the loss suffered by the lawful claimant from the act which caused it, that is to say, in this case, the requisition.

Finally, on account of the diversity, inadequacy or absence of legal provisions respecting requisition in different countries, it appeared to be preferable[1] not to refer to municipal laws matters in relation to the right of requisition and the obligation to indemnity.

[1] *Actes et documents*, vol. iii, p. 939.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, cannot be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war.

Article 3 relates to the hypothesis of enemy merchant ships which have left their last port of departure before the beginning of the war and are encountered *at sea*, sailing in full confidence and entire ignorance of the outbreak of hostilities.

In the present state of the law, these ships are, in principle, liable to capture.

However, it may be said that the same reasons that led to the preceding provisions relative to vessels *entering* enemy ports or vessels which happen to be in such ports, seem to demand that capture be forbidden. In both cases, the equitable solution and the interest of commerce are the same; and the interest of the belligerent is analogous.

The opinion of the committee, however, was not unanimous upon this point.

The proposed text prohibited capture, and left the belligerent merely the right of detention or seizure.

Attention was called to the fact that,[1] with respect to certain countries, the right of capture was indispensable; that it allowed the destruction of the captured vessel, so as not to encumber the captor with a prize which it might be difficult or impossible to convoy to a national port; that the refusal of this right to destroy would, in effect, amount to forcing a belligerent to leave the encountered vessel free; that the right to seize was of little value, if it was impossible in practice to convoy the prize to a national port; and that the rule proposed would thus create an inequality among the States.

When the question was put to vote, it resulted in a tie—6 votes to 6, with 3 abstentions.[2]

The committee then took as the basis of its deliberations an intermediate proposition, presented by his Excellency the delegate of Italy, which tended to assure equality of treatment for vessels encountered at sea and those in port; that is to say: confiscation to be prohibited; the right of seizure and of requisition to be extended so as to include the right to destroy, but with the reservation of requiring an indemnity.

This solution reduced the question to one of money, by permitting a belligerent to obtain the result assured by the present practice, but obliging him to pay for the loss caused by him to the commercial venture thus taken by surprise and unexpectedly sacrificed.

This proposition, on the first reading, succeeded in obtaining a majority of 8 votes to 2

[1] Declarations of Mr. Kriege, fourth session of committee of examination, August 14, 1907; twelfth session of committee of examination, September 6, 1907; thirteenth session of Commission, September 18, 1907.

[2] Minutes, committee of examination, third session, August 12, 1907.

with one abstention[1]; and, on the second reading, a majority of 10 votes to 4, with one abstention.[2]

It goes without saying that the right to destroy depends, as was pointed out by the delegation of Austria-Hungary[3] and as the text indicates, upon the obligation to provide for the safety of the passengers and crew, and the preservation of the ship's papers.

Finally, when the vessels in question have reached a port of their own country or a neutral port, there is no further reason for their favoured treatment, and they are naturally subject to the common law of naval warfare.

Article 4

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship itself.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

Articles 1, 2, and 3 concern the vessels; Article 4 treats of the cargo.[4]

With the reservation that the provisions of the Declaration of Paris of 1856 shall be applied, if occasion demands, enemy cargo is put on the same footing as an enemy ship, and is to receive the same treatment.

Article 5

The present regulations do not affect merchant ships whose build shows that they are intended for conversion into war-ships.

The object of Article 5 is to limit the scope of the application of the regulations.[5]

However optional the granting of days of grace contemplated by Article 1 may be, and however equitable the solutions sanctioned by Articles 2, 3, and 4 may appear, the majority of the committee,[6] after some little hesitation, came to the conclusion, upon the proposal of the British delegation,[7] amended by the delegation of Sweden,[8] that merchant ships intended for conversion into war-ships should be expressly left out of the proposed provisions and kept under the jurisdiction of the present law. That is the object of Article 5, according to which the build of the ships in question should serve to indicate their ultimate purpose.

[1] Minutes, committee of examination, fourth session, August 14, 1907. *Voting for*: Austria-Hungary, Brazil, France, Italy, Netherlands, Russia, Serbia, Sweden; *voting against*: Germany, United States, Argentine Republic, Japan; *abstaining*: Great Britain.

[2] Minutes, committee of examination, twelfth session, September 6, 1907. *Voting for*: Austria-Hungary, Belgium, France, Great Britain, Italy, Norway, Netherlands, Portugal, Serbia, Sweden; *voting against*: Germany, Argentine Republic, Japan, Russia; *abstaining*: United States of America.

[3] Remark of his Excellency Baron von Macchio, fourth session, committee of examination, August 14, 1907.

[4] *Actes et documents*, vol. iii, Fourth Commission, fourth session of committee of examination, August 14, 1907.

[5] Minutes of committee, fourth session, August 14, 1907.

[6] See remarks of Mr Kriege, twelfth session of committee, September 6, 1907, as well as the successive votes both on the subject-matter and form of this provision, in the fourth session (August 14, 1907), twelfth session (September 6, 1907), and fifteenth session (September 13, 1907).

[7] See fourth session of committee, August 14, 1907, and *annexes* 24 and 26.

[8] Fifteenth session of committee, September 13, 1907.

ANNEX 1[1]

PROPOSITION OF THE RUSSIAN DELEGATION

Days of Grace

ARTICLE 1

In the event of a merchant vessel of either of the belligerents being overtaken by war in the port of the other belligerent, the latter must grant this vessel a sufficient[2] period, in order to allow it :

To finish its unloading, or the loading of goods which do not constitute contraband of war, and to leave the port freely and reach in safety the nearest port of its country of origin or a neutral port.

ARTICLE 2

A merchant ship which, owing to circumstances of *force majeure*, has been unable to leave the enemy port within the period of grace[3] above mentioned, or which may be detained in an enemy port by the authorities on account of the necessities of war, may not be confiscated.

ARTICLE 3

Merchant ships of the belligerents, which are overtaken at sea by the outbreak of war, may not be captured if they left their port of origin or another port before the outbreak of hostilities.

When military conditions require it, these vessels may be detained by the enemy for such period of time as the necessities of war demand.

After these vessels have touched at a port of their country or at a neutral port they become subject to the laws and customs of naval warfare.

ARTICLE 4

The above-mentioned vessels which arrive in an enemy port enjoy the periods of grace and immunities indicated in the foregoing articles.

ANNEX 2[4]

PROPOSITION OF THE NETHERLAND DELEGATION

Amendment to the Proposition of the Delegation of Russia (*annex* 1) *relative to Days of Grace*

ARTICLE 1

The days of grace for each port shall be determined by the belligerents on the outbreak of war ; they may not be less than five days.

ARTICLE 2

Days of grace may be refused to enemy merchant ships designed or destined in order to be converted into war-ships, unless the Government to which they belong declares not to convert them during the course of the war.

[1] *Actes et documents*, vol. iii, p. 1150, *annexe* 18.
[2] The words "of grace" [*de faveur*] in the original proposition have been replaced by "sufficient".
[3] The words "of grace" [*de faveur*] in the original proposition have been stricken out.
[4] Ibid., p. 1151, *annexe* 19.

ANNEX 3[1]

PROPOSITION OF THE FRENCH DELEGATION

Days of Grace to be granted to Enemy Merchant Ships on the Outbreak of Hostilities

Merchant ships belonging to belligerent Powers which on the outbreak of hostilities happen to be in enemy ports, and to which no days of grace shall be granted to put to sea, may not be confiscated.

Nevertheless they may be refused permission to leave the port, and they are then subject to requisition, in consideration of an indemnity, in conformity with the territorial laws in force.

ANNEX 4[2]

PROPOSITION OF THE SWEDISH DELEGATION

Amendment to the Propositions of the Delegations of Russia and of France

Days of Grace

Article 1

In the event of a merchant ship of either of the belligerents being overtaken by war in a port of the other belligerent, it is desirable that the latter grant to this vessel days of grace, in order to allow it :

To complete its unloading, or the loading of goods which do not constitute contraband of war ; and to leave the port freely and reach in safety the nearest port of its country of origin or a neutral port.

Article 2

A merchant ship which, owing to circumstances of *force majeure*, may not have been able to leave the enemy port during the days of grace above mentioned, or to which days of grace may not have been granted, may not be confiscated. It may, however, be detained, on account of the necessities of war, and it is then subject to requisition, in consideration of an indemnity, in conformity with the territorial laws in force.

Article 3

Merchant ships of belligerents, which are overtaken at sea by the outbreak of war, may not be captured if they have left their port of origin or another port before the outbreak of hostilities.

When military necessities require, these vessels may be detained and requisitioned.

After these vessels have touched at a port of their country or at a neutral port, they become subject to the laws and customs of naval warfare.

Article 4

If any of the above-mentioned vessels put into an enemy port, they shall enjoy the periods of grace and immunities indicated in the foregoing article.

[1] Ibid., *annexe* 20.

[2] Ibid., *annexe* 21.

CONVENTION (VII) RELATING TO THE CONVERSION OF MERCHANT SHIPS INTO WAR-SHIPS[1]

(*For the heading see the Convention for the pacific settlement of international disputes*[2])

Whereas it is desirable, in view of the incorporation in time of war of merchant ships in the fighting fleet, to define the conditions subject to which this operation may be effected ;

Whereas, however, the contracting Powers have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place upon the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this agreement and is in no way affected by the following rules ;

Being desirous of concluding a Convention to this effect, have appointed the following as their plenipotentiaries.

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions :

ARTICLE 1

A merchant ship converted into a war-ship cannot have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of the Power whose flag it flies.

ARTICLE 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

ARTICLE 3

The commander must be in the service of the State and duly commissioned by the competent authorities. His name must figure on the list of the officers of the fighting fleet.

ARTICLE 4

The crew must be subject to military discipline.

ARTICLE 5

Every merchant ship converted into a war-ship must observe in its operations the laws and customs of war.

[1] *Actes et documents*, vol. i, p. 647.

[2] *Ante*, p. 292.

ARTICLE 6

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

ARTICLE 7

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 8

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers who take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 9

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

That Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, stating the date on which it received the notification.

ARTICLE 10

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 11

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government,

which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 12

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 8, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 9, paragraph 2) or of denunciation (Article 11, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

General Report to the Conference upon the work of the Fourth Commission[1]

(REPORTER, MR. HENRI FROMAGEOT)

In conformity with the distribution of work adopted by the Conference,[2] the Fourth Commission was charged with the study of the following questions, all relating to the regulation of the maritime law of nations in time of war:

1. The conversion of merchant ships into war-ships.
2. Enemy private property at sea.
3. Days of grace.
4. Contraband of war.
5. Blockade.
6. Destruction of neutral prizes.
7. Provisions relative to land warfare, which would apply equally to naval warfare.

Various other questions, more or less closely related to these matters, were afterwards added:

(*a*) Regulation of postal correspondence at sea in time of war.
(*b*) Treatment of the crews of captured ships.
(*c*) Exemption from capture of fishing vessels and certain other ships.

[1] *Actes et documents*, vol. i, p. 238.
[2] Ibid., p. 58.

By reason of the connexion between these questions and in order to preserve the unity necessary for its labours, the Fourth Commission, upon the proposal of its president, did not, like the others, subdivide itself into subcommissions.[1] His Excellency Mr. Martens submitted a general *questionnaire* embracing all the questions to be studied.[2] This *questionnaire* served as a basis for the discussions.

When the *questionnaire* had been exhausted, a committee of examination [3] was constituted to elaborate the text of the resolutions to be proposed. A subcommittee [4] was specially charged with the questions relating to contraband of war and to the regulation of postal correspondence at sea in time of war.

Fifty-six propositions, amendments or declarations, printed and distributed as annexes, were presented to the Commission, to the committee of examination, and to the subcommittee, who devoted no less than thirty-two sessions to the study of the numerous and delicate matters which were entrusted to them.

The object of the present report is to give an account of this work, and I have the honour to present, in the name of the Commission, five draft regulations, which in most points it proposes unanimously for final adoption.

These five drafts all aim better to guarantee the rights of neutral and peaceful commerce, and to place the conduct of naval hostilities so far as possible within the jurisdiction of conventional law.

Nothing of a similar nature has been attempted since the Declaration of Paris of 1856, and at the beginning of our labours, his Excellency Mr. Martens, our eminent president, did not fail to call attention to the great importance of this undertaking and to the effort which is demanded by the ever-growing need of justice among all the nations of the world. The effort has not been in vain. A first result has been obtained. Naturally it is still imperfect; but we cannot refuse to recognize its value or its scope. This is the first time that, in such matters, the century-old practices of belligerents, arising from vital necessities which are often imperative to nations, and for that very reason fundamentally divergent have been submitted to the civilized States for free discussion; it is the first time that there has appeared a common and genuine desire for good understanding upon such complex matters, in order to bring about the universal triumph of law and justice over arbitrariness and force.

If it has been impossible to elaborate complete regulations for all ten of the subjects in the programme of the Fourth Commission, we must hasten to state that the desire for an agreement has in all good faith by no means been abandoned. The result obtained to-day is only the first stone of a monument which is everywhere awaited and desired;

[1] Ibid., vol. III, p. 742.

[2] Ibid., p. 1133.

[3] The committee was composed of: his Excellency Mr. Martens, president; Mr. Kriege (Germany); his Excellency Baron von Macchio or Mr. Lammasch (Austria-Hungary); his Excellency Mr. Larreta (Argentine); his Excellency J. van den Heuvel (Belgium); his Excellency Ruy Barbosa (Brazil); his Excellency Mr. Matte (Chile); Rear-Admiral Sperry (United States of America); Mr. Louis Renault (France); his Excellency Sir Ernest Satow or Lord Reay (Great Britain); Mr. Fusinato (Italy); his Excellency Mr. Tsudzuki (Japan); his Excellency Mr. Hagerup (Norway); Mr. van Karnebeek (Netherlands); Captain Behr (Russia); his Excellency Mr. Milovanovitch (Serbia); his Excellency Mr. Hammarskjöld (Sweden); Mr. Henri Fromageot, reporter.

[4] The subcommittee was composed of: his Excellency Lord Reay (Great Britain), president; Mr. Kriege (Germany); Rear-Admiral Sperry (United States of America); his Excellency Ruy Barbosa (Brazil); his Excellency Mr. Matte (Chile); Mr. Louis Renault (France); Captain Behr (Russia); Mr. Henri Fromageot, reporter.

but we cannot hope to build it in a few months. The respect for law, the spirit of equity and conciliation, by which the labours of the Commission have constantly been inspired, are the best pledges for the future.

I

CONVERSION OF MERCHANT SHIPS INTO WAR-SHIPS

The first question contained in the programme of the Fourth Commission is 'Conversion of merchant ships into war-ships'.[1]

Our president, Mr. Martens, presented it in his *questionnaire* in the following form:

> Is it recognized, in practice and in law, that belligerent States may convert merchant ships into war-ships?
>
> When merchant ships are converted into war-ships, what legal conditions should the belligerent States observe?

In a great many countries the law recognizes the right of the State to appropriate merchant ships, particularly in time of war, either by requisition, by chartering, or by purchase, and at the same time provides for the recruitment of the necessary force either to man the vessels, or to complete the effective force of its squadrons. The exercise of this right, thus regulated or not regulated in advance, and the organization for mobilization are questions of municipal law.

What is within the province of international law is the matter of the conditions under which private vessels (merchant ships, fishing boats or pleasure craft) taken into the service of the State, may be considered war-ships, with the rights and duties belonging to such vessels.

This question is of interest to belligerents, at least to those who have abolished privateering; for a private vessel cannot then take part in military acts. It is of no less interest to neutrals, for only vessels belonging to the State possess the right, according to international law, to stop a neutral vessel on the high seas, search its papers, if there be occasion, and, in case of necessity, seize it. Moreover, certain rules of neutrality—sometimes local, such as passage through certain straits; sometimes general, such as the limit of stay or of victualling in neutral ports—apply only to war-ships.

It is clear that international law can require certain conditions of vessels converted into war-ships, for the purpose of assuring the genuineness as well as the reality of their conversion.

Upon this question seven propositions were laid before the Commission by the delegations of Great Britain,[2] Italy,[3] Austria-Hungary,[4] the Netherlands,[3] Russia,[3] Japan,[3] and the United States of America.[5]

The British proposition, properly speaking, did not aim so much to fix the conditions for the conversion of vessels as to give, as its title indicated, a definition of war-ship and to add to it, as a special category, under the name of 'auxiliary vessels', merchant ships flying a neutral or enemy flag and effectively aiding the military forces of the belligerent.

[1] *Actes et documents*, vol. I, p. XVII.
[2] Quoted in the report to the Commission, *post*, p. 614.
[3] *Post*, p.
[4] Declaration of Mr Lammasch, *Actes et documents*, vol. III, p. 745.
[5] *Post*, p. 614

The character and scope of this proposition were separately examined and have been made the subject of a special report.[1] It will suffice to state here that the aim of the British proposition was to assimilate to the military vessels of a naval force all merchant ships, whether employed in the service of this naval force for some purpose, or placed under its orders, or serving as transports for troops, and thus, in any event, evidently giving the belligerent hostile assistance, from the standpoint of the enemy.

The other propositions aimed more directly to give precision to the conditions of conversion.[2]

The propositions presented by Italy, the Netherlands, Russia, and the United States agreed in requiring that the commander of a merchant ship converted into a war-ship, should be in the service of the State and that the crew should be a military crew.

The delegation of the Netherlands added that they must fly the naval pendant and be subject to the laws and customs of war; the delegation of Russia likewise proposed that they should be registered in the list of war-ships of the State; the delegation of Austria-Hungary demanded that the conversion be permanent until the end of the war.

The delegations of Great Britain, Japan, the Netherlands, and the United States proposed, moreover, that it be laid down as a principle that converted vessels should be recognized as war-ships only if their conversion takes place in a national port or an occupied port.

The delegation of Italy admitted this same rule, except in respect to vessels that had left their national waters before the outbreak of hostilities.

The delegation of the United Mexican States declared[3] from the start that it was in favour of the Italian proposition, and adhered to the Austro-Hungarian proposition requiring that the conversion be permanent until the end of the war. The Mexican delegation[4] added that its Government meant, by its declaration, to abandon the right of privateering which it had reserved up to that time, and did not hesitate to enter upon the new road of international maritime law, the present tendencies of which are so clearly visible to this Conference.

No difficulty was raised before the Commission as to the right of a belligerent to convert merchant ships into war-ships, and our president, in confirming this, added that this right might be assimilated to the right of engaging militia to reinforce the land army.[5]

As to the conditions for the exercise of this right, without questioning the possibility or impossibility of using neutral waters to effect conversion, it was considered that the question whether it was proper to limit the places where conversion might be effected to national or occupied ports should first be discussed.[6]

The arguments in favour of this proposition were supported especially by the British

[1] Ibid. See also seventh session of July 10, 1907, declaration of his Excellency Lord Reay, and session of July 24, 1907. In the terms of a declaration of his Excellency Lord Reay (thirteenth session of Commission, September 18, 1907), the British delegation withdrew its proposition in regard to the definition of an 'auxiliary vessel'.

[2] See the analytical table drawn up to that effect (*Actes et documents*, vol. III, p. 1135), in which the various propositions are summarized, with the exception of that of the United States of America, which was submitted afterwards.

[3] Declaration of his Excellency Mr. Esteva, fifth session of the Fourth Commission, July 12, 1907.

[4] Declaration of his Excellency Mr. Esteva, seventh session of the Fourth Commission, July 19, 1907.

[5] Observation of his Excellency Mr. Martens, president, second session of Fourth Commission, June 25, 1907.

[6] Observations of Mr. Lammasch and of his Excellency Mr. Martens, president, fifth session of Fourth Commission, July 12, 1907.

delegation, who gave the following reasons: conversion on the high seas would leave neutrals in ignorance of the character of a ship which had left its last port of departure as a merchant ship; the conversion would be an act of sovereignty, which could be performed only in places where that sovereignty had jurisdiction.[1]

The delegation of the Netherlands,[2] declaring that it supported the British proposition, added that the comparison with militia seemed inaccurate, because converted ships would not in reality be intended for fighting, and showed the danger of abuses which conversion on the high seas would be likely to cause.

The delegation of Brazil was of the same mind,[3] and called attention to the necessity of avoiding the possibility of allowing privateering to be resumed in an indirect form by permitting an arbitrary conversion of merchant ships into war-ships.

While supporting the Austro-Hungarian proposition as to the permanence of conversion, the delegation of Germany,[4] as well as the delegations of Russia[5] and France,[6] maintained, on the contrary, that they could not impose any prohibition against conversion on the high seas. In their opinion, it was one of the most firmly established principles of maritime law that a State has full authority and sovereignty on the high seas over all vessels sailing under its flag. Consequently, if it be true, as the authors of the contrary propositions recognize, that conversion is an act of sovereignty upon a vessel, it is natural to conclude that this act can, like others, be performed on the high seas. As to abuses—the surprise of neutrals, the danger of a return to privateering,—nothing is easier than to provide against them by adopting publicity measures and all other conditions which are proper for the *bona fide* conversion of the vessel.

Finally, the delegation of Italy[7] showed how its proposition, which was less rigorous than the British proposition, aimed to keep better account of the actual status of vessels at the beginning of war. It would seem, the Italian delegation said, that vessels which had left their waters before the outbreak of hostilities might effect their conversion on the high seas, while nothing prevents those which leave their national waters later from making their military change before leaving. Furthermore, it was added,[8] it is difficult to admit that a merchant ship leaving a neutral port, where it enjoyed the privileges of a merchant ship, might take advantage of this privilege to convert itself later into a war-ship.

At this stage and without taking a vote, the question was referred to the committee of examination.[9]

Before the committee of examination the same question concerning the prohibition of conversion on the high seas was resumed and discussed. The arguments already presented before the Commission were again developed.[10] The question was put to a vote; but before the vote was taken it was clearly understood that the committee had no intention of declaring itself upon the existence or non-existence of the right of con-

[1] Speech of his Excellency Lord Reay, July 12, 1907. *Actes et documents*, vol. III, p. 522.
[2] Observations of his Excellency General den Beer Poortugael, fifth session of Fourth Commission, July 12, 1907.
[3] Speech of his Excellency Mr. Barbosa, ibid.
[4] Declarations of Admiral Siegel, ibid.
[5] Declaration of Colonel Ovtchinnikow, ibid.
[6] Declaration of Mr. Louis Renault, ibid.
[7] Observation of his Excellency Count Fornielli, ibid.
[8] Observation of Mr. Fusinato, ibid.
[9] See fifth session of Fourth Commission, July 12, 1907.
[10] See *Actes et documents*, vol. III, Fourth Commission, first session of committee of examination, August 3, 1907.

version on the high seas, but only upon the necessity for laying down rules stipulating how belligerents may effect conversion on the high seas. The balloting resulted in an undecisive vote: seven yeas to nine nays.[1]

Upon the proposal of various delegations—notably Italy, the Netherlands,[2] Sweden, and Belgium[3]—the committee, after some hesitation, decided to pass to the next point, and, laying aside the question of the place of conversion, to discuss the other conditions aiming to give neutrals guaranties in conformity with the principles sanctioned by the Declaration of Paris.

Upon the question concerning the permanence of conversion during the entire war, there were likewise divergent views, especially by reason of its connexion with the question of the *place* of conversion. The committee decided,[4] therefore, to leave this question *in statu quo* and, as proposed by the delegations of the Netherlands and Sweden,[5] to sanction the rules upon which there was agreement, by which the military character of the converted vessel might be readily determined.

Such were the conditions under which the draft herewith was drawn up, the preamble of which indicates its aim and scope. It received a unanimous vote, with six abstentions.[6]

> Considering: That several of the high contracting parties desire, in time of war, to incorporate vessels of their merchant marine in their naval fleets;
>
> That, consequently, it is desirable to define the conditions under which such conversion may be effected, in so far as the rules in this regard are generally accepted;
>
> That, whereas the high contracting parties have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place upon the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this agreement and is in no way affected by the following rules:
>
> ARTICLE I
>
> A merchant ship converted into a war-ship cannot have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of the State whose flag it flies.

The first article lays down the principle which is, so to speak, a corollary of the Declaration of Paris. Its object is to give every guarantee against a return, more or less disguised, to privateering. Every vessel claiming to be belligerent in character must be placed under the authority, direct control, and responsibility of the State whose flag it flies.

[1] Ibid. *Voting for* prohibition of conversion on the high seas, the nine following States: United States of America, Belgium, Great Britain, Italy, Japan, Norway, Netherlands, Sweden; *voting against*: Germany, Austria-Hungary, Argentine Republic, Chile, France, Russia, Serbia.

[2] Observation of Mr. van Karnebeek, ninth session of committee of examination, August 28, 1907.

[3] Observations of his Excellency Mr. Hammarskjöld and of his Excellency Mr. van den Heuvel, tenth session of committee of examination, August 30, 1907.

[4] See tenth session of committee of examination, August 30, 1907.

[5] Observations of Mr. van Karnebeek (ninth session of committee of examination, August 28, 1907) and his Excellency Mr. Hammarskjold, tenth session of committee of examination, August 30, 1907.

[6] *Abstaining*: United States of America (as not having adhered to the Declaration of Paris, 1856), Brazil, Dominican Republic, Ecuador, Haiti, Turkey. See *Actes et documents*, vol. iii, p. 917, Sept. 18, 1907.

ARTICLE 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

Article 2 requires that converted vessels bear the external marks which distinguish war-ships, that is to say, the naval flag, if that flag is different from the commercial flag, and the naval pendant. This is a sort of first publicity measure and guarantee given to neutrals, showing at once the military character of the vessel.

ARTICLE 3

The commander must be in the service of the State and duly commissioned by the competent authorities. His name must figure on the list of officers of the fighting fleet.

The object of Article 3 is to assure a *bona fide* conversion and connexion with the State.

There had been a question[1] of requiring the commander to have his commander's commission with him and to have on board documents proving the regular conversion of his vessel. It seemed to be more in conformity with practical necessities, and just as satisfactory, to indicate only the requirement that the commander be in the service of the State and regularly commissioned by the competent authorities, that is to say, regularly appointed to his rank and command.

ARTICLE 4

The crew is subject to military discipline.

ARTICLE 5

Every merchant ship converted into a war-ship must observe in its operations the laws and customs of war.

The object of Articles 4 and 5 is likewise to establish firmly the military character of the vessel and its crew. It is clear that, when the converted vessel becomes a real war-ship, it is subject to the obligations of this class of vessel, which counterbalance its rights as a belligerent.

Nevertheless the delegation of the United States of America[2] declared that it made reservations on Article 5, as that article did not seem necessary, and constituted, in its opinion, a distinction which would be annoying in the case of certain merchant vessels bought and regularly commissioned in time of peace as a part of the United States navy.

ARTICLE 6

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

The aim of Article 6 is to assure publicity in regard to the conversion.

As has been seen above, the condition of permanent conversion during the entire war could not be expressly sanctioned, as the delegation of Austria-Hungary had demanded. This question appeared to be closely connected with that of the place of conversion.

[1] See *Actes et documents*, vol. iii, Fourth Commission, tenth session of committee of examination, August 30, 1907.

[2] See twelfth session of committee of examination, September 6, 1907, declaration of Admiral Sperry. Ibid., p. 1039.

But it was understood [1] that in abstaining from adopting any rule in this respect, the committee by no means intended to countenance the abuses caused by successive conversions, which are contrary to the spirit of good faith, with which the draft regulation is before all other things inspired.

II

INVIOLABILITY OF ENEMY PRIVATE PROPERTY AT SEA

The status of enemy private property at sea is the second question which was entrusted to the Fourth Commission for examination.

In 1899, the adoption of the principle of inviolability was proposed by the delegation of the United States of America. Its discussion at that time had been set aside, as not figuring in the programme; but a *vœu* had been adopted [2] to refer it to a succeeding Conference for examination.

In conformity with this *vœu*, the question was included in the Russian programme [3] of April 6, 1906. In the *questionnaire*,[4] prepared under the direction of our president, it was expressed in the following form:

> Should the practice now in vogue relative to the capture and confiscation of merchant ships under an enemy flag be continued or abolished?

There were laid before the Commission by the delegations of the United States of America,[5] Austria-Hungary,[6] Italy,[6] the Netherlands,[7] Brazil,[8] Denmark,[9] Belgium,[9] and France [10] ten propositions, declarations or amendments, to the examination of which the Commission devoted no less than ten of its sessions,[11] in whole or in part.

In the meantime and during this long discussion, the Commission was happy to commend the declaratio.. made on July 17 by his Excellency Mr. de Villa Urrutia, first delegate of Spain, announcing that the Royal Government would henceforth adhere to the Declaration of Paris of 1856 in its entirety.[12]

The proposition of the United States of America, contemplating the absolute abolition of the right of capture, except in cases of the transportation of contraband or a violation of blockade, served as a basis for the exhaustive discussion of the question of inviolability. It was in these words:

> The private property of all citizens of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure at sea by the armed vessels or military forces of the said Powers. However, this provision in no way implies the inviolability of vessels which may attempt to enter a port blockaded by the naval forces of the above-mentioned Powers, nor of the cargoes of the said vessels.

[1] See tenth session of committee of examination, August 30, 1907.
[2] *Procès-verbaux*, pt. 1, pp. 31–3, fifth plenary session, July 5, 1899, *ante*, p. 21.
[3] *Actes et documents*, vol. i, p. xvii.
[4] Ibid., vol. iii, p. 1133, *annexe* 1.
[5] *Infra*.
[6] *Post*, p. 622, and minutes of second session of Commission, June 28, 1907.
[7] *Post*, pp. 616, 618, and minutes of fourth session of Commission, July 10, 1907.
[8] *Post*, p. 616.
[9] *Post*, p. 617.
[10] *Post*, p. 621.
[11] Ibid., minutes of: second session, June 28, 1907; third session, July 5; fourth session, July 10; sixth session, July 17; 7th session, July 19; twelfth session, August 7.
[12] See Fourth Commission, sixth session, July 17, 1907.

All the arguments in favour of inviolability were made with an eloquence and logical force which it would be difficult to surpass.

The American delegation[1] mentioned especially the continuity of the so-to-speak historic doctrine of the United States from Benjamin Franklin to President Roosevelt, from the negotiation of the treaty between the United States and Great Britain in 1785 and the conclusion of the treaty with Prussia in 1785 to the treaty of 1871 with Italy, the efforts made concerning the Declaration of Paris of 1856, the manifestations of public or parliamentary opinion in Germany, the example supplied for more than forty years by the Italian code for merchant marine, the high authority of the greatest political personages of England, the opinion of numerous eminent jurists in favour of the freedom of enemy commerce.

The analogy with the rules prohibiting pillage in war on land, the trivial practical military advantage that the destruction of commerce gives nowadays, reasons of humanity, the unjustifiable disturbance of transactions which are of as much interest to all neutrals as to the belligerents themselves, the necessity of restricting fighting to the organized military forces of the belligerents and of excluding innocent private parties, the danger of provoking a spirit of vengeance and reprisal, were all set forth in a striking manner.

The impossibility of admitting that war must be prevented or quickly terminated by making it as horrible as possible, the slight influence that commerce and the business world would really have in provoking or preventing war, the heavy burden of naval expenditures caused by the necessity of protecting commerce in case of war— nothing, it may be said, was omitted which might hold the attention.

The delegations of certain countries—notably Brazil,[2] Norway,[3] Sweden,[4] and Austria-Hungary[5]—likewise called attention to the continuity of their doctrine and their policy, and expressed an opinion in conformity with the proposition of the United States.

The delegation of China[6] likewise supported it without restriction.

The delegation of Germany,[7] while admitting that it leaned towards the proposed inviolability, made the reservation that its adoption of this principle depended upon a preliminary understanding as to the problems arising from contraband of war and blockade. The delegation of Portugal declared that it supported this opinion.[8]

Finally, it is proper to state that among the Powers that declared themselves ready to adhere to the doctrine of the United States, a certain number—notably the Netherlands,[9] Greece,[10] and Sweden[11]—did not conceal their doubts as to the present possibility of a unanimous agreement.

For reasons similar to those expressed in the German reservations, the delegation of Russia[12] remarked that, in the opinion of the Imperial Government, the question did

[1] Speech of his Excellency Mr. Choate, June 28, 1907. *Actes et documents*, vol. III, pp. 753, 7[illegible] and of Mr. Uriah Rose, July 5, 1907, ibid., p. 793. The English text of Mr. Choate's speech is appears in Scott's *American Addresses at the Second Hague Peace Conference* (Boston, 1910), p. 1[illegible]

[2] See speeches of his Excellency Ruy Barbosa, June 28, 1907, and July 5, 1907. *Actes et documents* vol. III, pp. 740, 780. [3] Declaration of his Excellency Mr. Hagerup, third session, July 5, 1907.

[4] Declaration of his Excellency Mr. Hammarskjöld, fourth session, July 10, 1907.

[5] Declaration of his Excellency Baron von Macchio, second session, June 28, 1907; July 17, 1907.

[6] Speech of his Excellency Mr. Foster, fourth session, July 10, 1907.

[7] Speech of his Excellency Baron Marschall von Bieberstein, third session, July 5, 1907.

[8] Observation of his Excellency Marquis de Soveral, third session, July 5, 1907.

[9] Declaration of his Excellency Mr. de Beaufort, third session, July 5, 1907.

[10] Declaration of his Excellency Mr. Rizo Rangabé, third session, July 5, 1907.

[11] Declaration of his Excellency Mr. Hammarskjöld, fourth session, July 10, 1907.

[12] Declaration of his Excellency Mr. Tcharykow, third session, July 5, 1907.

not appear to be ripe practically, that its solution presupposed preliminary understandings and an experience which had yet to be gained, that in fact all that could be done at present was to maintain the *statu quo*. Moreover, continued the Russian delegation,[1] the fear of disturbances in the commercial market, which war causes, would be an undeniable guaranty of peace.

The impossibility of separating the question of immunity from that of commercial blockade, the interruption of commerce, less cruel than the massacres caused by war, were the reasons which decided the British delegation,[2] which, nevertheless, declared that its Government would be ready to consider the conclusion of an agreement contemplating the abolition of the right of capture, if such an agreement could further the reduction of armaments.

The Argentine Republic[3] declared itself categorically in favour of the continuance of the right of capture. Colombia[4] declared that, whatever theoretical considerations might be advanced in favour of the abolition of the right of capture, this right offered an element of national defence, which, with due regard for its national interests, it could not give up.

In the face of these divergent opinions, praiseworthy efforts were made to bring about the adoption of measures which would alleviate the unjustifiable hardships of present practice.

Italy,[5] while declaring that it upheld the principle, which it had sanctioned in its laws, expressed the desire, in case this principle could not yet be accepted by the Conference, that intermediate measures be presented and discussed before the discussion was closed.

Brazil[6] proposed that in connexion with an agreement upon inviolability, which it desired to see reached, the Powers should agree to apply to naval warfare and property at sea the provisions of Articles 23, 28, 46, 47, and 53 of the Convention of 1899 respecting the laws and customs of war on land.

Belgium[7] proposed that, instead of striving for a result which there was little hope of reaching at present, the States should agree to lessen the hardships of capture, by substituting for confiscation simple detention or sequestration, to set the crews free, to prohibit the destruction of prizes, and, finally, to adopt a set of rules relative to the rights of belligerents in naval warfare as to enemy private property.[8]

In the same spirit the Netherland delegation, after having proposed[9] that every vessel carrying a passport proving that it will not be used as a war-ship be exempt from capture, declared that it supported, with the reservation of a few modifications, the project submitted by the delegation of Belgium.[10]

Finally, the French delegation,[11] indicating its entire sympathy with the liberal spirit

[1] Observation of his Excellency Mr. Nelidow, president of the Conference, second session, June 25, 1907.

[2] Declaration of his Excellency Sir Ernest Satow, third session, July 5, 1907; of Sir Edward Fry, ibid.; of Sir Ernest Satow, sixth session, July 17, 1907.

[3] Declaration of his Excellency Mr. Larreta, third session, July 5, 1907; fourth session, July 10, 1907.

[4] Speech of his Excellency Mr. Triana, third session, July 5, 1907.

[5] Declaration of his Excellency Count Tornielli, second session, June 28, 1907.

[6] See previously cited speeches of his Excellency Mr. Ruy Barbosa

[7] Speech of his Excellency Mr. Beernaert, fourth session, July 10, 1907; of his Excellency Mr. van den Heuvel, ibid.

[8] *Post*, p. 617.

[9] Declaration of his Excellency Vice-Admiral Röell, fourth session of Fourth Commission, July 10, 1907.

[10] See minutes, sixth session, July 17, 1907.

[11] Speech of Mr. Louis Renault, third session, July 5, 1907.

of the proposed doctrine, declared that it was ready to support it if a unanimous agreement could be reached; but as such an agreement did not seem possible at present, and as the solution of this question depended upon the solution of other questions no less delicate, the French delegation proposed to condition the continuance of the present practice upon respect for the conditions of modern war as being waged between State and State. This delegation remarked that, within these limits and from the point of view of law and equity, the hindrance or interruption of enemy commerce, as a means of paralysing the business activity of the enemy, is perfectly justifiable; that this is a powerful means of coercion, and is legitimate so long as it is directed against the resources of the State and not against private individuals, and that it may not be a source of gain for individuals. With these considerations in mind, a double *vœu* was proposed with a view to generalizing the abolition of the old custom of the capturing crews sharing in the prizes, and to making the States share in the losses resulting from capture.

Such were the circumstances under which a vote was taken on this important question.

The proposition of the United States of America (inviolability), which was first put to vote, obtained from the forty-four States represented, 21 yeas, 11 nays, 1 abstention, 11 States not answering on roll-call.[1]

In the absence of a sufficient number of votes to ensure a unanimous agreement, or at least an almost general agreement, the Commission took up the Brazilian proposition (assimilation to land warfare). As the consideration of this proposition resulted in an equal division of those voting and a large number of abstentions,[2] the delegation of Brazil withdrew it.[3]

The Belgian proposition (substitution of sequestration for confiscation), after having received a majority when taken under consideration,[4] could not, upon the discussion of the articles, obtain a support which was considered sufficient, and the Royal delegation requested its withdrawal.[5]

In view of the diversity of opinions expressed, and in the hope of inducing all the delegations to vote for the same measure, the president of the Commission proposed that a *vœu* be adopted to the effect that henceforth, at the beginning of hostilities, the Powers should declare of their own accord whether and under what conditions they had decided to renounce the right of capture.[6]

But even on this point objections were raised in various quarters, and this compromise *vœu* was withdrawn.

As a result the Commission had to pass upon the double *vœu* proposed by the French

[1] Minutes, sixth session, July 17, 1907. Thirty-three States out of the forty-four represented at the Conference took part in the vote. The twenty-one States that voted in favour are: Germany (with the above-mentioned reservations), United States of America, Austria-Hungary, Belgium, Brazil, Bulgaria, China, Cuba, Denmark, Ecuador, Greece, Haiti, Italy, Norway, Netherlands, Persia, Roumania, Siam, Sweden, Switzerland, Turkey; the eleven States that voted against are: Colombia, Spain, France, Great Britain, Japan, Mexico, Montenegro, Panama, Portugal, Russia, Salvador; Chile abstained.

[2] See *Actes et documents*, vol. III, minutes of the seventh session of Fourth Commission, July 19, 1907. Twenty-five States took part in the vote. Thirteen States voted for; twelve States voted against.

[3] Declaration of his Excellency Ruy Barbosa (ibid.).

[4] Minutes of seventh session, July 19, 1907. Twenty-eight States took part in the vote; twenty-three States voted for; three States voted against; two States abstained.

[5] Minutes of seventh session, July 19, 1907. Thirty States took part in the vote on Article 1 of the proposition. Fourteen States voted for; nine States voted against; 7 States abstained. See the declaration of withdrawal of his Excellency Mr. Beernaert (ibid.).

[6] Speech of his Excellency Mr. Martens, president (seventh session of Fourth Commission, July 19, 1907).

delegation (abolition of sharing in the prize, and the State sharing in the losses by capture). This *vœu*,[1] in spite of an amendment proposed by the delegation of Austria-Hungary,[2] likewise resulted in an indecisive vote and several abstentions.[3]

Such is the summary of the long discussion of one of the most important questions in the programme of the Fourth Commission. I have endeavoured to give a faithful account, without, however, taking up too much of your time. I should have liked to be able better to express the deep impression which, in spite of everything, the fine speeches which it was our fortune to hear did not fail to make upon each one of us. If it appears that a continuance of the present state of things is to be the result of this deliberation, we may be permitted to believe, as was said by the eminent first delegate of Belgium, his Excellency Mr. Beernaert, that a future agreement is not at all impossible.

III

DAYS OF GRACE[4]

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IV

CONTRABAND OF WAR

Contraband of war is one of the most delicate questions appearing in the programme of the Conference[5] and entrusted to the Fourth Commission for consideration.

In the course of recent wars it has been possible to perceive what serious difficulties have been caused by the lack of definite and precise rules as to the kind of articles that are liable to seizure by belligerents, the duty of belligerents to make known in advance what they intend to seize, the conditions necessary for the legitimate seizure of contraband articles, and the measures which may be taken to prove infringement of the promulgated prohibitions. If neutral commerce has grounds for demanding better guarantees for its security, the question, on the other hand, affects the vital interests of some countries, and still other countries consider that it involves an essential element of the means of coercion at their disposal for national defence.

The *questionnaire* sets forth the three following questions[6] as the basis of deliberation:

> What is the foundation of the right of belligerent Powers to prohibit commerce in articles constituting contraband of war?
> Within what bounds, in law and in fact, can belligerents exercise this right?
> Within what bounds, in law and in fact, must this right be respected by neutrals?

[1] *Post*, p. 621.

[2] *Post*, p. 622.

[3] Minutes, twelfth session, August 7, 1907. The first part of the *vœu* tending to generalize, in the laws of the various countries, the abolition of the right to share in prizes allowed captor crews gave rise to the following vote: thirty-four States took part in the vote; sixteen States voted for; four States voted against; fourteen States abstained. The second part, tending to have introduced in the various legislations the principle of the State's sharing in losses by capture, gave rise to the following vote: thirty-four States took part in the vote; seven States voted for; thirteen States voted against; fourteen States abstained.

[4] For the portion of the report covering this subject see *ante*, p. 582.

[5] Russian programme of April 3, 1906, section 3, paragraph 5 (*Actes et documents*, vol. i, p. 17); see also circular of the Government of the United States of America, signed by Mr. John Hay and dated October 21, 1904 (*ante*, p. 180).

[6] See *Actes et documents*, vol. iii, p. 1133.

Five propositions were laid before the Commission upon this subject. They were presented by the delegations of Great Britain,[1] Germany,[1] France,[2] Brazil,[3] and the United States of America.[4]

The British proposition, submitted at the first session of the Commission, contemplated purely and simply the abolition of contraband of war.

The German proposition maintained the right to prohibit trade in articles intended exclusively for use in war (absolute contraband), as well as in such articles as might be used in war and were intended for enemy forces (conditional contraband). It required the double condition of preliminary notification and of loading on board a vessel 'bound directly' for an enemy port or a port occupied by the enemy, or for an armed force of the enemy. In regard to conditional contraband, if the shipment were addressed to the enemy, to a military contractor, to a fortified place or position of support, there would be absolute presumption that it was intended for enemy forces. Contraband, whatever its character, was liable to confiscation, together with confiscation of the vessel, if the contraband articles formed more than half of the cargo. Finally, the proposition likewise contemplated the capture of vessels transporting effective military forces.

The object of the French proposition was to regulate the present practice, with a view to avoiding uncertainty and sudden changes, which are so detrimental to commerce, as well as arbitrariness on the part of belligerents. The proposition stated that the mere fact that a state of war is known to exist establishes as a clear right the principle of prohibition, including confiscation, of articles intended for the enemy country, which are exclusively and manifestly suitable for war, and specified a limited list of the categories under which these articles could be classified. The project proposed, as a second principle, that free trade in all other goods be presumed to exist, since, at first sight, there seemed to be no reason to hold that this would constitute a violation of the duties of neutrals. Finally, as experience shows that many articles, apparently perfectly harmless, but impossible to specify in advance, may be utilized in war, the French proposition admitted the right to prohibit trade in them, provided there were a preliminary notification and proof in each case that they are intended for enemy forces, thus making them liable to confiscation and, in case of doubt, to simple pre-emption.

The Brazilian proposition, inspired by the resolutions adopted by the Institute of International Law in 1896,[5] recognized only absolute contraband, enumerating its general categories and rejecting the idea of conditional and accidental contraband. By exception, it reserved to the belligerent a pre-emption in respect to certain articles (provisions, coal, raw cotton, clothing). It admitted that the destination not only of the vessel but of the merchandise was to be taken into consideration.

Finally, the proposition of the United States of America aimed to define absolute contraband and conditional contraband, with the requirement of preliminary notification of its prohibition.

The deliberations of the Commission[6] bore upon the general question of the abolition or continuance of contraband of war.[7]

[1] *Post*, p. 622. [2] *Post*, p. [illegible]. [3] *Post*, p. 624. [4] *Post*, p. [illegible].

[5] *Resolutions of the Institute of International Law* (New York, 1916), p. 129.

[6] See *Actes et documents*, vol. iii, eighth, ninth, and tenth sessions of Fourth Commission, July 24 and 31, 1907.

[7] Remark of his Excellency Mr. Martens, president, ninth session, July 26, 1907, and tenth session of Fourth Commission, July 31, 1907.

The British delegation,[1] developing the reasons for its proposition, laid special stress on the fact that the prohibition of contraband would ill accord with modern conditions. In former times, it was pointed out, in the days of sailing vessels, voyages with intermediate stops were frequent, and articles of contraband were chiefly articles of absolute contraband. The destination of the vessel was generally sufficient to show the destination and hostile character of the goods. As the tonnage was relatively small, exercise of the right of search was easy. The prohibition of contraband was effective. At present the discoveries of science have greatly increased the number of articles now included under the name of conditional contraband. In order to make the prohibition of any use, it would have to be so extended as to make the Declaration of Paris a dead letter. Moreover, steam navigation, with numerous intermediate stops, has given rise to singular complications, against which the theory of continuous voyage is endeavouring to struggle; and, on the other hand, thanks to the progress made in transportation on land, there is an easy way for contraband to evade the prohibition. Finally, the great tonnage, the variety of the cargo, the necessary ignorance of the captain in regard to the nature of the packages carried, everything tends to make a search difficult, almost always to make the prohibition of no avail, and in all cases to cause to neutral commerce inconveniences out of all proportion to the legitimate interest of the belligerent.

On the other hand, the delegations of Germany,[2] France,[3] Russia,[4] the United States of America,[5] and Turkey[6] declared themselves in favour of the continuance of the idea of contraband. They reminded the Commission that the right of the belligerent to prohibit the transportation of appliances of war by the enemy was founded on the principle of legitimate defence, and that the right of control and of seizure was grounded upon the fact that a neutral State is not responsible for the trade of its citizens. The reasons, based upon the transformation that has taken place in commerce and maritime navigation, it was added, seem to be rather exaggerated. The right to search vessels loaded with provisions or coal in bulk, for example, does not present either difficulties or useless trouble to innocent commerce. By giving entire freedom to the trade in appliances of war, would not commerce be given by that very fact an interest in continuing hostilities? Is it proper to aid and abet such a source of profit? Finally, would there not be a certain contradiction between the abolition of contraband and the theory, elsewhere advanced,[7] that treats as war-ships, with all the consequences resulting therefrom, vessels flying any flag which are engaged in transportation for enemy forces? If the present uncertainty presents some disadvantages, is not abolition somewhat too radical a remedy, capable of giving rise to more serious difficulties? Moreover, the delegation of Germany pointed out, by removing, as it proposes, the system of continuous voyage, interference with commerce would be limited so far as possible.

[1] Speeches of his Excellency Lord Reay, July 24, 1907, and July 31, 1907. *Proc. I.P. Commission*, pp. 884–886.

[2] Speeches of Mr. Kriege and of his Excellency Baron Marschall von Bieberstein. Ibid., pp. 880, 886. Speech of Mr. Louis Renault, ninth session of Commission, July 26, 1907.

[3] Remark of his Excellency Mr. Tcharykow, ninth session, July 26, 1907.

[4] Remark of Rear-Admiral Sperry, July 26, 1907; of his Excellency Mr. Choate, July 31, 1907. Ibid., pp. 879, 880.

[5] Declaration of his Excellency Réchid Bey (ninth session, July 26, 1907), while declaring himself in favour of limiting as much as possible articles to be considered as contraband of war.

[6] The British proposition relative to a definition of *auxiliary vessel* was afterwards withdrawn. See declaration of his Excellency Lord Reay, thirteenth session of Commission, September 13, 1907. Ibid., p. 915.

The delegations of the Argentine Republic,[1] of Portugal,[2] of Switzerland,[3] and of Belgium,[4] having in view the diminution of the evils of war, declared themselves in favour of the British proposition. The Norwegian delegation[5] likewise supported it, adding that the freedom of neutral commerce could have no influence upon the duration of hostilities, since, as a matter of fact, the belligerents alone were masters of the situation; that the irresponsibility of a neutral State did not interfere with the freedom of private parties; that, finally, according to the English declarations, the theory of an auxiliary vessel was not in conflict with the abolition of contraband. But, in default of this radical solution, in case it should be considered premature, the Royal delegation expressed the wish either that a regulation be passed putting an end to the present uncertainties as to conditional contraband and continuous voyage, or, at any rate, that the question be reserved for a future agreement.

The delegations of Austria-Hungary[6] and of Sweden[7] were likewise favourable, in principle, to the abolition of contraband, but nevertheless declared that they were ready to support any projects that were most advantageous to freedom of commerce.

Of the same mind, the delegation of Brazil[8] explained how, in its opinion, the prohibition of contraband, by preventing a belligerent from obtaining provisions from the markets of the world, made it necessary for States constantly to maintain ruinous armaments and supplies of provisions, and was thus one of the causes of the excessive increase of military expenditures in time of peace. The delegation of the Republic added that, as a matter of sound logic the abolition of contraband was linked with the abolition of the right of capture; that, whether neutral or enemy, private property and commerce should be removed from the troubles of war; that, finally, the Brazilian proposition to regulate contraband was presented only because of the slight chance of having contraband absolutely abolished.

Finally, the delegation of Chile[9] pointed out how, at any rate, it was proper, in its opinion, to abolish conditional contraband, not only for the purpose of giving greater security to commerce but also of avoiding numerous difficulties caused by it. The Chilean delegation specified in this respect the case of nitrate of soda, classified up to the present time as contraband, eighty per cent. of which, at least, is used in agriculture.

Such were the circumstances under which a ballot was taken upon the abolition of contraband.[10]

Out of 35 States which voted, the British proposition obtained 26 votes; 5 States voted against it; 4 States abstained from voting.

[1] Declaration of his Excellency Mr. Larreta, ninth session, July 26, 1907.
[2] Declaration of his Excellency Marquis de Soveral, ibid.
[3] Declaration of Mr. Max Huber, ibid.
[4] Declaration of his Excellency Mr. van den Heuvel, tenth session, July 31, 1907.
[5] Speech of his Excellency Mr. Hagerup, ninth session, July 26, 1907.
[6] Declaration of his Excellency Baron von Macchio. See *Actes et documents*, vol. III, p. [illegible].
[7] Declaration of his Excellency Mr. Hammarskjöld, ninth session, July 26, 1907.
[8] Speech of his Excellency Mr. Rui Barbosa, ninth session, July 26, 1907.
[9] Speech of his Excellency Mr. Carlos Concha, tenth session, July 31, 1907.
[10] See tenth session, July 31, 1907. *Voting for*: Argentine Republic, Austria-Hungary, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Dominican Republic, Spain (declaration of Count de la Mortera, eleventh session, August 2, 1907), Great Britain, Greece, Italy, Mexico, Norway, Portugal, Netherlands, Peru, Persia, Portugal, Salvador, Serbia, Siam, Sweden, Switzerland; *voting against*: Germany, United States of America, France, Montenegro, Russia; *abstaining*: Japan, Panama, Roumania, Turkey.

After this vote upon the general principle, the question was referred to the committee of examination [1] and given over to a special subcommittee for study.

The subcommittee, in view of the fact that a unanimous vote could not be obtained in the Commission, endeavoured to find a basis for a general agreement upon the regulation of contraband.[2]

In the first place, it considered what articles should constitute absolute contraband. A certain number of categories of articles were decided upon as admitting of such classification [3]: (1) arms of all kinds, including arms for sporting purposes and their distinctive component parts; (2) projectiles, charges, and cartridges of all kinds, and their distinctive component parts; (3) powders and explosives specially prepared for use in war; (4) gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts; (5) clothing and equipment of a distinctively military character; (6) all kinds of harness of a distinctively military character; (7) saddle, draft, and pack animals suitable for use in war; (8) articles of camp equipment and their distinctive component parts; (9) armour plates; (10) war-ships, including boats, and their distinctive component parts of such a nature that they can be used only on a war-vessel; (11) implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

The consideration of the other questions likewise gave rise to a first exchange of views. The delegation of the United States of America declared [4] that it was willing, in conjunction with the British delegation, to abolish relative contraband, as intimated in its first proposition. Lack of time and the complication of interests involved did not admit of the elaboration at present of a text adopted by all.

It was the opinion that these were questions which, in the sincere desire for regulations that would be satisfactory to all, must be submitted to the interested Governments for further consideration, and the subcommittee is pleased to hope that this delicate matter can then be made the subject of a definitive agreement.

V

ON BLOCKADE

The questions raised by blockade did not appear expressly in the Russian programme of April 3, 1906; but, as the study of this question belongs to the study of the 'special operations of maritime warfare' contemplated by this programme,[5] the *questionnaire* of the Fourth Commission had mentioned it in the form of the two following questions: [6]

> Is it necessary to modify the terms of the Declaration of Paris of 1856 [7] as to blockade in time of war?
>
> Is it desirable to determine, in the convention to be concluded, the universally recognized consequences of the breaking of an effective blockade?

[1] Remarks of his Excellency Mr. Martens, president, tenth session of Commission, July 31, 1907.
[2] Remark of his Excellency Lord Reay, president, first session of subcommittee, August 12, 1907. See second session of subcommittee, August 15, 1907.
[3] Declaration of Rear-Admiral Sperry. See *Actes et documents*, vol. III, Fourth Commission, third session of subcommittee, August 21, 1907.
[4] Russian programme of April 3, 1906, section 3, paragraph 1. *Ante*, p. 589.
[5] *Actes et documents*, vol. III, p. 1133.
[6] Declaration of Paris of April 16, 1856: '. . . (4) In order to be binding, blockades must be effective; that is to say, they must be maintained by a force really sufficient to prevent access to the territory of the enemy.'

There were laid before the Commission a proposition submitted by the delegation of Italy,[1] and four amendments presented by the delegations of the United States of America,[2] Brazil,[3] Great Britain,[4] and the Netherlands.[5]

The object of the Italian proposition was to specify the conditions under which a blockade must be *effective*, *declared* and *made known*, according to the rules of the law of nations, in order to be obligatory. On this point it laid down the principle of a system of notifying the blockaded place, as well as neutral Governments. In default or in case of ignorance of this notification, a ship approaching the blockaded place should receive a special notification. The proposition established, moreover, a system according to which a vessel could not be seized on account of violation of the blockade except while it was attempting to pass through the lines of the blockading force.

The Royal delegation supported its proposition by pointing out[6] that the definition of blockade given by the Declaration of Paris of 1856, while it contained the germ of future solutions, left room for numerous uncertainties as to its practical application, that it seemed wise to clear up these doubts by completing the definition of blockade and by specifying the manner of its notification as well as what constituted a violation. The aim of the proposition was to confine blockade to its rightful bounds by perfecting the work of 1856 and by establishing equitable conditions in conformity with the exigencies of war and the interests of commerce.

The amendments presented by Brazil and the Netherlands accepted the principles of the Italian proposition. The Brazilian amendment[7] aimed to have the geographical limits of blockade specified; to lay down the rule that within those limits the effectiveness of a blockade could not be questioned; to establish the principle that vessels which had put to sea seven days after notification to the country from which they had sailed would be presumed to know of the blockade; and, finally, to assure a notification of changes in the blockade. The Netherland amendment[8] confined itself to stating that only the question of effective blockade in war should be considered, and not so-called pacific blockade.

The amendments submitted by the United States of America and Great Britain, without disputing the material portions of the Italian proposition as to the definition of blockade and the notification thereof, aimed, on the contrary, with respect to its violation, to put into force the system of permitting the seizure of every vessel sailing towards a blockaded place, as well as of a vessel attempting to force its way through the line of blockade itself.

In the Commission the principles sanctioned by the Italian proposition obtained, in addition to the above-mentioned support of Brazil and the Netherlands, the support of Germany,[9] Austria-Hungary,[10] Greece,[11] Turkey,[12] and the Argentine Republic,[13] it being

[1] *Post*, p. 626. [2] *Post*, p. 627.
[3] Speech of his Excellency Guido Fusinato. See *Actes et documents*, vol. III, p. 887.
[4] Speech of his Excellency Ruy Barbosa, eleventh session of Commission, August 2, 1907. Remarks of his Excellency Mr. de Beaufort (ibid.) and of Lieutenant-Colonel van Oordt (ibid.).
[5] Declaration of his Excellency Baron Marschall von Bieberstein, tenth session of Fourth Commission, July 31, 1907.
[6] Declaration of his Excellency Baron von Macchio (ibid.).
[7] Declaration of Mr. Streit, tenth session of Commission, July 31, 1907.
[8] Except for certain modifications in the wording, conformably in this respect to the British proposition; declaration of his Excellency Mehemed Pasha, eleventh session of Commission, August 2, 1907.
[9] Declaration of his Excellency Mr. Larreta (ibid.).

recognized by the Italian delegation, according to the observations of the Greek and Dutch delegations and in conformity likewise with the text of the question itself as stated in the *questionnaire*, that the proposition concerned only blockade in time of war, thus excluding, in the opinion of the Dutch delegation, blockade of neutral territory.

The first subcommission of the Third Commission, charged with the question of submarine mines, expressed through its president [1] the opinion that it was proper to include in the discussion of blockade the question whether the mere use of these destructive engines was sufficient to constitute an effective blockade. It appeared, in effect, that this question could be considered jointly by the two Commissions. It was decided [2] to entrust it to the two committees of examination for discussion, in case they should prepare a draft Convention.

Such were the circumstances under which the Italian [illegible] and its various amendments were brought before your committee of exam[illegible]

At the first deliberation the British delegation [3]—emp[illegible] nce between the systems long followed in the matter of block[illegible] on the one hand, and by Anglo-American practice, on the [illegible] on the question of blockade was not specifically included i[illegible]; the absence of instructions and the lack of time in wh[illegible] on which would be acceptable to the interested Governm[illegible] a matter—proposed that discussion of this question [illegible] of it postponed.

It was not in the power of the committee to pass upon this matter. I[illegible] transmit this proposition, expressing the wish that, in case of p[illegible] study by the Governments might, in the near future, bring a[illegible] which was demanded by the interests of commerce and the peace of the world.

VI

DESTRUCTION OF NEUTRAL PRIZES

The question of the destruction of neutral prizes in case of *force majeure*, which figures in the Russian programme of April 3, 1906,[4] was entrusted by the Conference to the Fourth Commission for examination.

With a view to giving direction to the arguments and to facilitating the work,[5] our president inserted the following questions [6] in his *questionnaire*:

> Is the destruction of merchant ships, sailing under a neutral flag and engaged in the transportation of troops or contraband of war in time of war, prohibited by law or by international practice?
>
> Is the destruction of all neutral prizes by reason of *force majeure* illicit according to laws at present in force and the practice of naval warfare?

[1] Remark of his Excellency Mr. Ittagerup (ibid.).

[2] Remarks of their Excellencies Count Tornielli, Sir Ernest Satow, and Mr. Martens, president, eleventh session of Fourth Commission.

Declaration of his Excellency Sir Ernest Satow, fifth session of committee of examination, August 1[illegible] 1907. *Actes et documents*, vol. iii, p. 965.

[4] Russian programme of April 3, 1906, section 3, paragraph 5, *ante*, p. 180.

[5] Remarks of his Excellency Mr. Martens, president, twelfth session of Commission, August 7, 1907.

[6] *Actes et documents*, vol. iii, p. 1133.

Four propositions were presented—by the delegations of Great Britain, Russia, the United States of America, and Japan.[1] The Commission discussed the principle involved in them and referred them to the committee of examination under the following conditions:

The Russian delegation[2] proposed to lay down as a principle that the destruction of a prize should be prohibited, except in case its preservation might prejudice the safety of the capturing vessel or the success of its operations. The right of destruction should be exercised by the captor only with the greatest reserve; he should look out for the safety of the persons on board, preserve the ship's papers, and might possibly be required to pay damages.

In the Commission, the Imperial delegation[3] laid stress especially on the fact that, in its opinion, a vessel which violates neutrality would not longer have a right to the benefits of neutral status; that the very fact of the capture, under conditions recognized as justifying its validity, would cause title to the property to pass to the captor, who would thus become free to destroy it as his own property; that in any case the capture should be submitted to a prize court and might give rise to an indemnity. For military or practical reasons, it was added, it might be impossible for the captor to preserve the prize and convoy it to a place of safety. Under such conditions it would be treason indeed to set the prize free, and an absolute prohibition to destroy it would place countries which have ports only on their home coast under an unjustifiable handicap.

The British proposition[4] and the proposition of the United States of America,[5] on the contrary, aimed at an absolute prohibition to destroy the prize and the obligation to set it free, if it were found impossible to convoy it before a prize court.

The delegation of Great Britain, in support[5] of its proposition, took the standpoint of the present law, which it submitted as not authorizing destruction. Replying to the argument above mentioned, based on the difference in the geographical situation of States, it added that if such geographical situation did indeed prevent a State from exercising effectively the right of seizure with respect to neutral vessels carrying contraband or running a blockade, it must nevertheless leave them free.

The Commission was unanimously of the opinion that it was in no way incumbent upon it to investigate what the present law was, but only what law it should promulgate; that it was not called upon to discuss here *de lege lata*, but *de lege ferenda*; and it recognized[6] the fact that there was a connexion between the question of the destruction of prizes and the question of the free access of prizes to neutral ports, which had been submitted to the Third Commission for study; and that, in consequence, there should be a joint study of the questions by the two committees of examination.[7]

In your committee of examination the Russian system of the right of destruction and the Anglo-American system of the prohibition of destruction were taken up and

[1] This last proposition, presented by the Imperial Government as an amendment to the British proposition, was withdrawn in the committee of examination, August 24, 1907 (see *Actes et documents*, vol. III, p. [illegible], declaration of his Excellency Mr. Tsudzuki).

[2] *Ibid.*, p. [illegible].

[3] Speech of Colonel Ovtchinnikow, August 7, 1907 (*Actes et documents*, vol. III, p. 805).

[4] *Ibid.*, p. [illegible].

[5] Speech of his Excellency Sir Ernest Satow, twelfth session of Commission, August 7, 1907.

[6] Remarks of his Excellency Count Tornielli (*ibid.*).

[7] Remarks of his Excellency Mr. Martens, president (*ibid.*).

developed.[1] The delegation of Germany[2] declared that it was entirely of the point of view of the delegation of Russia.

The Italian delegation[3] stated the connexion which existed, in its opinion, between this question and that of the right of prizes to enter neutral ports, contemplated by Article 23 of the draft regulations upon the access of belligerent vessels to neutral ports and their stay therein, which was elaborated by the committee of examination of the Third Commission.

Pursuant to this last point of view, a meeting of the two committees of examination took place.[4] In the first place a ballot was taken on the principle of the free access of prizes to neutral ports, established by the said Article 23. This ballot resulted in 9 votes for and 2 votes against the principle, with 6 abstentions. A ballot was then taken on the Anglo-American proposition (prohibition of the destruction of prizes), resulting in a vote of 11 for and 4 against the proposition, with 2 abstentions; and, finally, a ballot was taken on the Russian proposition (right to destroy) resulting in 6 votes for and 4 votes against the proposition, with 7 abstentions.

Such was the result of these deliberations, which may be summed up, it would seem, as follows: The free access of belligerent prizes to neutral ports received a slight majority; the prohibition of the right to destroy, more or less dependent for the most part on such free access, received a slightly greater majority; and, finally, the right to destroy, under any condition, also received a slight majority and a number of abstentions. Under these circumstances it seemed to be difficult to reach an agreement at the present time.

VII

LAWS AND CUSTOMS OF NAVAL WARFARE

When the work was distributed during the course of the second plenary session of the Conference, the Fourth Commission was charged, as a final task, with an investigation as to 'what provisions relative to war on land would be likewise applicable to naval warfare'.

The *questionnaire* elaborated by our president, his Excellency Mr. Martens, to serve as a basis for the discussions of the said Commission, stated the question in the following words: 'Within what limits are the provisions of the Convention of 1899 relative to the laws and customs of war on land applicable to the operations of naval warfare?'

As will be recalled, the Commission, in its twelfth session, referred this question, without preliminary discussion, to the committee of examination for investigation, which committee, following the order of the *questionnaire*, took it up last.

In order to obtain a basis for the discussions which might arise, the committee considered it desirable to have a report made upon the matter.[5]

[1] See in support of the Russian proposition, the speech of Commander Behr, August 24, 1907; in support of the Anglo-American propositions, the remarks of his Excellency Sir Ernest Satow, August 24 and September 4, 1907, as well as remarks of General G. B. Davis, in the name of the delegation of the United States of America, September 9, 1907. *Actes et documents*, vol. III, pp. 1009, 1013, 1015, 1048.

[2] Declarations of Mr. Kriege, eighth session of committee, August 24, 1907; ninth session, August 28; eleventh session, September 4; thirteenth session, September 9; and the documents printed in *annexe* 43. *Ibid.*, pp. 962, 990, 1018, 1048, 1171.

[3] Remarks of his Excellency Comm. Tornielli and his Excellency Mr. Fusinato, eighth session of committee, August 24, 1907; ninth session, August 28.

[4] See fourteenth session of committee, September 10, 1907.

[5] Report drawn up by Mr. van Karnebeek, *post*, p. 1028.

As this report was placed on the programme of its twelfth session, the committee was unanimously of the opinion that at that late hour there was not sufficient time to begin and satisfactorily to carry through so vast a work. The report had laid stress especially upon the fact that the adaptation of the Convention of 1899 to naval warfare would necessitate not only changes in the wording and form, but also modifications in the matter itself, requiring profound study, for which the committee was not prepared. Indeed, the regulations to be elaborated would have to take account of certain complicated situations arising from war on land as well as from naval warfare. Moreover, the question arose as to whether or not the different draft regulations concerning the crew of enemy merchant ships captured by a belligerent should enter into these regulations, as well as those concerning coastal fishing boats and vessels that have been classified with them, those concerning the status of enemy merchant ships at the outbreak of hostilities, those concerning the conversion of merchant ships into war-ships, &c. In short, the committee, although fully recognizing the usefulness of the work demanded, considered that it was obliged to renounce it and leave it for a future Conference to take up carefully.

However, it was recognized in committee that the provisions of the regulations of 1899 were inspired by principles which do not apply to war on land alone. As appears from the preamble of the Convention to which these regulations were annexed, its authors were moved by a desire to diminish the evils of war as much as possible and to satisfy the ever-increasing requirements of civilization and humanity. Indeed, the committee stated that these principles, as a general thing, were equally applicable to naval warfare; and it was of the opinion that, pending the framing of special regulations, it would be advisable to request the Governments to follow these principles, in so far as possible, if occasion should arise.

Under these circumstances the committee decided to present the following *vœu* to the Commission:

> The Commission requests the Conference to be good enough to express the *vœu* that it would like the Powers to apply to naval warfare, so far as possible, the principles of the Convention of 1899 relative to war on land, pending the framing of special regulations.
>
> It is, in its opinion, desirable that the elaboration of special regulations should figure in the programme of the next Conference.

This *vœu* was adopted unanimously.

VIII

PROTECTION OF POSTAL CORRESPONDENCE AT SEA[1]

. . . . . .

IX

CREWS OF ENEMY MERCHANT SHIPS CAPTURED BY A BELLIGERENT[1]

. . . . . .

X

EXEMPTION FROM CAPTURE OF COASTAL FISHING BOATS AND CERTAIN OTHER VESSELS IN TIME OF WAR[1]

. . . . . .

[1] For the portions of the report covering these subjects, see *post*, pp. [illegible]

ANNEX 1[1]

PROPOSITION OF THE RUSSIAN DELEGATION

Definition of the term 'War-ship'

Every vessel commanded by a naval officer in active service and having a crew governed by the military code is considered a war-ship. The vessel must, by order of its Government, fly the man-of-war flag, and as soon as this order is issued the vessel is considered as registered in the list of the war-ships of its country.

ANNEX 2[2]

PROPOSITION OF THE ITALIAN DELEGATION

Conversion of Merchant Ships into War-ships

A merchant ship may not be converted into a war-ship unless it is placed under the command of a naval officer of its State and unless it has a crew governed by all the rules of military discipline.

Vessels that leave the territorial waters of their country after the outbreak of hostilities may not change their character either on the high seas or in the territorial waters of another State.

ANNEX 3[3]

PROPOSITION OF THE NETHERLAND DELEGATION

Conversion of Merchant Ships into War-ships

1. It is permissible to convert a merchant ship in the service of the State into a war-ship.

2. Converted vessels must be commanded by a naval officer and their crews must be wholly or partially military.

3. A converted ship must fly at its gaff and at its masthead the man-of-war flag and the pennant or flag of its commander.

4. In time of war, conversion may be effected only in a national port; the converted vessel must there be provided with a commission furnished by the competent authority of the Government whose flag it flies.

5. The commander of a converted vessel must respect the laws and customs of war at sea.

6. All vessels claiming to be war-ships, which do not comply with the above-mentioned conditions, shall be treated as pirate ships.

ANNEX 4[4]

PROPOSITION OF THE JAPANESE DELEGATION

Conversion of Merchant Ships into War-ships

A merchant ship may not be converted into a war-ship except in the national ports or territorial waters of the State to which the merchant ship in question belongs, or in the ports or territorial waters occupied by its naval or military forces.

[1] *Actes et documents*, vol III, p. 1135, *annexe* 3.
[2] Ibid., p. 1130, *annexe* 4.
[3] Ibid., *annexe* 5.
[4] Ibid., *annexe* 6.

ANNEX 5[1]

PROPOSITION OF THE DELEGATION OF THE UNITED STATES

Conversion of Merchant Ships into War-ships

A war-ship must be commanded by a regularly commissioned officer, and must have a crew under military law and discipline.

In time of war no merchant ship shall be converted into a war-ship unless it is commanded by a regularly commissioned officer and has a crew under military law and discipline, and no conversion of this kind may be effected except in the territorial waters of the State owning the vessel or in the territorial waters over which it has effective control through its military forces.

ANNEX 6[2]

DEFINITION OF THE TERM 'AUXILIARY VESSEL'

Report to the Commission[3]

On June 28 last, the British delegation presented to the Commission a proposition relating to the definition of the term 'war-ship', which was reported in *annexe 2* of the proceedings of the Fourth Commission.

This proposition is thus worded:

There are two classes of war-ships:

A. Fighting ships;

B. Auxiliary vessels.

A. The term 'fighting ship' shall include all vessels flying a recognized flag which are armed at the expense of the State for the purpose of attacking the enemy, and the officers and crew of which are duly authorized for this purpose by the Government to which they belong. It shall not be lawful for a vessel to assume this character except before its departure from a national port, nor to relinquish it except after its return to a national port.

B. The term 'auxiliary vessel' shall include all military ships, whether belligerent or neutral, which are used for the transportation of sailors, munitions of war, fuel, provisions, water, or any other kind of naval supplies, or which are designed for making repairs, or charged with the carrying of dispatches or the transmission of information, if the said vessels are obliged to carry out the sailing orders given them, either directly or indirectly, by a belligerent fleet. The definition shall likewise include all vessels used for the transportation of military troops.

At the session of July 19 last, there was a certain amount of confusion as to the scope and exact meaning of this proposition.

Did the proposition really concern the conversion of merchant ships into war-ships? Would it not be better to consider it in connexion with contraband? Was it a new question, separate and distinct, concerning the recognition of a certain legal status with respect to private vessels, enemy or neutral, put into service by military forces?

Such were the circumstances under which, upon the initiative of his Excellency Count Tornielli, you constituted a small committee composed, with your bureau, of the delegates of the Powers that had presented propositions respecting the conversion of [illegible]

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[1] *Actes et documents*, vol. III, p. 113; *annexe 5*.

[2] Ibid., p. 802, Fourth Commission *annexe* to eighth session, July 24 1907.

[3] This report is presented in the name of a committee of examination which was composed of his Excellency Count Tornielli, president, his Excellency Mr Martens president of the Fourth Commission, his Excellency Lord Reay (Great Britain), Rear-Admiral Siegel (Germany), Rear Admiral Sperry (United States), Rear Admiral Hayao Shimamura (Japan), Captain Behr (Russia), Lieutenant Snoeck (Netherlands), Mr Fromageot, secretary of the Fourth Commission, reporter.

ships into war-ships. You requested this committee to define the meaning and the scope of the said paragraph B of the British proposition.

The committee met yesterday morning, July 23, and has been pleased to charge your secretary to lay briefly before you the result of its deliberations.

The British proposition, as presented, includes in its preamble, as you have seen, in the single expression 'war-ships', two classes, fighting ships and auxiliary vessels.

His Excellency Lord Reay declared at the very start that he withdrew this preamble.

As a result, there is no longer occasion to present, as a class of war-ships, the vessels referred to by the British proposition under the name of auxiliary vessels.

The proposition is therefore found to include at present two clearly distinct provisions:

1. A provision relative to the definition of 'fighting ships', that is to say, the conditions that a war-ship must fulfil in order to enjoy this characterization from the standpoint of international law.

In this respect and in reply to a remark made by Count Tornielli, the honourable British delegate very plainly declared that nothing was further from the mind of his Government than to propose a text which might bring up the thought of a disguised re-establishment of the old right of privateering.

Furthermore, this first paragraph did not have to be examined by the committee. It seemed naturally to require discussion in connexion with the propositions presented on the same subject by the other delegations.

2. A provision containing a definition of what the British delegation proposes to call 'auxiliary vessels'.

On this point his Excellency Lord Reay explained the point of view of his delegation, which is to assimilate to the military vessels of a naval force, with respect to the treatment to which they are exposed, merchant ships, whether employed in the service of this fleet for any purpose or placed under its orders, or serving to transport troops in any way, thus plainly rendering hostile assistance to the fleet.

In order to define the scope of the proposition the members of the committee explained in turn the consequences which it seemed to carry in its train.

Hostile character recognized with respect to vessels carrying munitions, fuel, provisions, &c., it was remarked, is nothing else than the sanction of the idea of contraband in apparent contradiction to the proposal, made by Great Britain, to abolish this idea. Contraband destined for a naval force would thus be left seizable—and, as we are about to see, under more rigorous conditions than before—while the same kind of transportation to an enemy port would be lawful.

On the other hand, in the present state of law, a merchant ship accompanying a fleet is simply exposed to the common law treatment—that is to say, capture and the requirement of a confirming decision by a prize court.

Subjection of the said vessel to the same treatment as the military vessels of this fleet would authorize not only capture without any judicial prize decision, but also the employment of all means of destruction in use between military forces.

From this exchange of observations and the explanations given by his Excellency Lord Reay, it follows that the meaning and scope of the British proposition may be stated as follows:

Properly speaking, this is not a question of contraband nor of merchant ships converted into war-ships, that is to say, mobilized. It is not commerce with a belligerent that is referred to, but the fact of a vessel's being in the service of this belligerent in any capacity whatever, as a magazine ship, repair ship, provision, fuel, or munition ship. Perhaps the ship may be in ballast, accompanying the fleet for such and such a contingency.

These vessels, in the course of their service in behalf of the belligerent, would, according to the British proposition, be subjected to the same treatment as the military vessels of the belligerent, with all the consequences of fact and of law which result therefrom.

As soon as their service has terminated, they would again be under the jurisdiction of common law.

The expression 'auxiliary vessel', often used to designate mobilizable or mobilized vessels, which are destined to exercise the rights of belligerents, may here cause confusion. Such confusion, as may be seen, must be avoided.

Is it proper, as our president, Mr. Martens, has pointed out, to recognize this new class of vessels, standing, in a way, between belligerent military ships and private vessels?

Is there occasion to impose the proposed treatment upon them?

Should a distinction be made between a vessel sailing in company with a fleet, a vessel sailing alone under the orders of the said fleet, and a vessel transporting troops?

The committee of examination was not asked to pass upon this question. It has endeavoured, as it was charged, to define the question, which is for you to decide.

ANNEX 7[1]

PROPOSITION OF THE BRAZILIAN DELEGATION

Inviolability of Enemy Private Property at Sea

With the aim of assimilating the status of private property at sea in naval warfare to that of private property on land, the delegation of Brazil proposes, in the event of the American propositions not being approved:

1. That the words 'apart from cases governed by maritime law' be struck out of Article 53 of the Convention of July 29, 1899, with respect to the laws and customs of war on land.

2. That the following provision be added:

A. Articles 23, last paragraph, 28, 46, and 47 of the above-mentioned Convention apply likewise to war at sea.

B. When the captain of a vessel or of a belligerent fleet finds himself under the necessity of requisitioning in the contingency provided for by Article 23, letter *g*, of the above-mentioned Convention—that is to say, in case it is necessary to destroy or to seize these goods on account of imperative exigencies of war—an enemy's ship, its cargo or any portion thereof, requisition shall be evidenced by the requisitioner by means of receipts given to the master of the vessel that has been seized or whose goods have been seized, with all the data possible, in order to ensure the right of the interested parties to just compensation.

C. This article applies to neutral goods, which may be on board enemy merchant ships that are requisitioned.

The commander of the vessel of the war fleet, who has decided to requisition, is obliged to land the officers of the arrested vessels, the officers and crew of the seized vessel, with sufficient funds to return to the country to which they belong.

ANNEX 8[2]

PROPOSITION OF THE NETHERLAND DELEGATION

Inviolability of Enemy Private Property at Sea

The delegation of the Netherlands is in favour of any proposition that establishes the principle of inviolability of private property at sea.

In order that the possibility of converting merchant ships into auxiliary cruisers in time of war may not be an excuse for not accepting this principle, the delegation submits the following proposition for the consideration of the Commission:

> A merchant ship may not be captured by a belligerent party merely for the reason that it is sailing under the enemy flag, if it has a passport given by the competent authority of its country, which passport declares that the vessel will not be converted into a war-ship nor used as such during the entire war.

[1] *Actes et documents*, vol. iii, p. 1141, *annexe* 11.
[2] Ibid., p. 1142, *annexe* 12.

ANNEX 9[1]

DECLARATION OF THE DANISH DELEGATION

Inviolability of Enemy Private Property at Sea

The Danish Government, desirous of doing its share toward the development of international law, which aims to diminish, in so far as possible, the severities of naval warfare, is ready to recognize the principle of the inviolability of private property at sea, if this principle can obtain the approval of the Conference. But if the time has not yet come for the realization by common agreement, of this humanitarian idea, the Danish delegation is willing to collaborate in the adoption of measures tending to limit the inconveniences caused by practices that have hitherto been followed.

ANNEX 10[2]

PROPOSITION OF THE BELGIAN DELEGATION

Rights of Belligerents with respect to Enemy Private Property in Naval Warfare

ARTICLE 1

Enemy merchant ships as well as enemy goods under the enemy flag, may not be seized and detained by a belligerent except on condition that they be returned at the end of the war.

ARTICLE 2

The following vessels may not be seized or detained:

1. Barks that are engaged exclusively in coastal fishing as well as their gear and their catch of fish.

2. Vessels used exclusively for scientific purposes or subject, by reason of their character as hospital ships, to the provisions of the Hague Convention of July 21, 1899.

ARTICLE 3

A *procès-verbal*, stating the seizure as well as an inventory of the ship's papers, are drawn up by the commanding officer of the capturing vessel. Copies of these documents are given to the captain of the seized vessel or to his representative.

ARTICLE 4

The captain and the members of the crew of seized enemy ships are landed as soon as circumstances permit.

They are set free upon their promise not to serve against the capturing belligerent as long as hostilities last.

The Government of which they are citizens or subjects must not require or accept from them any service that is contrary to their pledged word.

ARTICLE 5

The capturing belligerent takes charge of the enemy vessels and goods which he has seized.

But he is permitted to destroy the seized vessel if circumstances do not admit of its being conveyed to a place of detention, or if the approach of an enemy force makes recapture seem imminent.

ARTICLE 6

Vessels that are in such bad condition that they cannot be preserved, or whose real value is out of proportion to the cost of repairs and of their up-keep, as well as perishable goods may be sold.

[1] [illegible] Annex 14.
[2] [illegible] Annex 14.

ARTICLE 7

The capturing belligerent has the right to use and convert such seized vessels as he believes he can make use of in war operations.

He has likewise the right to use the seized goods for military purposes.

ARTICLE 8

Ransoming of enemy ships is prohibited.

ARTICLE 9

Upon the termination of hostilities the capturing State must return to their owner the vessels and cargoes which it has detained.

It may effect this restitution at the place where the ships and their cargoes happen to be.

It is not obliged to pay any indemnity for the deprivation resulting from the seizure, nor for the deterioration which may have occurred while in custody, unless caused by gross carelessness on its part.

ARTICLE 10

The capturing State must reimburse the owner for the value of such vessels or cargoes as cannot, through its own act, or through the act of its agent, be returned, as well as the amounts realized from the sale of vessels and of goods which it was impossible to preserve.

ARTICLE 11

The execution of the obligations provided by the foregoing article may be entrusted by the belligerent and by virtue of the treaty of peace, to the State to which the seized vessels and cargoes belong.

ARTICLE 12

The foregoing provisions do not modify in any respect the rights which may belong to belligerents by virtue of the rules concerning blockade or contraband of war.

They shall not be applicable to enemy ships that form a part of auxiliary fleets or to those that have taken part in the hostilities.

ANNEX II[1]

PROPOSAL OF THE NETHERLAND DELEGATION

Amendments to the Proposition of the Belgian Delegation[2] relative to the Rights of Belligerents with respect to Enemy Private Property in Naval Warfare

TEXT OF THE BELGIAN PROPOSAL	AMENDMENTS
ARTICLE 1	
Enemy merchant ships ~~which on entering a port under the enemy flag or which have been~~ captured and detained by the belligerent ~~who has a right to confiscate them~~	1 and detained by him until
the end of the war.	
3	3 ARTICLE 1 *a* (Like amended Article 6 of the Belgian proposition.) ARTICLE 1 *b* Like amended Article 7 of the Belgian proposition.)

[1] *Actes et documents*, Vol. III, p. 1145, *annexe* 15.

[2] Annex I, p. 670.

TEXT OF THE BELGIAN PROPOSAL

AMENDMENTS

ARTICLE 2

The following vessels may not be seized or detained:

1 Barks that are engaged exclusively in coastal fishing, as well as their gear and their catch of fish.

2 Vessels used exclusively for scientific purposes or subject, by reason of their character as hospital ships, to the provisions of the Hague Convention of July 29, 1899.

ARTICLE 3

A *procès-verbal*, stating the seizure, as well as an inventory of the ship's papers, are drawn up by the commanding officer of the capturing vessel. Copies of these documents are given to the captain of the seized vessel or to his representative.

ARTICLE 4

The captain and the members of the crew of seized enemy ships are landed as soon as circumstances permit.

They are set free upon their promise not to serve against the capturing belligerent as long as hostilities last.

The Government ~~of which they are subjects or citizens~~ must not require from them any service that is incompatible with their pledged word.

ARTICLE 5

The capturing belligerent takes charge of enemy vessels and goods which he has seized

He is permitted to destroy the vessel if circumstances do not admit of her being conveyed to a place of detention or the approach of an enemy force to capture seem imminent ⊥

ARTICLE 1 *c*

The belligerent has a right of pre-emption on the enemy goods seized with the ships, if he wishes to use these goods for military purposes. Other seized enemy goods may be sold or detained until the end of the war.

enemy

and detained.

⊥ In the event of destruction, the capturing State is obliged to indemnify, with as little delay as possible, the owners of neutral goods on board such vessel.

TEXT OF THE BELGIAN PROPOSAL

ARTICLE 6 ℶ

ℵ Vessels that are in such bad condition that they cannot be preserved, or whose real value is out of proportion to the cost of repairs and of their upkeep ~~as well as perishable goods~~, may be sold.

ARTICLE 7 ℸ

The capturing belligerent has the right to use and convert such seized vessels as he believes he can make use of in war operations.

~~He has likewise the right to use the seized goods for military purposes~~.

ARTICLE 8

Ransoming of enemy ships is prohibited.

ARTICLE 9

Upon the termination of hostilities, the capturing State must return to their owner the vessels and cargoes which it has detained ℴ.

ℵ

It may effect ⊥ ~~this~~ restitution at the place where the ships and their cargoes happen to be. It is not obliged to pay any indemnity for the deprivation resulting from the seizures nor for the deterioration which may have occurred while in custody, unless caused by gross carelessness on its part.

ℶ

AMENDMENTS

ℶ (Place this article at the end of Article 1 as Article 1 *a*.)

ℵ seized

ℸ (Place this article at the end of Article 1*a* as Article 1 *b*.)

ℴ as well as the vessels which it has used by virtue of Article 1 *b*.

ℵ It may, nevertheless, require the owner of the vessels which it has detained to reimburse it for the expenses incurred in their preservation.

⊥ the

ℶ ARTICLE 9 *a*

If the capturing State has used a merchant ship by virtue of Article 1 *b*, it will not be obliged to pay any indemnity for deterioration or loss which may have resulted, unless the vessel at the time of its seizure was provided with a passport given by the competent authority of its country, declaring that the vessel would not be converted into a war-ship nor utilized as such ~~long~~ as the war lasted.

TEXT OF THE BELGIAN PROPOSAL	AMENDMENTS
ARTICLE 10	
~~The capturing State~~ ⅂ must reimburse the owner for the value of such vessels ∧ or cargoes as cannot, through its own act, or through the act of its agent, be returned, as well as the amounts realized from the sale ○ ~~of vessels and~~ of goods ⊥ ~~which it was impossible to preserve~~.	⅂ Upon the cessation of hostilities the capturing State ∧ (except those that are not provided with the passport specified in Article 9 *a*) ○ or pre-emption ⊥ and of vessels which it was impossible to preserve.
ARTICLE 11	
The execution of the obligations provided by the foregoing article may be entrusted, by the belligerents and by virtue of the treaty of peace, to the State to which the seized vessels and cargoes belong.	
ARTICLE 12	
The foregoing provisions do not modify in any respect the rights which may belong to belligerents by virtue of the rules concerning blockade or contraband of war.	
They shall not be applicable to enemy ships ⅂ ~~that form a part of auxiliary fleets~~ or to those that have taken part in the hostilities.	⅂ converted into war-ships

ANNEX 12[1]

PROPOSITION OF THE FRENCH DELEGATION

Inviolability of Enemy Private Property at Sea

Considering that, although positive international law still admits the legality of the right of capture as applied to enemy private property at sea, it is eminently desirable that the exercise of this right be conditioned on certain formalities, until an understanding may be reached between the States with respect to its abolition ;

Considering that it is of the utmost importance that, in conformity with the modern conception of war, which must be waged against States and not against individuals, the right of capture appears to be solely a means of coercion practised by one State against another State ;

That, in this connexion, all individual profit to the agents of the State, who exercise the right of capture, should be excluded, and that the losses suffered by individuals from captures should ultimately be borne by the State to which they belong ;

The French delegation has the honour to propose to the Fourth Commission that the *vœu* be expressed that such States as shall exercise the right of capture abolish the right of the crew of the capturing ships to share in the prizes and take such measures as are necessary to prevent the losses caused by the exercise of the right of capture from falling entirely on the individuals whose goods shall have been seized.

[1] *Actes et documents*, vol. III, p. 1148, *annexe* 19.

ANNEX 13[1]

PROPOSITION OF THE AUSTRO-HUNGARIAN DELEGATION

Amendments to the Vœu presented by the French Delegation[2] concerning the Inviolability of Enemy Private Property at Sea

Animated by a strong desire to end the discussion of the Fourth Commission on the inviolability of enemy private property at sea by any improvement, however slight, of present conditions, and believing that the *vœu* proposed by the French delegation contains the elements that are calculated to bring about this end, but nevertheless keeping in mind certain objections that this *vœu* appears to have encountered from a considerable number of the members of this Commission, the delegation of Austria-Hungary has the honour to propose the following amendments to the text submitted by the delegation of France :

(*a*) Insert after ' that such ', the words ' Powers as maintain the right of making captures ', instead of ' States as shall exercise the right of capture ';

(*b*) Instead of ' take such measures as are necessary ', insert the words ' endeavour to find a practicable method '; and

(*c*) Instead of ' of the right of capture ', put ' of this right '.

ANNEX 14[3]

DECLARATION CONCERNING CONTRABAND OF WAR READ BY HIS EXCELLENCY LORD REAY IN THE NAME OF THE BRITISH DELEGATION

In order to lessen the difficulties encountered by neutral commerce in time of war, the Government of His Britannic Majesty is ready to abandon the principle of contraband in case of war between the Powers which may sign a Convention to this end. The right of search shall be exercised only in order to determine the neutral character of a merchant ship.

ANNEX 15[4]

PROPOSITION OF THE GERMAN DELEGATION

Contraband of War

ARTICLE 1

Only the following articles may be considered contraband of war :

(*a*) Arms, including sporting weapons, as well as such materials as are capable of use only in war (absolute contraband) ;

(*b*) Such other materials and articles as may be used in war and are consigned to the armed force of the enemy (conditional contraband),

If they form the cargo of a vessel which is bound directly for an enemy port or a port occupied by the enemy, or which is destined for the armed force of the enemy, and if these materials and articles have been expressly declared contraband of war.

ARTICLE 2

There is absolute presumption that the materials and articles designated in Article 1 *b* are destined for the armed force of the enemy when the shipment in question is addressed to the authorities or a military contractor of the enemy Power, or when it is consigned to a fortified place in the enemy country or to some other place serving as a support to the forces of the enemy.

[1] *Actes et documents*, vol. iii, p. 1149, *annexe* 17.
[2] Annex 12, *supra*.
[3] *Actes et documents*, vol. iii, p. 1159, *annexe* 27.
[4] Ibid., *annexe* 28.

ARTICLE 3

A list of the materials and articles to be considered contraband of war in the meaning of Article 1 must be published or notified to neutral Governments or their diplomatic agents.

ARTICLE 4

Contraband of war is subject to confiscation. The same is true of the vessel carrying it if the owner or the captain of the vessel is aware of the presence of contraband on board and if this contraband forms more than half of the cargo.

ARTICLE 5

The vessel is not subject to confiscation if the captain was in ignorance of the fact that war had broken out and if there is no question as to his ignorance. There is presumption to this effect if the vessel is encountered on the high seas within eight days following the outbreak of hostilities, and if, within this interval, it has not touched at a port.

In the case provided for in the preceding paragraph, the contraband of war on the vessel is subject to confiscation only in consideration of an indemnity.

ARTICLE 6

Vessels which have squads of troops on board are subject to confiscation if the owner or the captain of the vessel was aware of the military character of the passengers in question, and if it is not possible to plead an exception under the circumstances mentioned in paragraph 1 of Article 5. The same is true in the case of the transportation of private passengers belonging to the armed force of the enemy, if the vessel has put to sea for the purpose of transporting them.

Soldiers who are on board remain prisoners of war, even though the vessel is not subject to confiscation.

ANNEX 16[1]

PROPOSITION OF THE FRENCH DELEGATION

Draft Regulations on Contraband of War

ARTICLE 1

Trade in the following articles, included under the head of absolute contraband, is, of right, forbidden to neutral nationals by the mere fact that a state of war is known to exist, to wit:

1. Arms of all kinds and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds and their distinctive component parts.
3. Powders and explosives of all kinds.
4. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. Harness of all kinds.
7. Saddle, draft, and pack animals.
8. Articles of camp equipment and their distinctive component parts.
9. Naval military material.
10. Armour plates.
11. War-ships, including boats, and their distinctive component parts.
12. Balloons and their distinctive component parts.
13. Implements and apparatus specially designed for the manufacture of munitions of war, for the manufacture or repair of arms or military material, for use on land, at sea, or in the air.

[1] Ibid., p. 1157, *annexe* 29.

ARTICLE 2

Absolute contraband is subject to confiscation.

It may cause the confiscation of the vessel on which it is found, if the captain resists seizure or if it is proved that the captain or owner knew, or was in a position to know, the nature of the prohibited cargo.

ARTICLE 3

Neutral commerce in all articles not included in absolute contraband may be freely carried on with belligerents.

Nevertheless, the latter have the right to restrict this liberty on condition that they give notice, through diplomatic channels, of the articles which they intend to intercept, before they proceed to exercise this right.

ARTICLE 4

If it is proved that an article specifically declared contraband of war, in conformity with the foregoing provision, is, at the time of its seizure, not only consigned to an enemy destination, but also really intended for the military or naval forces or departments of the enemy State, such article is subject to confiscation; otherwise seizure of it may not be effected except on condition that the owner be reimbursed for its value.

ARTICLE 5

If the enemy has no access to the sea except through neutral territory, the fact that the transporting vessel is bound for this territory is insufficient to prove that the trade is neutral.

ANNEX 17[1]

PROPOSITION OF THE BRAZILIAN DELEGATION

Contraband of War

(In the event of the British proposition[2] not being accepted)

ARTICLE 1

When transported by sea, consigned to a belligerent or for his account, the following articles are contraband of war:

1. Arms of all kinds.
2. Munitions of war and explosives.
3. War material, except the articles mentioned in the Convention of July 20, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention Article 1, and Articles 14 to 16 of the latter Convention.
4. Vessels equipped for war.
5. Special implements for the manufacture of munitions or other articles exclusively for use in war.

ARTICLE 2

Articles which in combination may become suitable for war are included in the category of munitions.

ARTICLE 3

Destination for the enemy of articles for special and immediate use in war, as defined in Article 1, is presumed, when they are being carried to one of his ports, to one of his war-ships, or to a neutral port, if the latter, according to evident proof and indisputable facts, is only an intervening point for the purpose of deceiving the belligerents as to the real destination of the shipment.

[1] *Actes et documents*, vol. iii, p. 1159, *annexe* 30. [2] Annex 14 *ante*, p. 622.

ARTICLE 4

Articles, which are not made for war and are used in war specially and immediately, may not be considered contraband merely because of the possibility, the intention, or even the fact of their being destined for the enemy or for his use.

Conditional contraband and accidental contraband are therefore abolished.

ARTICLE 5

Nevertheless the belligerent may, if he so wishes, exercise the right of sequestration or of pre-emption with respect to provisions, coal, raw cotton, and articles of clothing, destined either for an enemy port or for a neutral port, when the latter may be considered, according to the clear, evident, and indisputable facts, as an intervening point in enemy destination.

In the first case the State of the captor shall eventually return to the owner the sequestrated cargo, indemnifying him for his loss. In the second case it shall pay him the price of the merchandise bought, according to its value on the bill, plus the freight, as well as other charges, and 10 per cent. in consideration of the lost profits.

ARTICLE 6

The right admitted in the preceding article ceases, if the captain of the stopped vessel binds himself in writing, under the penalty of suffering all the effects of contraband of war in case he breaks his word, to change the destination of his vessel to a port which may not reasonably be suspected of concealing a hostile destination.

ARTICLE 7

In case of seizure or repression on account of contraband, not in conformity with the foregoing rules, the State of the captor shall be required to return the seized articles with damages.

ARTICLE 8

Penal measures for contraband of war, that is to say, capture and condemnation by prize courts, do not apply to shipments which started before the declaration of war.

ANNEX 18[1]

PROPOSITION OF THE DELEGATION OF THE UNITED STATES

Contraband of War

1. Absolute contraband shall include arms, munitions of war, provisions, and articles which are employed solely for military purposes or for military establishments.

2. Conditional contraband shall include provisions, materials, and articles which are employed both in peace and in war, but which by reason of their character or special qualities, or their quantity, or by their character, quality, and quantity, are suitable and necessary for military purposes, and which are destined for the use of the armed forces or for the military establishments of the enemy.

3. The list of the articles and provisions which are to be included in each of the above-mentioned classes must be duly published and notified to neutral Governments, or their diplomatic agents, by the belligerents, and no article shall be seized or confiscated as conditional contraband until this notice has been given.

[1] *Actes et documents*, vol. iii, p. 1160, *annexe* 31.

ANNEX 19[1]

PROPOSITION OF THE ITALIAN DELEGATION

Blockade

ARTICLE 1

In order to be binding, a blockade must be effective, declared, and notified.

ARTICLE 2

A blockade is effective when it is maintained by naval forces that are really sufficient to prevent passage, and so stationed as to render it clearly dangerous for vessels to attempt to run the blockade.

A blockade is not considered as lifted if bad weather forces the blockading vessels to leave their stations t mporarily.

ARTICLE 3

The declaration of blockade must indicate the exact time that the blockade begins, its limits by longitude and latitude, and the period within which neutral vessels which entered the port before the beginning of the blockade are permitted to leave.

ARTICLE 4

The declaration must be notified to the authorities of the blockaded place and the Governments of neutral States.

If such notice has not been given, or if a vessel approaching the blockaded port proves that it was not aware of the blockade, notice must be given to the vessel itself by an officer of one of the blockading vessels, and registered on the ship's p pers.

ARTICLE 5

A vessel may not be seized as guilty of violation of blockade except at the time that it attempts to break through the lines of an obligatory blockade.

ARTICLE 6

Vessels are permitted to enter a blockaded port in case of distress, which must be verified by the commanding officer of the blockading fleet.

ARTICLE 7

A vessel seized for violation of blockade may be confiscated, as well as its cargo, unless the owner of the latter proves that the attempt to violate the blockade was made without his knowledge.

ANNEX 20[2]

PROPOSITION OF THE DELEGATION OF THE UNITED STATES

Amendments to the Proposition of the Italian Delegation concerning Blockade[3]

ARTICLE 3

Omit the words ' by longitude and latitude'.

ARTICLE 5

Omit the article and substitute :

Any vessel which, after a blockade has been duly notified, sails for a port or a place that is blockaded, or attempts to force the blockade, may be seized for violation of the blockade.

[1] *Actes et documents*, vol. iii, p. 1167, *annexe* 34.

[2] Ibid., p. 1168, *annexe* 35.

[3] Annex 19, *supra*.

ANNEX 21 [1]

PROPOSITION OF THE BRAZILIAN DELEGATION

Amendment to the Italian Proposition of Blockade [2]

1. A blockade is effective, under the conditions stipulated in the Italian proposition (Article 2), only when it is limited to ports, roadsteads, anchorages, bays, or other landing places on the enemy shore, as well as places giving access thereto.

2. The Conference shall fix a certain number of miles, calculated from the coast, at low tide, or from an imaginary line between the extremities of the port or of the bay, as well as from the said extremities along the coast, in order to limit the area within which the blockading fleet shall carry on blockade operations.

3. When a vessel is captured within these limits, the above-mentioned conditions having been fulfilled, no question as to the effectiveness of the blockade may be raised

4. Notice as provided in Article 4 of the Italian proposition shall, in all cases, be presumed to be known, unless the contrary is proved, to vessels which have left ports within the jurisdiction of the notified Government seven whole days after the date of the said notice.

5. Changes in the blockade must likewise be notified and shall not bind neutrals unless the geographical limits are indicated in accordance with the provision above (Article 2).

ANNEX 22 [3]

PROPOSITION OF THE BRITISH DELEGATION

Amendments to the Proposition of the Italian Delegation concerning Blockade [2]

ARTICLE 2, PARAGRAPH 1

Substitute the word ' real ' for ' evident '.

ARTICLE 3

See amendment proposed by the delegation of the United States of America.[4]

ARTICLE 4, PARAGRAPH 2

Substitute the words ' a neutral vessel approaching ' for ' the vessel approaching '.

ARTICLE 5

See amendment proposed by the delegation of the United States of America.[4]

ANNEX 23 [5]

PROPOSITION OF THE NETHERLAND DELEGATION

Amendment to the Italian Proposition on Blockade [2]

NEW ARTICLE 3, PARAGRAPH 2

The declaration of blockade can be notified by a belligerent only with respect to an enemy coast-line.

ANNEX 24 [6]

PROPOSITION OF THE BRITISH DELEGATION

Destruction of Neutral Prizes

Destruction of a neutral prize by the captor is prohibited. The captor must release all neutral vessels that he is unable to bring before a prize court.

[1] *Actes et documents*, vol. iii, p. 1168, *annexe* 36.
[2] *Actes et documents*, vol. iii, p. 1169, *annexe* 37.
[3] *Actes et documents*, vol. iii, p. 1169, *annexe* 38.
[4] *Actes et documents*, vol. iii, p. 1170, *annexe* 39.
[2] Annex 19.
[4] Annex 20.

ANNEX 25 [1]

PROPOSITION OF THE RUSSIAN DELEGATION

Destruction of Neutral Prizes

Believing that the absolute prohibition of the destruction of neutral prizes by belligerents would bring about a situation of striking inferiority in the case of Powers that have no naval bases except on their own coasts, and being of the opinion that all international agreements should be founded upon the principle of reciprocity and equal opportunity,

The Imperial delegation of Russia submits to the consideration of the Fourth Commission the following draft of a provision relating to the destruction of prizes, a provision which seems to it to take into account all the interests at stake :

> The destruction of a neutral prize is prohibited except in cases where its preservation might endanger the safety of the capturing vessel or the success of its operations. The commanding officer of the capturing vessel may exercise the right of destruction only with the greatest discretion, and must take care to tranship beforehand the crew, and, in so far as possible, the cargo, and in all cases preserve all the ship's papers and all other articles that are necessary for a prize decision and for the fixing of the indemnities to be granted to neutrals, if occasion requires.
>
> It is thoroughly understood that in case the seizure or destruction of neutral prizes is recognized as illegal by a prize court or by the competent authorities, the interested parties have a right to bring action for damages.

ANNEX 26 [2]

PROPOSITION OF THE DELEGATION OF THE UNITED STATES

Destruction of Neutral Prizes

If for any reason whatever a captured neutral vessel cannot be brought to adjudication, such vessel must be released.

ANNEX 27 [3]

LAWS AND CUSTOMS OF NAVAL WARFARE

Report to the Committee of Examination [4]

The *questionnaire* serving as a basis for the discussions of the Fourth Commission includes as its final question the following :

> Within what limits are the provisions of the Convention of 1899 relative to the laws and customs of war on land applicable to the operations of naval warfare ?

It was with respect to this question that the committee of the said Commission asked the undersigned, at its ninth session, to make a report.

His Excellency Mr. Beernaert, who presided over the work of the first subcommission of the Second Commission, relating to the revision of the regulations respecting the laws and customs of war on land, has been good enough to co-operate with him.

It follows from the text of the *questionnaire* that the scope of the report is limited by the compass of the Convention of 1899 and the Regulations annexed to it, with the modifications that the Conference has just made in them. This report, therefore, will not take into consideration the question whether there may not be other rules, not included in the Convention, which might be applicable to naval warfare.

This being so, and the provisions of the Regulations respecting war on land thus forming the subject of the present examination, it would perhaps seem to be necessary first

[1] *Actes et documents*, vol. iii, p. 1170, *annexe* 40. [2] Ibid., p. 1171, *annexe* 42.
[3] Ibid., p. 1053, *annexe* to thirteenth session of committee of examination, Fourth Commission.
[4] Reporter : Jonkheer van Karnebeek.

to study the Regulations as a whole in order to determine their guiding principles, and then to consider whether they are applicable to naval warfare or not. But time is pressing, and it seems desirable that this report should be brief. We shall therefore take up immediately the provisions of the Regulations of 1899 in order, and this work, following above all practical lines, will be confined to pointing out the problems without any claim to solving them.

ANNEX TO THE CONVENTION	REMARKS
REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND[1]	
SECTION I.—*On Belligerents*	
CHAPTER I.—*The Qualifications of Belligerents*	
ARTICLE 1	ARTICLE 1
The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions : 1. That they be commanded by a person responsible for his subordinates ; 2. That they have a fixed distinctive emblem recognizable at a distance ; 3. That they carry arms openly ; and 4. That they conduct their operations in accordance with the laws and customs of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination ' army '.	This article, as its history shows, is a compromise between the prohibition of irregular warfare and the absolute right to co-operate in national defence. Inasmuch as in the present state of affairs there can be no further thought of irregular hostilities on the seas, the considerations which prompted Article 1 do not appear to be applicable to naval warfare. It is none the less desirable, however, to determine how belligerent character is established and to fix the conditions which war-ships must fulfil in order to be able to act and to be treated as such. Since, by virtue of the Declaration of Paris of 1856, the right of capture and the right of search may only be exercised by agents of the State and under its responsibility, the conditions necessary for the exercise of these rights by vessels in process of conversion must be clearly established. It would seem that the rules relative to the conversion of merchant ships into war-ships, upon which the committee is to decide and which have already been the subject of a special examination, might find their place here.
ARTICLE 2	ARTICLE 2
The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if *they bear arms openly and* they respect the laws and customs of war.	Not applicable.

[1] Changes proposed by the Second Commission are indicated by italics. See *ante*, p. 529.

ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II. *Prisoners of War*

ARTICLE 3

Not applicable.

CHAPTER II

General Remarks

1. It would seem that this chapter as a whole is, *mutatis mutandis*, applicable to naval warfare. Nevertheless it will be necessary to determine what regulations, orders, and tariffs are applicable to it. Will it be those of the ***army*** of the State into whose power the naval prisoners of war have fallen, or those of the navy, if there is one? Must a distinction be made according to the place where the prisoners are confined—on a vessel or on land? The wording will or will not require modification according to the solution given to this question.

2. It must, moreover, be recalled here that the treatment of the crews of captured enemy merchant ships is governed by a special project. According to the last project upon which the committee of examination decided, these crews shall not be made prisoners of war, unless the vessel has taken part in the hostilities, or unless, except in the case of the neutral members of the crew, not including the officers, the promise mentioned in this project was refused. Thus, in principle, the present chapter does not seem to be susceptible of application to the crews of captured enemy merchant ships, and it would be a mistake to insert in it the provisions of the aforesaid project. On the other hand, it is evident that this chapter will be applicable to them in the cases contemplated by the two above-mentioned conditions.

3. The treatment of the crews of captured neutral merchant ships has not been the subject of study by the committee of examination. It would seem to be necessary to determine their position likewise. *A fortiori* the fundamental principle should be not to consider them prisoners of war.

The committee will examine whether there is occasion to provide for certain cases in which these crews might not claim their freedom.

ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ARTICLE 4

Applicable, except that the following word should be omitted: 'horses' (paragraph 3), and the word 'crews' should be substituted for the word 'corps' (paragraph 1).

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety, *and while the circumstances which necessitate the measure continue to exist.*

ARTICLE 5

Applicable, with the insertion of the word 'vessel' after the word 'camp'.

ARTICLE 6

The State may utilize the labour of prisoners of war according to their rank and aptitude, *officers excepted.* The tasks shall not be excessive and shall have no connexion with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, *or, if there are no rates in force, at a rate suitable for the work done.*

When the work is for other branches of the public service or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE 6

Applicable, except as modified by the general remark above, in so far as paragraph 3 is concerned.

ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE 7

Applicable, except as to whether they should be treated as soldiers or not by the capturing State.

ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

Escaped prisoners who are retaken before being able to rejoin their army or before leaving the territory occupied by the army that captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE 8

Applicable, except as modified by the above remark.

ARTICLE 9

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE 9

Applicable.

ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ARTICLE 10

Applicable.

ARTICLE 11

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 11

Applicable.

ARTICLE 12

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the courts.

ARTICLE 12

It follows from the general remarks above that this article cannot apply to the crews of merchant ships, enemy or neutral, as these crews are not in principle made prisoners of war. It must be observed, however, that the position of officers of war-ships who are set free on parole will—

according to the draft regulations adopted by the committee—be more favourable than that of neutral officers of enemy merchant ships, who must promise not to serve on an enemy vessel, even a merchant ship, as long as the war lasts.

The committee will perhaps consider whether this is not an anomaly which should be removed, by substituting the words 'serving on an enemy ship', for the words 'bearing arms . . . honour', or whether it should be retained by analogy of enemy merchant ships to enemy crews.

Article 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands, and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army they were accompanying.

Article 13

Does this case occur in war at sea?

If so, it would be necessary to change the enumeration in applying the same treatment.

Article 14

An information bureau relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in neutral countries which have received belligerents in their territory. The function of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned all the information necessary to enable it to make out an individual return for each prisoner of war. *The individual return shall be sent to the Government of the other belligerent after the conclusion of peace; the bureau must state in it the regimental number, the name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.* It is kept informed of internments and transfers, as well as of *releases on parole, exchanges, escapes,* admissions into hospital and deaths.

It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the field of battle or left by

Article 14

Applicable.

prisoners who have *been released on parole, or exchanged, or who have escaped, or* died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ARTICLE 15

Applicable.

ARTICLE 16

Information bureaus enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by State railways.

ARTICLE 16

Applicable.

ARTICLE 17

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its own army are entitled, the amount to be refunded by their Government.

ARTICLE 17

Applicable, except that the words 'its navy' (if there is one) for the words 'its army'.

ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ARTICLE 18

Applicable.

ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE 19

Applicable.

ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

ARTICLE 20

Applicable.

CHAPTER II.—*The Sick and Wounded*

ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

ARTICLE 21

Omit.

SECTION II.—*On Hostilities*

CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments*

ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE 22

Applicable.

ARTICLE 22 *a*

'*It is forbidden to force ressortissants of the hostile party to take part in the operations of war directed against their country, even if they were in its service before the commencement of the war.*'

ARTICLE 22 *a*

It would perhaps be advisable to adapt the principle contained in this article to naval warfare in so far as boats engaged in coastal fishing are concerned, which it is proposed by the committee to exempt from capture.

ARTICLE 23

In addition to the prohibitions provided by special conventions, it is especially forbidden :

(*a*) To employ poison or poisoned weapons ;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion ;

ARTICLE 23

Applicable, except letter *g* and the substitution in letter *f* of the words 'Convention for the adaptation to maritime warfare of the principles of the Geneva Convention' for the words 'Geneva Convention'.

(*d*) To declare that no quarter will be given;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(*f*) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(*h*) *To declare abolished, suspended, or inadmissible in a court of law the private claims of ressortissants of the hostile party.*

ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ARTICLE 24

Applicable.

ARTICLE 25

It is forbidden to attack or bombard *by any means whatever* towns, villages, dwellings or buildings that are not defended.

ARTICLE 25

It will be required to insert here the regulations concerning bombardment by naval forces in time of war, adopted by the Conference.

ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ARTICLE 26

See remark on Article 25.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, *and historic monuments*, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 27

See above: ditto.

ARTICLE 28

It is forbidden to give over to pillage even a town or place taken by storm.

ARTICLE 28

Ditto.

CHAPTER II.—*Spies*

ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

ARTICLES 29, 30, AND 31

May boats engaged in coastal fishing act as spies? And, since it depends on the belligerent to order them away, is there occasion to provide for this contingency? It will be for those technically qualified to consider the applicability of this chapter.

CHAPTER III.—*Flags of Truce*

ARTICLE 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him.

ARTICLE 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all necessary steps in order to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

ARTICLES 32–4

In naval warfare cartel ships take the place of parlementaires in land warfare. The principles set forth in this chapter appear to be applicable to such ships. Moreover, the distinctive marks of these vessels must be stipulated. Perhaps there is occasion to inquire, in addition, under what limitations these vessels may be provided with crews and armaments.

ARTICLE 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV.—*Capitulations*

ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

ARTICLE 35

In case of surrender there would be occasion to apply this provision.

CHAPTER V.—*Armistices*

ARTICLE 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ARTICLE 36

Applicable.

ARTICLE 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

ARTICLE 37

Applicable.

ARTICLE 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

ARTICLE 38

Applicable, with the substitution of the words 'both military and naval forces' for the word 'troops'.

ARTICLE 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the populations and between them.

ARTICLE 39

Not applicable.

ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ARTICLE 40

Applicable.

ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

ARTICLE 41

Not applicable.

SECTION III.—*On Military Authority over the Territory of the Hostile State*

General Remark

The preliminary question is whether there can be territorial occupation in naval warfare. Not occupation by disembarked troops, but by naval forces themselves. It is believed that this question should be answered in the affirmative, although the occupied territory will necessarily be limited as a general thing, and although the case will not often occur. Does such an occupation belong, in law, to naval warfare or to war on land? The answer appears uncertain, the more so for the reason that war at sea, as bombardments prove, does not exclude operations against the coast.

ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 42

This definition appears to be susceptible of application to occupation by naval forces. A situation of fact resulting from certain hostile operations is involved.

ARTICLE 43

The authority of the legitimate Power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE 43

Applicable.

ARTICLE 44

It is forbidden to force the population of occupied territory to take part in military operations against its own country.

ARTICLE 44

Applicable.

ARTICLE 44 *a*

It is forbidden to force the inhabitants of occupied territory to furnish information about the hostile army or its means of defence.

ARTICLE 44 *a*

Applicable; see the remark with respect to Article 22 *a*.

ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

ARTICLE 45

Applicable.

ARTICLE 46

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ARTICLE 46

Paragraph 1 applicable.

Paragraph 2. It is a question of determining the status of private property, which would not be inviolable merely for the reason that it happened to be on the seas. In case of territorial occupation by naval forces, should the seizure and confiscation of such property as would be respected in case of occupation by an army be admitted?

Should the legal effect of the occupation be different according to the character of the forces of occupation?

In so far as *vessels* are concerned, it is evident that those whose exemption from capture is generally recognized, such as barks engaged in coastal fishing, are not under consideration. It would seem that the same should be true in regard to vessels which are not intended for ocean navigation. There remain vessels intended for ocean navigation properly so called, whether they are used for commerce, for pleasure cruises, or for any other purpose. In case of occupation, should the law of naval warfare take precedence in all its severity over the law of land warfare, with respect to such vessels?

Or, following Article 53 of the Convention of 1899 and the draft regulations concerning the treatment of enemy merchant ships on the outbreak of hostilities, would the right of detention and of requisition be sufficient, with the exception, nevertheless, of merchant ships designed in advance for conversion into war-ships?

In so far as *goods* are concerned, provision must be made: (1) for the case of enemy goods and neutral goods constituting contraband of war which are on board an enemy vessel; (2) for the case of contraband on board a neutral vessel. It is

evident, as to the first case, that the goods will receive the same treatment as the vessel. As to the second case, the committee will have to decide whether or not the presence of contraband, under the circumstances in question, justifies the capture and confiscation of the vessel. But there is furthermore the preliminary question whether sufficient legal reasons really exist to subject goods found on board vessels in port to treatment different from that to which goods are subjected which are stored in warehouses, piled on docks, &c. It would seem that there can be no ground either under the law of land warfare or under the law of naval warfare for seizing goods under the latter circumstances. Is the fact of their being carried on board a vessel sufficient reason to cause them to lose their inviolability?

ARTICLE 47

Pillage is formally forbidden.

ARTICLE 47

Applicable.

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 48

Applicable.

ARTICLE 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ARTICLE 49

Applicable, with the substitution of the words 'of the fleet' for the words 'of the army'.

ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ARTICLE 50

Applicable.

ARTICLE 51	ARTICLE 51
No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief (*général en chef*). The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force. For every contribution a receipt shall be given to the contributors.	Applicable, with the substitution of the word '*commandant*' for the word '*général*'.
ARTICLE 52	ARTICLE 52
Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, *and payment shall be arranged as soon as possible.*	Applicable.
ARTICLE 53	ARTICLE 53
An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.	Paragraph 1. Applicable, with the substitution of the words 'naval force of occupation' for the words 'army of occupation'.
All means of communication and of transport operated on land, at sea, and in the air, for the transmission of persons, things and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.	Paragraph 2. As regards the modifications to be made with respect to vessels, see the remarks under Article 46.
Submarine cables connecting an occupied or enemy territory with a neutral territory	Paragraph 3. Applicable.

shall not be seized nor destroyed except when absolute necessity requires. They must likewise be restored and compensation fixed when peace is made.	
ARTICLE 54	ARTICLE 54
The plant of railways coming from neutral States, whether the property of those States or of companies or of private persons, shall be sent back to them as soon as possible.	Applicable if such a case should arise, which is unlikely.
ARTICLE 55	ARTICLE 55
The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.	Applicable.
ARTICLE 56	ARTICLE 56
The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property. All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.	Applicable, with the substitution of the words 'shall be inviolable' for the words 'shall be treated as private property'.
FINAL ARTICLE	FINAL ARTICLE
A belligerent party which shall violate the provisions of the present regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.	Applicable.

It follows from the foregoing examination that the provisions of the Convention of 1899 are to a great extent of a nature to be applied to naval warfare, and in effect these provisions are inspired by principles which are applicable not to war on land alone. Nevertheless, the examination likewise proves that in several respects the application would necessitate not only changes of form, but also modifications in the substance. Instead, therefore, of confining ourselves simply to a reference to the Convention of 1899 —for this would not be sufficient—it would be necessary to draw up for naval warfare as for war on land, special, precise, and detailed regulations. These regulations would have the advantage of substituting certainty, based upon definite prescriptions, for the uncertainty of a reference to principles that are more or less vague, and which in their new applications are susceptible of various interpretations.

Should we insert in the regulations respecting the laws and customs of war at sea the different drafts elaborated or still to be elaborated by the committee of examination concerning the crews of enemy merchant ships captured by a belligerent; the draft concerning fishing barks; that concerning the treatment of enemy merchant ships on the outbreak of hostilities; that concerning the destruction of neutral prizes, etc.?

Like the system adopted in 1899, the provisions of these drafts would then serve only as a basis for the instructions that the contracting parties would engage to give to their naval forces.

Will it be preferable, on the contrary, to make these provisions the subject of separate conventions? There would be a certain advantage in combining all in the same regulations, but it might be felt that none of these drafts would concern the usages of naval warfare properly so called.

It was thought that this report might be confined to bringing up and defining these questions, as was done in regard to those brought up by the examination of the text itself of the Convention of 1899.

It is for the committee to solve them.

CONVENTION (VIII) RELATIVE TO THE LAYING OF AUTOMATIC SUBMARINE CONTACT MINES [1]

(For the heading see the Convention for the pacific settlement of international disputes.[2]*)*

Inspired by the principle of the freedom of sea routes, the common highway of all nations ;

Seeing that, although the existing position of affairs makes it impossible to forbid the employment of automatic submarine contact mines, it is nevertheless desirable to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible to peaceful navigation the security to which it is entitled, despite the existence of war ;

Until such time as it is found possible to formulate rules on the subject which shall ensure to the interests involved all the guarantees desirable ;

Have resolved to conclude a Convention for this purpose, and have appointed the following as their plenipotentiaries :

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions :

ARTICLE 1

It is forbidden :

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them ;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings ;

3. To use torpedoes which do not become harmless when they have missed their mark.

ARTICLE 2

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy, with the sole object of intercepting commercial shipping.

ARTICLE 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the

[1] *Actes et documents*, vol. i, p. 650.

[2] *Ante*, p. 292.

danger zones as soon as military exigencies permit, by a notice addressed to ship-owners, which must also be communicated to the Governments through the diplomatic channel.

ARTICLE 4

Any neutral Power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must inform ship-owners, by a notice issued in advance, where automatic contact mines will be laid. This notice must be communicated at once to the Governments through the diplomatic channel.

ARTICLE 5

At the close of the war, the contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents along the coasts of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 6

The contracting Powers which do not at present own perfected mines of the kind contemplated in the present Convention, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert the *matériel* of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

ARTICLE 7

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 8

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent, by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it has received the notification.

ARTICLE 9

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, transmitting to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, stating the date on which it received the notification.

ARTICLE 10

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 11

The present Convention shall remain in force for seven years, dating from the sixtieth day after the date of the first deposit of ratifications.

Unless denounced, it shall continue in force after the expiration of this period.

The denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and six months after the notification has reached the Netherland Government.

ARTICLE 12

The contracting Powers undertake to reopen the question of the employment of automatic contact mines six months before the expiration of the period contemplated in the first paragraph of the preceding article, in the event of the question not having been already reopened and settled by the Third Peace Conference.

If the contracting Powers conclude a fresh Convention relative to the employment of mines, the present Convention shall cease to be applicable from the moment it comes into force.

ARTICLE 13

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 8, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 9, paragraph 2) or of denunciation (Article 11, paragraph 3) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Report to the Conference from the Third Commission on the Laying of Automatic Submarine Contact Mines [1]

(Reporter, Mr. Georgios Streit)

Mr. President and Gentlemen:

The Third Commission to-day renders an account to the Conference of the mission which you entrusted to it by assigning to it from among the topics mentioned in the programme of the Imperial Russian Government the question concerning the laying of automatic submarine contact mines.

After having referred the matter for preliminary study to its first subcommission, which in turn, after a general discussion,[2] appointed a committee of examination [3] with instructions to draft regulations, the Third Commission busied itself for a long time with this subject of the laying of mines. It devoted four meetings to it; in the meeting of August 28 it had to dispose of a preliminary question which had arisen in the committee of examination, to wit, whether the regulations to be drawn up should also contain provisions on the laying of mines by neutrals; in the meetings of September 17, 19 and 20, it deliberated on the draft regulations and accompanying detailed report [4] submitted to it by the committee of examination.[5] We may be permitted to refer to these so far as the project of the committee has not been changed by the Commission.

The draft drawn up by the committee [6] had its first reading in the meetings of September 17 and 19. In order to settle what provisions might secure a sufficient number of votes to warrant a hope of reaching the desired agreement in the Conference, it seemed necessary to confine ourselves in drafting a project to serve as a basis for the second reading to the decisions arrived at by an absolute majority of votes. We proceeded at the same time

[1] This report was presented for the Third Commission by Professor Georgios Streit (Greece), reporter of the first subcommission. *Actes et documents*, vol. 1, p. 287.

[2] Meetings of June 27, July 4, and July 11 of that subcommission.

[3] This committee of examination was presided over by his Excellency Mr. Hagerup (Norway), president of the subcommission, and was composed of the following members: Rear-Admiral Siegel and Lieutenant-Commander Retzmann (Germany), Rear-Admiral Sperry (United States), Rear-Admiral Haus (Austria-Hungary), his Excellency Mr. van den Heuvel (Belgium), Captain Burlamaqui de Moura (Brazil), Colonel Ting (China), Captain Chacon (Spain), Rear-Admiral Arago (France), Captain Ottley and Commander Segrave (Great Britain), Professor Georgios Streit, reporter (Greece), his Excellency Count Tornielli and Captain Castiglia (Italy), Rear-Admiral Havao Shimamura and Captain Miyajima (Japan), his Excellency Vice-Admiral Jonkheer J. A. Röell and Lieutenant Surie (Netherlands), Captain Behr (Russia), his Excellency Mr. Hammarskjöld and Captain af Klint (Sweden), his Excellency Ahmed Nessim Pasha and his Excellency Vice-Admiral Mehemed Pasha (Turkey).

[4] *Post*, p. 656.

[5] The committee of examination held ten meetings; its proceedings were not recorded.

[6] *Post*, p. 680.

to make slight changes in form. As a result all the seven articles of the new text[1] were able on second reading to win unanimous support ;[2] although on some points there were abstentions and reservations which we shall take occasion to specify in the course of this brief account. The project, as a whole, was finally submitted to the vote of the Commission and was adopted unanimously by those who voted, with the reservations indicated. Six Powers refrained from voting.

I

The principal change made by the Commission in the text drafted by the committee consists in the omission of Articles 2 to 5 of the committee's text ;[3] these deal with the limits as to area imposed upon belligerents in the use of anchored automatic submarine contact mines. Paragraph 3 of Article 4, which obtained on the first reading a strong majority (24 yeas, 5 nays, 3 abstentions, and 12 absent), and on second reading unanimity save for a few abstentions (33 yeas and 4 abstentions), was the only one kept by the Commission. It now appears as Article 2 of the draft which we have the honour to submit to the Conference ; the rest of the provisions contained in the said articles have disappeared. In fact, from the beginning of our deliberations two opposing tendencies were manifested on the subject of the places where it should be permissible to place anchored automatic contact mines. On one hand it was desired to establish fixed limits within which the employment of such mines would not be forbidden, and on the other a right was claimed in behalf of belligerents to make use of anchored mines without restriction as to place, even on the high seas, within the 'sphere of their immediate activity'. The committee hoped to be able to find a compromise solution :

1. By permitting the use of anchored automatic contact mines within a zone of three marine miles which in certain places would be extended to ten miles ; a further distinction being established on certain points, as to this greater zone, between the defence and the attack.

2. By permitting belligerents to make use of such mines in the sphere of their immediate activity even beyond the limits above mentioned ; but, in this case, the mines employed 'would have to be so constructed as to be rendered harmless within the maximum period of two hours after the party using them abandoned them'.

In the Commission this solution did not obtain an absolute majority of votes. Even paragraph 2 of Article 4, which established the difference mentioned between attack and defence, was rejected, as it obtained only 10 votes as against 12 nays and 10 abstentions. It was the same with an amendment presented, as a compromise, by the delegation of Sweden, according to which the prohibitions of Articles 2 to 4 would carry an exception in the case 'of an imperious military necessity' ; this amendment was likewise rejected by a majority of the Commission.

As to Articles 2 to paragraph 1 of 4, as presented by the committee, they obtained only a relative and rather feeble majority (Article 2 : 16 yeas, 11 nays, 10 abstentions ; Article 3 : 16 yeas, 10 nays, 10 abstentions ; Article 4, paragraph 1 : 15 yeas, 9 nays, 12 abstentions) ; and Article 5 of this text was rejected almost unanimously, being opposed both by the delegations that were against any restriction in area and by the delegations that had

[1] ... *et documents*, vol. iii, p. 670, *annexe* 35. This *annexe* is identical with the text submitted ... conference, *post*, p. 654.

[2] ... ting of September 26. *Actes et documents*, vol. iii, p. 454.

[3] *Post*, p. 680.

consented, in order to facilitate an agreement, to permit the use of anchored mines everywhere in the sphere of the immediate activity of the belligerents, subject to the technical restrictions contained in the second paragraph of Article 5. Moreover, very serious doubts were expressed as to the possibility of applying in all circumstances the technical provisions set forth in that paragraph.

The omission of Articles 2 to 5 of the committee's draft necessarily caused the second paragraph of Article 7 and the second paragraph of Article 9 to be dropped. It seemed, however, to be understood that the absence of any provision assigning limits within which neutrals can place mines must not be interpreted as establishing a right on the part of neutrals to place mines on the high seas.

By thus overturning, through the suppression of Articles 2 to 5, the decision which has seemed to obtain unanimous support in the committee and according to which a restriction as to area in the use of anchored mines ought to be expressly set forth in the regulations, there has been no intention to swerve from the conviction that a restriction as to area also is in principle imposed upon the employment of such mines. The very weighty responsibility towards peaceful shipping assumed by the belligerent that lays mines beyond its coastal waters has been several times placed in evidence, and it has been unanimously recognized that only 'absolutely urgent military reasons' can justify such a usage with respect to anchored mines. 'Conscience, good sense, and the sentiment of duty imposed by the principles of humanity' will be the surest guide for the conduct of mariners of all civilized nations; even without any written stipulation, there will surely not be lacking in the minds of all the knowledge that the principle of the liberty of the seas, with the obligations that it carries for those who make use of this means of communication open to all peoples, is definitively dedicated to humanity.

II

The other provisions contained in the committee's draft have not undergone essential modification.

Article 1 remains the same with the exception of a slight change in phrasing to emphasize the prohibition laid down in the first paragraph. The fundamental distinction between the three kinds of engines mentioned in Article 1 is preserved. The Commission was unanimous for prohibiting the use of anchored automatic contact mines which do not become harmless when they have broken loose from their moorings as well as the use of torpedoes which do not become harmless when they have missed their mark. As to unanchored mines, the broader proposal to forbid their use absolutely (for a period of five years) was again brought up by the delegation of Germany; it obtained only a relative majority; and then the provision as the committee had worded it, that unanchored mines ought to be so constructed as to become harmless one hour at most after the person who laid them ceases to control them, obtained a majority of 19 yeas against 8 nays and 9 abstentions, 8 Powers not responding to the vote call. The Argentine delegation declared that it accepted the provision with the exception of the fixed period of one hour within which the mine must become harmless.

On the second reading, Article 1 was carried unanimously; but reserves as to paragraph 1 were again noted by the delegations of Germany, Montenegro, Russia and

Sweden, which refrained from voting on this paragraph; and the Ottoman delegation, through his Excellency Turkhan Pasha, made with regard to the whole article a declaration that 'the Imperial delegation cannot at the present time undertake any engagement for which perfected systems are not yet universally known'.

Article 2 reproduces, as we have just seen, paragraph 3 of the fourth article of the committee's original draft. The different vicissitudes through which this provision passed are narrated in the report to the Commission.

At the time of the second reading a short discussion again took place, as an objection was made to Article 2 in its present form by the delegation of Germany. His Excellency Baron Marschall observed that the prohibition against laying mines off the coasts of the enemy 'with the sole object of intercepting commercial shipping', introduced a subjective element which was absent from the other draft texts and which would give rise to difficulties in application; he reserved his vote. His Excellency Mr. Méray expressed himself in a similar sense and refrained from voting on this article, as also did the delegations of France and Colombia. The other members of the Commission supported the text submitted by the committee.

A new and more radical amendment presented by the British delegation,[1] providing that it is 'forbidden to lay automatic contact mines before the ports of the adversary other than those which are considered as war ports' had previously been rejected by the Commission by a vote of 13 to 5, with 17 abstentions.

Article 3[2] was adopted unanimously. Indeed, throughout the deliberations, all the delegates in their speeches supported the proposition that every possible precaution should be taken for the security of peaceful shipping; and they were able to agree on the particular measures to be taken for this purpose. The text proposed by the committee underwent only a slight change in its form; since it was unanimously recognized that the provision obliging belligerent States to notify the danger zones 'as soon as it can be done' was intended to qualify this obligation as the exigencies of war might make necessary,[3] it seemed preferable to express this idea more clearly in the very text of the regulations.

His Excellency Turkhan Pasha repeated on the occasion of the discussion of this article in the Commission, the declaration that had been made in the committee by the Ottoman delegation with regard to the straits of Bosporus and Dardanelles. This was inserted in the detailed report.

Article 4,[4] dealing with the precautions imposed upon neutrals in the use of automatic contact mines, was accepted unanimously after omitting by a majority vote the provision fixing limits of area which neutrals should observe in laying mines. We have already had occasion to explain the reason of this omission.

Article 5[5] merely completes the provisions contained in the two preceding articles by laying down rules to be observed at the close of the war by every Power, belligerent or neutral, which has laid mines that may still be dangerous for shipping. This was passed unanimously.[6]

The provision of Article 6[7] is temporary. The engagement taken by the contracting Powers to convert as soon as possible the *matériel* of their mines so as to bring it into con-

[1] *Ibid.*, p. 690.
[2] Report to the Commission.
[3] Article 8 of the committee's draft.
[4] Article 9 of the committee's draft.
[5] Article 6 of the committee's draft.
[6] Article 7 of the committee's draft.
[7] See also the report to the Commission, *post*, p. 675.

formity with the technical conditions set forth in these regulations was unanimously adopted; but the hesitation manifested in the committee with respect to the period of one year to be granted Governments for effecting such conversion of unanchored mines was emphasized in the Commission in connexion with the British amendment to apply this same period to all mines mentioned in the regulations. The British amendment provided:

> The prohibition against employing automatic contact mines which do not answer to the conditions of Article 1 shall come into force one year after the ratification of the present Convention.

The vote on this amendment was 18 yeas, 11 nays, with 8 abstentions. Seven Powers did not respond to the call for their votes.

An absolute majority of votes not having been secured, the British delegation presented at the time of the second reading a new formula[1] establishing a distinction between anchored mines and unanchored mines; for the latter the prohibition stated in the first article would go into force one year after the ratification of the Convention; as to anchored mines, however, the period granted Governments to effect the conversion of *matériel* required by Articles 1 and 3 of the regulations was extended to three years from the date of ratification. The result of the voting on this formula was 17 yeas, 9 nays, and 10 abstentions.

The second paragraph of Article 9 of the text presented by the committee, which relates to the conditions imposed on the use of mines allowed 'within the sphere of the immediate activity of the belligerents', had to be abandoned, as we have already said, in consequence of the omission of the rule to which it referred.

At the time of the vote on Article 6 his Excellency Turkhan Pasha renewed in the name of the Ottoman delegation its reserve relative to perfected systems not yet universally known; he declared that 'so far as his Government was concerned it would defer putting into practice the rules of Articles 1 and 3 referred to in Article 6 until some suitable means of ensuring the conditions contemplated by the articles in question are generally adopted and applied'.

Article 7 corresponds to Article 10 of the committee's draft. In the Commission the British delegation proposed an amendment[2] assigning a duration of seven years for the Convention as a compromise between the original proposal according to which the Convention to be concluded was to have a duration of ten years and the text presented by the Committee which fixed a term of five years for it; this amendment would at the same time, as was said by the delegation of Japan in the Commission, avoid any interruption between the new Convention to be concluded when the question should be reopened according to paragraph 2 of this article and the Convention now negotiated. The British amendment was adopted on the first reading by 21 yeas against 8 nays and 9 abstentions, 6 Powers not responding to the roll call; at the time of the second reading the formula inserted on the basis of the British amendment secured unanimity in the Commission. As a consequence there appears at the end of the draft submitted to you a provision according to which the stipulations of the present regulations are to hold for a period of seven years or until the close of the Third Peace Conference if that date is earlier; the contracting Powers undertake to reopen the question of the employment of mines six months before the expiration of the period of seven years in the event of the question not having been already reopened and settled by the Third Peace Conference. Failing the stipulation of a fresh Convention the present regulations would continue in force unless

[1] *Post*, p. 691.

[2] *Post*, p. [illegible].

denounced, and such action shall only have effect in regard to the notifying Power and six months after the notification.

Before closing this rapid review of the text which is submitted for the sanction of the Conference it is important to recall a very interesting discussion which took place in the Commission in the meeting of September 26 on an amendment proposed by the delegation of Colombia to Articles 2 and 5,[1] to the following effect :

> The employment of anchored contact mines is absolutely forbidden except as a means of defence.
>
> Belligerents may not employ such mines except for the protection of their own coasts and only within a distance of the greatest range of cannon
>
> In the case of arms of the sea or navigable maritime channels leading exclusively to the shores of a single Power, that Power may bar the entrance for its own protection by laying anchored automatic contact mines.
>
> Belligerents are absolutely forbidden to lay anchored automatic contact mines in the open sea or in the waters of the enemy.

The views of the Colombian delegation were developed by Mr. Pérez Triana. Without entering into the technical details of the question he urged the necessity from the point of view of the community of nations of limiting the employment of anchored automatic contact mines to the defence of coasts if it should appear impossible to suppress their use altogether. His Excellency Sir Ernest Satow declared himself in favour of the Colombian proposal, saying that the British delegation would support any proposal tending to restrict the use of mines, and that in England the employment of mines had been abolished even for defensive purposes.

Along the same line Colonel Ting reiterated for the delegation of China the desire of the Chinese Government to assist in restricting the use of mines, and he declared that he would also vote in support of the proposal of the Colombian delegation.

On the other hand, the president having emphasized the importance of the principle stated in the first paragraph of this proposal as one that might of itself be made the subject of a vote by the Commission, his Excellency Mr. Mérey von Kapos-Mére directed the attention of the Commission to the difficulty of determining in some cases whether a military operation is a means of defence properly so called or a means of attack ; and that therefore in his opinion the proposal in question ought to be voted on in its entirety. The same idea of the impossibility of distinguishing in practice between the use of mines as a means of defence or of attack was advanced by his Excellency Baron Marschall von Bieberstein, who said that the German delegation was opposed to the Colombian amendment. His Excellency Mr. Hagerup, who was chairman of the subcommission and of the committee of examination, recalled that the point of view that the delegation of Colombia took had been carefully studied in the course of their deliberations and that it seemed from these deliberations that a proposal to limit the employment of mines to defence alone would have little chance of success ; that none of the proposals in this direction had gone so far ; and that the delegation of Norway would therefore abstain from voting on the amendment submitted as it could not have any substantial value.

At the instance of Mr. Pérez Triana the Colombian proposal was put to vote as a whole : 10 States voted for and 15 against it ; there were 6 abstentions and 7 absent. As the majority was not absolute the amendment failed.

[1] *Actes et documents*, vol. III, p. 680, *annexe* 30.

III

Finally, the Commission on the motion of the Netherland delegation [1] had yet to consider the form to be given to the decision of the committee, approved in principle by the Commission, according to which there was no change whatever made in the present status of straits by the stipulations of the Convention to be concluded. The Netherland delegation desired that a provision to this effect be inserted in the regulations concerning the laying of mines. After a discussion it was deemed preferable to add nothing to the text of the regulations but instead to change the passage in the report which speaks of the resolution of the committee of examination on this question. It would be thus established in the report that straits are not contemplated in the deliberations of the *present Conference*, and, while expressly preserving the declarations made in the committee by the delegations of the United States, Japan, Russia, and Turkey, a desire would be indicated to see the technical conditions adopted in the present regulations applied to such mines as might be used in straits.

In line with this idea it was decided to substitute the following for the last paragraph of the fifth chapter of the report : [2]

> The committee has taken note of these declarations and decided that they should be reproduced in full in the present report. At the same time the committee decided unanimously to suppress all provisions relating to straits, which should be left out of discussion in the present Conference. It was clearly understood that under the stipulations of the Convention to be concluded nothing whatever has been changed as regards the actual status of straits. But, so far as not inconsistent with the foregoing declarations, it has been considered as natural that the technical conditions established by these regulations should be of general application.

Such, gentlemen, is the result of our painstaking deliberations on this new and difficult question. We have been able to reach an agreement in the Commission on some principles really useful for the society of nations and constituting a first step forward in the path traced by the First Peace Conference. It is for your high assembly to perpetuate the work of the Commission by giving your sanction to the provisions contained in the draft regulations annexed which we have the honour to commend to the approval of the Conference.

ANNEX 1 [3]

DRAFT REGULATIONS CONCERNING THE LAYING OF AUTOMATIC SUBMARINE CONTACT MINES

Text submitted to the Conference [4]

ARTICLE 1

It is forbidden :

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them ;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings ;

3. To use torpedoes which do not become harmless when they have missed their mark.

[1] *Post*, p. 690.
[2] *Post*, p. 664.
[3] *Actes et documents*, vol. i, p. 293, *annexe* B.
[4] See footnote on p. 655.

ARTICLE 2

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

ARTICLE 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the safety of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship-owners, which must also be communicated to the Governments through the diplomatic channel.

ARTICLE 4

Any neutral Power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice must be communicated at once to the Governments through the diplomatic channel.

ARTICLE 5

At the close of the war the contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents along the coasts of the other, their position must be notified by the Power which laid them to the other party, and each Power must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 6

The contracting Powers which do not at present own perfected mines of the kind contemplated in the present regulations, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

ARTICLE 7 [1]

The stipulations of the present regulations are concluded for a period of seven years or until the close of the Third Peace Conference, if that date is earlier.

The contracting Powers undertake to reopen the question of the employment of automatic submarine contact mines six months before the expiration of the period of seven years, in the event of the question not having been already reopened and settled by the Third Peace Conference.

In the absence of a stipulation of a new Convention the present regulations will continue in force unless the present Convention is denounced. The denunciation shall not have effect (with regard to the notifying Power) until six months after the notifications.

[1] These draft regulations were adopted without change by the Conference in its eighth plenary session on October 9, 1907. Respecting modifications subsequently made in the wording of Article 7, see Mr. Renault's report on the Final Act, *ante*, p. 224. A few minor changes also appear in the Convention: 'security' replaces 'safety' (Article 3); 'to the other party' follows 'notified' (Article 5); and (Article 6) 'regulations' becomes 'convention', and 'them', for mines, becomes 'it' for *matériel*.

ANNEX 21

THE LAYING OF AUTOMATIC CONTACT MINES

Report to the Commission [2]

In taking up the question of the laying of mines the first subcommission had no illusions as to the possibility in this delicate matter of reaching conclusions that would bring about a definitive and absolutely satisfactory solution of all its problems. In addition to the technical difficulties, which the eminent president of the subcommission justly emphasized at the beginning of our work and which have arisen with disconcerting frequency, there are difficulties of a legal nature inherent in one of the most important divisions of the law of nations—the regulation of the freedom of the sea. Between principles which at first glance seemed unreconcilable, it was necessary to find a middle path in order to comply as far as possible with all legitimate demands.

If in this question of relatively recent date theoretical study has brought out very serious controversies, we should not be astonished to meet with great caution in a diplomatic conference, the purpose of whose deliberations is to formulate a text susceptible of being transformed into an international convention involving the contracting States in undertakings that are firm and exact.

The Institute of International Law considered this subject a year ago at its session in Ghent, on the basis of a report presented by Professor Kebedgy, and, after a very interesting discussion, it only arrived at a provisional wording of its resolutions, and decided that a further discussion should take place at the next session. A similar proceeding took place at the 16th session of the International Law Association, where a remarkable paper was submitted by Mr. von Martitz, professor at the University of Berlin; this paper was referred to a committee with instructions to draw up proposals for the next meeting of the association.

We are dealing in fact with one of the principal weapons that modern war makes use of. Besides submarine mines operated from a distance by electric cables and serving mainly for coast defence, and besides automobile torpedoes discharged during a naval combat, of late years there have been used automatic contact mines, both anchored and unanchored, which can be laid rapidly in great numbers, and are intended to explode as a result of a mere blow received from a hostile war-ship. No one dreams of contesting the legitimacy of these weapons from the view-point of existing law; likewise, no one has thought of forbidding their use completely—especially a use for the purpose of injuring the armed forces of the enemy. But the employment of this weapon, in itself allowable, carries danger for peaceful shipping; and peaceful shipping may claim that the sea, open to all nations, should not conceal these secret engines of destruction, sown in unexpected places, without all possible precautions being taken to safeguard the principle of the freedom of the sea definitively established centuries ago. Here it is that international law is asked to intervene and to attempt to harmonize this principle with the no less imperative exigencies of war and the legitimate needs of national defence. Moreover, the purpose of assuring to pacific commerce an effectual protection has constituted the point of common departure of all the discussions of the subcommission and of the com-

[1] *Actes et documents*, vol. iii, p. 397, *annexe* A.

[2] This report was presented to the Commission in the name of a committee of examination instituted by the first subcommission and presided over by his Excellency Mr. Hagerup (Norway), president of this subcommission. The committee was composed of the following members: Rear-Admiral Siegel and Lieutenant-Commander Retznmann (Germany), Rear-Admiral Sperry (United States of America), Rear-Admiral Haus (Austria-Hungary), his Excellency Mr. van den Heuvel (Belgium), Captain Batlamaqui (Brazil), Colonel Ting (China), Captain Chacon (Spain), Rear-Admiral Arago (France), Captain Ottley and Commander Segrave (Great Britain), Professor Georgios Streit, reporter (Greece), his Excellency Count Tornielli and Captain Castiglia (Italy), Rear-Admiral Shimamura and Captain Matsuyama (Japan), his Excellency Rear-Admiral Jonkheer Röell and Lieutenant Surie (Netherlands), Captain Behr (Russia), his Excellency Mr. Hammarskjöld and Captain af Klint (Sweden), his Excellency Turkhan Pasha and Rear-Admiral Mehemed Pasha (Turkey).

mittee. The terrible catastrophes that may be caused by automatic contact mines at any moment during a war, and even for a long time after the conclusion of peace, were present in the minds of all, and a declaration of the delegation of China summarizing recent experiences in its waters in the Far East was of a nature further to accentuate the general desire to reach agreement on this subject.

> The Chinese Government (so ran this declaration) is even to-day under the necessity of equipping the vessels in its coastwise trade with special instruments to pick up and destroy the floating mines which encumber not only the high sea but also its territorial waters. In spite of every precaution being taken, a very considerable number of coasting trade boats fishing boats, junks and sampans have sunk as a consequence of collisions with these automatic submarine contact mines, and these vessels have been utterly lost with their cargoes without the details of the disasters reaching the western world. It is calculated that from five to six hundred of our countrymen in the pursuit of their peaceful occupations have met a cruel death through these dangerous engines.

On the other hand, we must take into account the incontestable fact that submarine mines are a means of warfare the absolute prohibition of which can neither be hoped for nor perhaps desired even in the interest of peace: they are, above all, a means of defence, not costly but very effective, extremely useful to protect extended coasts, and adapted to saving the considerable expense that the maintenance of great navies requires. Certainly the ideal defence of coasts, the defence which can never cause injury to peaceful ships, is that obtained by fixed mines which explode by means of electricity. But the use of such mines is necessarily limited to the vicinity of the land, and even there it is not always possible nor sufficient. This means that automatic contact mines are an indispensable weapon. Now to ask an absolute prohibition of this weapon would consequently be demanding the impossible; it is necessary to confine ourselves to regulating its use.

Notwithstanding these difficulties, the committee charged with co-ordinating the resolutions of the subcommission and with endeavouring to reconcile in one text the different view-points, may congratulate itself for having reached an agreement on some of the broad principles that should in its opinion govern the subject. The principles unanimously accepted may be summed up as follows:

1. There is a fundamental distinction to be made between anchored automatic contact mines and unanchored mines; the latter may be used everywhere, but they should be constructed in such a way as to become harmless within the lapse of a very short time; it should be the same with torpedoes that have missed their mark.

2. As to anchored mines, a limitation is necessary as to space, that is to say, as regards the places where it shall be permissible to lay them.

3. But as this limitation can not be absolute and as it does not exclude in every case the possibility of laying anchored mines where peaceful shipping should be entitled to rely upon free navigation, it is necessary here again to have recourse to a limitation in duration, that is to say, a limitation of the time during which the mine is dangerous, which would be possible, thanks to modern technical invention. We have likewise been able to reach a unanimous decision:

That every anchored mine should be constructed in such a way as to become harmless in case it breaks its moorings and goes adrift.

By a happy combination of the limitations as to space, with the technical conditions that we have just mentioned, a very appreciable improvement can be effected over the present state of things. On several occasions it has been strongly emphasized that the obligation of employing anchored mines that become harmless as soon as they have broken from their moorings constitutes a very great advance over the present situation.

4. These provisions are completed by rules, also voted unanimously, establishing an obligation on States employing anchored mines not only to take all possible measures of precaution, particularly in notifying the dangerous regions (Article 6), but also to

remove at the end of the war the anchored mines that have been laid, and, in every case, to provide so far as possible that the mines made use of become harmless after the lapse of a short time, so that they do not remain dangerous long after the close of the war.

5. Finally, the general consent of the States represented in the committee of examination was given to some transitory provisions undertaking to apply these rules as soon as possible and granting the time necessary for conversion of existing material, as well as to the *vœu* that the question may be taken up again before the expiration of the necessarily rather short term for which the Convention can be concluded.

These statements are certainly of a nature to weaken the impression that perhaps will be produced by an analysis of the disagreements on different details regarding which we shall take occasion to give an account in the course of this report; they prove that the long work of the subcommission and of the committee of examination has finally succeeded in producing real results unanimously accepted. It will be for the Commission to endeavour to reconcile with the greatest degree the opposing views on those points where a solution satisfactory for all could not be found.

II

The discussion in the subcommission took place on the basis of a project presented at the first meeting of the Third Commission by his Excellency Sir Ernest Satow in the name of the British delegation.[1] At the same time the delegation of Italy presented an amendment on the first two points of the British project. This Italian proposition was characterized by his Excellency Count Tornielli as a preliminary motion.[2] Besides there were the following propositions and amendments:

1. An amendment of the delegation of Japan concerning unanchored automatic contact mines.[2]

2. Propositions and amendments of the delegation of the Netherlands relating to certain points of detail in the British proposal, and especially emphasizing the obligation to give notice of mines laid, the regulation of the right of neutrals to lay mines for the purpose of denying belligerents access to their territory, and finally the establishment of the responsibility that should rest upon Governments placing mines, if these mines cause loss of non-hostile individuals or material outside of the notified regions.[3]

3. A proposition of the delegation of Brazil on the subject of the defence of the coasts of neutrals and the responsibility to be established in case of the breaking loose of mines.[4]

4. A proposal of the delegation of Spain on the subject of the control to be exercised by an international technical commission over the use of perfected mines as well as on the subject of confining the laying of mines to hostile territorial waters.[4]

5. An amendment of the delegation of Germany concerning the use of anchored automatic contact mines in the theatre of war.[4]

6. A proposal of the delegation of Russia relating to the period of time to be fixed for putting perfected mines into use.[5]

7. A proposal of the United States of America, which, although filed at the meeting of July 11, could not be distributed until after the close of the debates in the subcommission.[4]

After a general discussion all these proposals were referred to a committee of examination and drafting, in which were asked to participate the bureau of the subcommission and representatives of the delegations that had presented proposals or amendments. There have besides taken part in the work of the committee of examination representatives of the French and Austro-Hungarian delegations, and among the members of the subcommission his Excellency Turkhan Pasha, honorary president of the Third Commission.

[1] *Post*, p. 681.
[2] *Post*, p. 682.
[3] *Post*, p. 683.
[4] *Post*, p. 684.
[5] *Post*, p. 685.

Colonel Ting in the place of his Excellency Mr. Lou Tseng-tsiang, honorary president of the Third Commission, and his Excellency Mr. Hammarskjöld, vice-president of this same Commission.

The committee likewise took as a basis of its deliberations the British proposal, changed a little in form in order to permit of placing all the proposals thus far presented upon a synoptic table,[1] prepared by his Excellency Mr. Hagerup. In the course of the debates in the committee new proposals or formulas were presented by the delegations of Germany, Austria-Hungary, Great Britain, Italy, and the Netherlands, which were only distributed to the members of the committee, and regarding which we shall have occasion to speak further on. Among these the German delegation presented in the third meeting of the committee the text, 'combining in part the previous proposals with a view to reconciling military exigencies with the interests of peaceful shipping'.[2] All these proposals and amendments served for the drafting by the bureau of the texts adopted on the basis of the deliberations of the committee in order to be presented for its definitive vote, as well as for the final drafting of the project which appears at the end of the present report and is submitted for the approval of the Commission. Ten meetings of the committee of examination were held; it was agreed not to make a record of the proceedings in order to facilitate free exchange of views among the members of the committee. The absence of such minutes explains the lengthy and somewhat unusual character of the present report, which must, in a more detailed fashion than is usual, give an account of the principal opinions expressed in the committee.

III[3]

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IV

The project which the committee has the honour to submit opens with certain prohibitions concerning the different kinds of engines to which it relates. By reason of their importance it was thought best to place these provisions at the head of the project.

Article 1

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

A distinction between these three kinds of engines is made necessary by their nature and also by the purposes for which they are used.

Unanchored mines, floating at large upon the sea, constitute a tremendous danger for peaceful shipping, even beyond the theatre of war and far from the places where they have been laid; this is what led the Institute of International Law to declare itself in favour of an absolute prohibition of these 'floating' mines. The original project of the British delegation was conceived in this same sense; but at the very beginning of the discussion in the subcommission the proposal to prohibit absolutely the use of unanchored mines was confronted with very serious objections. It was pointed out that it is impossible for Governments to dispense with a weapon hitherto employed in naval warfare, and especially in certain cases the only means of safety for a vessel pursued by a stronger enemy. In general, it was said, the imperative requirements of war are incompatible with so absolute a prohibition. Two proposals, based upon recent progress in the

[1] *Post*, p. 685. [2] *Post*, p. 680.

[3] This chapter of the report deals with the question of the competence of the Commission respecting the right of neutral Powers to lay mines.

construction of mines, of which we have already spoken, brought about a solution which while taking into account military exigencies, was at the same time of a nature to respond satisfactorily to the legitimate rights of peaceful shipping. The preliminary motion of the Italian delegation,[1] by which 'unanchored automatic contact mines must be furnished with an apparatus rendering them harmless one hour at the most after their placement', was along these lines, and it met no opposition in the subcommission. A similar proposal was presented by the delegation of Japan,[2] and Captain Ottley also supported it in behalf of the British delegation in case the absolute prohibition should prove unacceptable and upon condition that the lapse of time after which unanchored mines should become harmless was to be a very limited one.

Nevertheless, the proposal of an absolute prohibition of all unanchored automatic contact mines was brought up again by the delegation of the United States of America. It could not rally a majority of votes in the committee of examination, which rejected it by eleven votes to four, with two abstentions, and then declared itself unanimously in favour of a limitation in the sense above indicated of the time during which the unanchored mine may be dangerous. But, although in agreement on this last principle, the members of the committee were not unanimous in desiring also to fix in a determinate manner the length of time to be allowed for unanchored mines to become harmless. It was maintained that there are cases where it is impossible to fix a limit in advance, that we must be satisfied with a more general formula which will, without fixing any length of time, lay it down 'that unanchored automatic contact mines should become harmless after a limited time so as to present no danger to neutral ships'. 'If a naval force', said Rear-Admiral Siegel, 'is pursued and wishes to throw unanchored mines to prevent its adversary from reaching it, a fixed limit, especially a limit of one hour, would very often render the use of this weapon ineffective and useless, as the pursuer will be in a position, either through his scouts or other means, to know that his adversary has cast mines, and would therefore find ways to avoid all danger either by making a short detour or waiting an hour before passing over the dangerous place, after which he will be quite safe. Another case arises when an enemy blocks the mouth of a river. If the defender wishes to employ floating mines against his enemy by sending them down with the current, the time of their effectiveness must be in relation with the distance they are to travel, and can not be fixed in advance.'

In spite of these considerations the majority of the committee, desiring to make sure that the principle adopted would be really effective, declared itself in favour of a period of time fixed in advance (nine votes to two and five abstentions), after which the committee on being called upon to make a choice between a limit of one hour and a limit of two hours (the latter having been proposed by way of compromise by his Excellency Mr. Hammarskjöld), decided in favour of a limit of one hour by a majority of eight votes against one, with seven abstentions.

The original Italian proposal was thus accepted. But it was observed that among unanchored mines are also included automatic mines in tow, and for these the limit of one hour should not be counted from the moment of placing them but only from the moment when they are let loose and drift by themselves. As this observation seemed a just one, the provision was worded so as to meet this requirement. It was decided that unanchored automatic contact mines should become harmless one hour at the most after the one who has laid them loses control over them.

As to anchored automatic contact mines and automatic torpedoes, agreement respecting their construction was more easily reached. The Russian proposal on automatic torpedoes[3] was adopted unanimously, with the omission of the words 'so far as possible', which appeared in the prohibition proposed by the Imperial delegation concerning the use of such torpedoes as do not become harmless when they have missed their mark. The prohibition of the use of anchored automatic contact mines, that do not become

[1] *Post*, p. 683. [2] *Post*, p. 684.
[3] *Post*, p. 685.

harmless when they have broken from their moorings, appeared in all the complete propositions, and met with no objection in the committee.

It remains only to mention on the subject of Article 1 some doubts of a technical order that were expressed in the committee. While some members of the committee were doubtful as to the possibility of any sure realization in all circumstances of the principles adopted for the construction of automatic mines, whether anchored or unanchored, contending 'that there does not at present exist apparatus generally adopted or even sufficiently tried out to render mines harmless', the majority seemed more sanguine on this subject. Existing apparatus rendering mines harmless at the surface or even making their immersion complete through the infiltration of water within a limited length of time is sufficient in the opinion of Captain Castiglia to meet the requirements of Article 1, and in a series of observations, addressed in writing to the members of the committee, Captain Ottley remarked them with respect to unanchored mines of 'the process by which a hole pierced through the covering of the mine and plugged with some soluble substance like sal ammoniac could cause the explosive charge to pass under the water and make the mine sink. This process would be applicable to every mine as the coverings of unanchored mines already existing could also be easily and quickly cut to fulfil any desired condition in this sense'.

So the addition of the words 'so far as possible', contained in the Russian proposals and limiting the obligation to make use of automatic mines perfected in the sense of Article 1, was rejected in the committee by eleven votes to five.

It was the same with a proposal of the delegation of Spain respecting the improvements imposed by Article 1 for anchored automatic contact mines. Captain Chacon observed that 'as all the technical difficulties were not yet removed in regard to the construction of anchored mines that become harmless on breaking from their moorings, the prohibition of paragraph 2 of Article 1 would be equivalent in reality to a complete prohibition of the use of these engines. In adopting the new rules it would be necessary to assure peaceful shipping of neutrals of their effectiveness and to avoid creating a dangerous situation which would not fail to be fraught with serious and sad consequences'. With this aim the delegation of Spain insisted on the usefulness of creating an international technical Commission to look into the effectiveness of the perfected apparatus used by the different States in their navies. 'If the invention of arms and means of waging war in general must be a secret matter with each country, the means of safety, the apparatus of security applied in the interest of neutrals should be universal ground, and nothing should prevent their being made known.'

These arguments did not succeed in convincing the majority of the committee, which considered that the establishment of an international technical committee would hardly be accepted by a large number of States, and the Spanish proposition having been defeated by ten votes to four, with two abstentions, the delegation of Spain expressly reserved the right to take up the question before the Commission.

We hasten to add that temporary provisions were adopted (Article 9), granting time for putting new apparatus into use.

V

In Articles 2 to 5 the regulations proceed to determine the places where anchored automatic contact mines may be laid. Articles 2 and 3 have reference to placing such mines as a defence for coasts; Article 4 relates to attack, that is, to the anchored mines that the belligerent places before the coasts of his adversary; Article 5 deals with the possibility of making use of anchored mines even beyond such limits, in the sphere of the immediate activity of the belligerents.

Indeed, if a limitation as to area of the use of unanchored automatic contact mines would not sensibly reduce the dangers they present, and if to realize this aim we had to have recourse to the prohibition in paragraph 1 of Article 1, for anchored automatic contact mines such a limitation as to area seems necessary from several points of view.

Anchored mines concealed in the water and intended to serve for a long time constitute a permanent danger for ships assuming risks in the regions where they have been placed; it would therefore be necessary to forbid their use where peaceful shipping has the right to move freely. Nevertheless, here again the principle of the free use of the sea is in opposition with the inflexible necessities of national defence or of war, and a compromise again seems needful.

Considerations of this kind had led the Institute of International Law [illegible] to prohibit the laying of mines on the high seas while permitting belligerents to lay them in their own waters as well as in the waters of their adversaries, and leaving to neutrals the option of laying mines in their own waters to prevent the violation of neutrality. It is this same idea that inspired the original proposition, in which a very clear distinction was made in the same sense between the high seas and territorial waters. A single exception to this rule was contained in the British proposition: the zone of coastal waters — and in this report we thus term waters washing the coasts of a State without reference to limit — in which the laying of anchored mines was not prohibited, 'could be extended up to a distance of ten miles before fortified war ports, with the responsibility, nevertheless, for the belligerent which places mines to give notice thereof to neutrals and to take the steps that circumstances permit in order to prevent, so far as possible, merchant ships that could not have received this notice from being exposed to destruction'.

After a thorough discussion the committee, while taking as a general point of departure the distinction between coastal waters and the sea beyond these limits, decided to fix upon a distance from the coast beyond which the use of anchored mines would only be permitted under certain restricted conditions (Article 5). These conditions would not apply to anchored mines placed within the distance fixed (Articles 2–4).

On the other hand, after long deliberation, a provision advanced at the beginning of the debate by the delegation of the Netherlands was rejected. Among the original Netherland proposals was one establishing a prohibition 'to bar straits uniting two open seas'.[2] In a formula presented later the sense of this prohibition was thus specified: 'In any case', read the formula presented to the committee of examination, 'the communication between two open seas can not be barred entirely; but passage will be permitted only on conditions which are indicated by the competent authorities.'

His Excellency Vice-Admiral Röell explained to the subcommission that the proposal had reference only to the right which should be reserved to neutrals to traverse straits uniting two high seas, straits which ought not to be entirely barred. He pointed out that, except where special conventions govern the situation of certain straits, no one in theory contested the obligation to allow passage through straits joining two open seas, but it is important that this principle be fixed by a conventional stipulation clearly stating that straits cannot be barred so as not to leave open communication for peaceful shipping. It would be well understood that the bordering State might lay down conditions for passage, especially by having the ships that wish to pass guided by a pilot. In speaking of straits joining two open seas all the interior seas of a State would naturally be excluded. 'A rule', concluded the Vice-Admiral, 'is necessary. If we do not formulate one the situation will be untenable, and the absence of any stipulation will give rise to complaints and disputes, which from every point of view we must try to avoid.'

In order to bring out the sense of the prohibition clearly there was added, after a preliminary exchange of views in the committee, to the rules proposed by the delegation of the Netherlands a second paragraph stating that 'these provisions have no effect upon rules established by existing treaties nor upon rights of territorial sovereignty'.

In fact, notwithstanding the explanations given, the proposal of the Netherlands met objections drawn from rights of territorial sovereignty as well as from conventional stipulations existing on the subject of certain straits. It would be necessary, it was said, that these reservations appear in the very text of the arrangement in order to cover the declarations made on several sides on the subject of existing conventional stipulations, as well as on the subject of straits whose shores belong to the same State. The declara-

[1] *Resolutions of the Institute of International Law* (New York, 1916), p. 166. [2] *Post*, p. 683

tion made in the name of the delegation of Japan at one of the sessions of the subcommission was recalled. His Excellency Mr. Tsudzuki, while declaring that he had no objection if the rule were applied only to neutral countries, had remarked, on behalf of the delegation of Japan, that 'the Netherland amendment to Article 4 of the British proposal could, in his opinion, perhaps be adapted to the geographical conditions of continental States but not always to those of insular Powers. By reason of the particular configuration of Japan, of the great number of straits separating the islands (straits which are an integral part of its territory, but which, nevertheless, would fall within the definition as written in the said amendment), the Japanese delegation could not adhere to this provision.'

However, even with the above-stated addition, the proposed formula concerning straits did not carry. A declaration worded more broadly, so as to include also the laying of mines in straits by neutrals, was made in the committee on behalf of the Japanese delegation by Rear-Admiral Shimamura; but this delegation at the same time added that it would be improbable that the straits between Japanese islands would ever be entirely barred to neutral navigation, and he said that he was ready to accept a provision to the effect that

> It is desirable that communication between two open seas be not entirely barred by automatic mines. Nevertheless, passage may be subjected to conditions to be decreed by the competent authorities.

Rear-Admiral Sperry declared in the name of the delegation of the United States that 'taking into consideration the great number of islands composing the Philippine group and the uncertainty of the results that the stipulation in question might have, and also taking into account the stipulations of treaties comprised within the added paragraph, it could not take part in the discussion, since, in its opinion, the matter was outside the scope of its instructions'.

Finally, in a declaration made on behalf of the Ottoman delegation, his Excellency Turkhan Pasha stated that

> The Imperial Ottoman delegation believes that it should declare that, given the exceptional situation created by treaties in force of the straits of the Dardanelles and the Bosporus (straits which are an integral part of the territory), the Imperial Government could not in any way subscribe to any undertaking tending to limit the means of defence that it may deem necessary to employ for these straits in case of war or with the aim of causing its neutrality to be respected.

To these reservations were added doubts respecting the legal meaning of the formula as stated; it was asked what straits were contemplated by it as uniting two open seas, and up to what point would the rights of territorial sovereignty exclude an application of the principle.

Finally, the delegation of Germany and Spain declared themselves without instructions on the subject of the whole provision, and the delegation of Russia expressed reservations as to the competence of the Conference to deal with this matter. According to a declaration made by Captain Behr on behalf of the Imperial delegation:

> The article in question establishes a general status for all straits.
>
> The delegation of Russia thinks that as the status of certain straits is regulated by special treaties based upon political considerations, the stipulations concerning these straits can not form the subject of discussion. As to creating a special status for one class of straits and excepting others, this procedure would seem fruitless and very dangerous. The difference in status resulting therefrom, both for neutrals and for belligerents, would inevitably be a new source of conflicts between them.
>
> I am consequently directed by my delegation to declare that, in its opinion, the question of the status of straits joining two open seas is not within the competence of the Conference, and that the Imperial delegation can not take part in discussing any proposals relative thereto.

Owing to these reservations and declarations the committee unanimously decided to omit any provision concerning straits, which should remain unaffected by any stipulation in the present regulations; it was distinctly laid down that by the stipulations of the Convention to be concluded no change whatever is made in the present status of straits, which is in nowise affected by the provisions on the use of mines.[1]

VI

It is within these limits that the text decided upon by the committee restricts in Articles 2 to 5 the places where anchored automatic contact mines may be placed.

Article 2

It is forbidden to lay anchored automatic contact mines, beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured, starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

The committee naturally had some hesitation when considering the substitution of the limit of three marine miles for the limit of territorial waters contained in the original British proposal. The question of knowing whether, in order to avoid controversy and different opinions as to the extent of territorial waters, it would not be better to fix a limit for the purposes of the present regulations, was brought up in the subcommission by his Excellency Mr. van den Heuvel. As the British delegation had no objection to such a determination and had itself suggested the distance of three miles, the committee was left to find a formula to this effect which should take into account the limits necessitated by the sinuosities of the coasts and the islands and islets belonging to States. It was, however, clearly established that such a determination could only relate to the laying of mines, without carrying in any manner whatever a definition of territorial waters which could have application and legal consequences in other matters.

In the committee the question had to be gone into again, as some of the members were opposed to the substitution of any fixed limit to the extent of 'territorial waters'. It was observed that the right of laying mines should extend as far as the jurisdiction of the bordering State, and that especially for the defence of the country, in view of the possibility of bombardments directed against the shore by enemy naval forces, the limit for anchored mines should not be less than gun range. Rear-Admiral Sperry, on behalf of the delegation of the United States of America, declared that even a limitation on the basis of territorial waters could not be considered as sufficient in every circumstance. This is why the American proposal had avoided mentioning any limit on area.

> The omission (said he) in the proposal of the delegation of the United States of America[2] relative to submarine mines of a definite restriction on the places where they may be laid is not due to any sympathy whatever with the general use of mines beyond territorial waters, a means which in common with the whole civilized world it condemns, but for quite other considerations.
>
> The term territorial waters is perhaps no more certain in its application than measured limits; but the naval delegate of the United States is not prepared to say that a limitation in one way or another would not affect the right to defend the four thousand miles of continental coast of the United States at certain points which must be approached through a winding channel between submerged reefs, far from the shore, where some mines would absolutely prevent access. In one island of the Philippines that is surrounded by reefs there is a large bay with land on all sides, which would shelter the fleet of the greatest Power.

[1] See *ante*, p. 654.

[2] *Post*, p. 584, annex 11.

The Powers that are here represented have vast rich possessions in the Pacific and Indian Oceans, where the harbours and islands are protected by coral reef barriers, with only here and there a passage that may or may not be less than ten or even a hundred miles from the mainland.

The reefs may or may not be exposed at low tide. Where is the low-water mark? Has it been decided that all waters inside of reefs are territorial waters? Shall the three miles be measured from the reefs and beyond? The coast of Australia is fringed for more than a thousand miles by the Great Barrier Reef at a distance of from twenty to one hundred and fifty miles from the shore. Inside this reef, where there is only an occasional passage, there exists a labyrinth of lesser reefs and islets, but in the thousand miles the largest vessels can navigate in security under the guidance of a pilot. It is not necessary for a ship going to an Australian port to pass inside, and the interior waters can hardly be considered as forming a part of the high seas. It is not within the knowledge of the delegate of the United States whether they are so considered; but it seems doubtful that the nationals of that great and rich community would voluntarily abandon what might be almost a perfect defence of important points.

Many Powers represented here have vast colonial empires whose coasts are protected by almost perfect ramparts of coral, as all naval officers know, and it would be well to consider with care the possible effects of any conventional provision that we might agree upon, and that when once made would be difficult to denounce.

To these considerations it was objected that if we followed out all the logical consequences we should be led to omit any limitation as to area on the laying of anchored mines, which would not appear to correspond to the intentions of the American proposal; on the other hand, this proposal itself would have provided for the necessity of taking precautions for the security of neutrals, and this, by implying the obligation to give notice of the places mined, would appear to deprive these arguments of much of their force.

The committee held to the distinction in principle between coastal waters and the high sea; it decided, however, by a majority of votes (nine to five, with two abstentions) to fix the limit at [illegible] marine miles from the coast. In conformity with the suggestions of the subcommission, the committee, on the motion of his Excellency Vice-Admiral Röell, as a means of designating the line to mark the limit within which the laying of anchored mines is lawful, adopted a formula almost identical with that which appears in Article 2 of the Convention on fisheries in the North Sea, dated May 6, 1882. The only change made in this formula was the substitution in paragraph 1 of the word 'islets' for 'banks', which is found in the 1882 Convention. Captain Ottley drew the attention of the committee to the discussions to which the use of the word 'banks' might give rise if borrowed from the above-mentioned Convention. 'At the mouths of great rivers, and indeed everywhere in the world', said he, 'are found reefs and sand banks at a distance much greater than three miles from the coast; if we do not render the text more precise by omitting any mention of banks, it will be possible to extend the application of Article 2 to those banks and those reefs that are entirely or partly submerged, and the principle adopted that prohibits as a general rule the laying down of mines beyond coastal waters might be imperilled.'

The committee, notwithstanding the explanation given by his Excellency Vice-Admiral Röell, and according to which the term 'banks' was clear enough, comprising islets at low tide, that is to say banks that are dry at low water, preferred to select a less equivocal term, and by a majority of votes (seven against four, with six abstentions) supported the opinion of his Excellency Mr. Hammarskjöld, who proposed to substitute for the word 'banks' the word 'islets', which appears in our text.

A reservation was formulated by the Ottoman delegation on the subject of paragraph 2 of Article 2. His Excellency Turkhan Pasha declared that the limitation indicated as to bays in the said paragraph did not appear to him sufficiently to take into account all geographical circumstances.

ARTICLE 3

The limit [illegible]he laying of anchored automatic contact mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

As military ports are considered those ports which have been decreed as such by the nation to which they belong.

It will be recalled that a provision fixing a greater distance before fortified naval ports was already contained in the British proposal. This same proposal defined naval ports, stating expressly that as such should be considered 'only ports possessing at least a large graving dock and provided with the outfit necessary for the construction and repair of war-ships, if a staff of workmen paid by the State is maintained there in time of peace for this purpose'.

On this principle itself, of fixing a wider zone before naval ports, there appeared to be agreement; the only objection was that any words on this point might seem superfluous in view of the possibility of placing anchored mines in the theatre of war. But there was some hesitation as to the distance to be fixed; on the vote there were eight votes in favour of the distance of ten miles, five in favour of six miles, and three abstentions.

On the other hand, there was more difficulty in getting an agreement respecting the places before which this wider zone would be permitted. The definition of a naval port contained in the British project seemed too narrow. The delegation of the Netherlands called the attention of the subcommission to the fact that graving-docks and stocks for construction or repairs are often located in an interior commercial port which the fortified port serves as a seaport. It expressed doubts on the utility or necessity of requiring that the yards in question be operated by the State. In this sense his Excellency Vice-Admiral Röell submitted an amendment, whereby it was left to each State to determine which of its ports should be considered as naval ports. His Excellency Count Tornielli observed that there is a connexion between this question and the regulations adopted by the Conference for bombardment of undefended towns and ports by naval forces. If, according to these regulations, military arsenals and naval shipyards, even when belonging to individuals and located in undefended coast towns, are exposed to destruction by cannon fire by means of bombardment from the sea, it will be quite necessary to allow a State to defend its shipyards by placing mines so as to shelter them from bombardment by hostile naval forces; that is to say, that it is necessary to widen the zone for laying mines to ten marine miles before these places. Therefore for this purpose the places where military arsenals or naval shipyards or graving-docks exist are to be classed with naval ports.

Against these arguments Captain Ottley insisted, in the name of the British delegation, on the necessity of not extending the zone of ten miles to that degree; at least it would be necessary not to be able to place mines to such a distance before *every* hostile place where naval shipyards are located. He concluded by asking for the omission of these words in paragraph 1 of Article 3, and supported his amendment as follows:

> If we keep the words 'and those where there are naval shipyards' in the text of the Convention, it will be permissible for the belligerent to sow mines in profusion on the open sea up to a distance of ten miles around a large number of ports of a character quite commercial belonging to the enemy under the pretext that such ports possess 'naval shipyards'. We might cite as examples the ports of Marseilles, Belfast, Liverpool, Seattle, Philadelphia, Havre, St.-Nazaire, Bordeaux, Danzig, Bremerhaven, Leghorn, Sestri Ponente, Odessa, Nikolayev, Helsingfors, Rotterdam, and hundreds of other centres of industry. The result of such operations will be ruinous, and besides, such a rule will violate the principle for which the large majority of the committee has already voted. That is to say, that as far as possible the use of these engines on the open sea should be restricted.
>
> Therefore I propose to omit the words 'and those where there are naval shipyards'.

In fact it seems to me that we are so occupied with the desire to accord the greatest liberty of action to a country wishing to *defend* its coasts and harbours by means of automatic mines, that we are risking enlarging in an extremely dangerous way the right of a belligerent to sow these mines in profusion before the commercial ports of its *adversary*. There can be no reasonable objection to the use of mines as a means of *defence* of a port, since the defender will always be in the neighbourhood to watch over the dangerous region in front of his own ports. Besides, it is a fundamental principle of international law that the sovereignty of a State with respect to defence and internal police is never hindered. But no such consideration can be advanced with respect to the other side of the question, that is to say, the unlimited placing of mines before the port of an *enemy*. This operation will always constitute a very serious danger for neutral vessels since an enemy cannot possibly watch over these mines effectively.

Let us take a concrete example. A vessel carrying mines could arrive after nightfall at the mouth of a great river—the Garonne, Plata, Seine, Mississippi, Thames, or the Rhine. Before sunrise the next day it could sow five hundred mines. The mines having been placed during the night the vessel laying them can not with certainty determine the points where they are.

If we do not omit the above mentioned words this terrible operation may take place not only within the three-mile limit but even at a distance of ten miles from the coast. The belligerent vessel will justify itself for this action by declaring that there exists in some port situated on the river a 'naval shipyard', and that consequently international law grants it the right to act thus.

As is seen, the considerations presented by the British delegation had reference to attack; the reasons adduced by his Excellency Count Tornielli in advocating the extension of the zone of ten miles to any place where naval shipyards are found had regard mainly to defence. Harmony appeared to be obtained by establishing a distinction between attack and defence. On motion of Commandant Castiglia the majority of the committee decided (see the commentary on the next article) that while preserving in the text of Article 3, which contemplated only defence, the more general terms of the formula presented by the Italian delegation, the rights of the assailants would be limited in Article 4 by not permitting him to place mines at a distance of ten miles before enemy ports (not constituting, of course, naval ports) unless they contained naval shipyards *belonging to the State*.

Thus the text of Article 3 as it appears in the project secured unanimity, with the reservation by the majority of the committee that its scope be restricted in the next article with respect to laying anchored mines for the purposes of attack.

ARTICLE 4

Off the coasts and ports of their adversaries the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

After having fixed limits for the defence of coasts the regulations take up attack in Article 4. The first two paragraphs of this article deal with the limits of area that belligerents must observe in laying anchored mines before enemy coasts; the third paragraph adds a new restriction, which is that, even where anchored mines may be placed before enemy coasts in the zone referred to in the first two paragraphs, they can not be placed there 'with the sole object of intercepting commerce'.

1 Let us first take up this last provision. It owes its existence to a British proposal

contained in the first project of the delegation of Great Britain, and stating that 'it is forbidden to use automatic submarine contact mines to establish or maintain a commercial blockade'.

In the subcommission Rear-Admiral Arago remarked that it would be, above all, necessary to determine the precise scope of this provision. 'Does it, for example, forbid belligerent vessels which are establishing a blockade all use of submarine mines even for their own defence, or, on the contrary, is its only purpose to forbid the establishment of a blockade by the aid of a cordon of submarine mines placed before an enemy coast?' To this Captain Ottley answered 'that the thought underlying this provision was the prohibition of a belligerent from closing a commercial port of his enemy through the employment of automatic contact mines'.

This being the case, it was questioned whether the discussion of the British proposal did not fall outside the competence of the Third Commission. It was remarked that the question of to what extent and in what manner a blockade may be established is one for the Fourth Commission, which was dealing with the subject of blockade in war; it pertains especially to the Fourth Commission to give an expression on any question concerning the effectiveness of blockade. After an interchange of views in the subcommission the president was able to announce the unanimous decision of the subcommission 'to deal with only one of the phases of the British proposal; it would only determine in its examination of mines as a means of injuring the enemy, whether use may be made of them with the object of barring the commercial shipping of the adversary— a question it seems, which should be answered in the negative. With this established, the committee could be trusted to emphasize this thought and to leave out of the discussion the application of the principles of the Declaration of Paris on the effectiveness of blockade to the subject of mines.

It is, in fact, along this line that the committee dealt with the English proposal. It was agreed at the outset that in order to avoid any mistake it was necessary to drop the term blockade used in that proposal.

But whilst it was preferred in several quarters to avoid any provision which might unduly restrict the liberty of action of belligerents, and which, however the rule might be expressed, would raise insurmountable difficulties in its interpretation and application and give rise either to abuses or to mutual recriminations between belligerents, the majority of the committee took the contrary position (fourteen votes to three). The majority hesitated only between the formula finally accepted, which is due to a project of his Excellency Mr. Hammarskjöld in co-operation with his Excellency Mr. Hagerup and the wording of which was modified by his Excellency Count Tornielli, and another formula,[1] which was presented during the discussion by the British delegation and was worded as follows:

> The laying by a belligerent of automatic contact mines before a commercial port of its adversary is not authorized except when there is anchored there at least one large fighting unit.

This last formula was intended to reconcile the two opinions, but it was abandoned as soon as it was seen that it could not gain unanimity.

2. As to the first two paragraphs of Article 4, their guiding idea is that in principle the attacking party must have the same rights and duties that the one on the defence has as to the places where it is permissible to lay mines. Equality in weapons must therefore also be preserved in principle.

There was an amendment[2] in the contrary sense presented by the delegation of Spain with a view to restrict for the attack the use of automatic contact mines to the [illegible] waters where the other party exercised effective power.

In support of this proposal the eminently defensive nature of mines was pointed out, and the necessity of avoiding so far as possible all confusion on the subject of respon-

[1] *Actes et documents*, vol. iii, p. 671, *annexe* 25. [2] *Post*, p. [illegible].

bility for eventual damage caused by this weapon to the shipping of neutrals. To this suggestion it was answered that it seemed going too far and placing too great a restraint upon the exigencies of belligerents.

> Naval war, said his Excellency Vice-Admiral Reedtz has for its aim to cause the greatest possible damage to the hostile ships in order to bring the war to an end as soon as possible.
>
> One of the principal means is to obstruct the hostile ships in their manœuvres, for example, by preventing them from leaving their port by laying mines and at the same time giving more liberty of movement to one's own vessels. If we limit the laying of mines to maritime zones where effective power is exercised we shall certainly injure operations of an offensive nature on the theatre of war, but this will be going beyond the Spanish proposal, which has only for its object safeguarding neutral ships without at the same time hindering the operations of the belligerents.

The committee, while in principle favouring the point of view of equality for the two belligerents, consented to examine the possibility of finding a certain compromise between the requirements of the attack and the interests of peaceful navigation. Captain Castiglia said that it is fair to give more liberty of action to the country wishing to defend its ports and its coasts with mines, assuming that it can control them more easily, than to the one using mines in the waters of its adversary. Besides the provision of paragraph 3 of which we have just spoken and which already lays quite a serious restriction upon the attacking party, another would be added, limiting the assailant as to the zone in which he may lay mines to the distance of three miles; an exception would be made for naval ports and for ports classed with naval ports by reason of establishments located there. Article 3b provided said establishments belonged to the State. Several other members of the committee favoured this view, and the restriction contained in paragraph 2 of Article 4 obtained six votes against two, and nine abstentions.

It follows from this provision that the principle of equality between attack and defence finds an exception with regard to ports that are not naval ports but contain establishments of naval construction or graving-docks. If these establishments belong to the State the limit of the zone is carried to ten miles for both belligerents; if they belong to individuals it is only the zone of defence that is carried to ten miles, that of attack reaching only three miles with the exception, of course, of the sphere of immediate activity of the belligerents, which, conformably to Article 5, has no fixed limits. It may be recalled, on the subject of distinctions to be made between attack and defence, that the question of knowing whether such a distinction can be justified has received the attention of writers on international law. Mr Nys especially, in volume 3 of his treatise, declares himself in favour of a limitation that is unequal for the two belligerents. "Doubtless", says the illustrious Belgian writer, "the littoral sea forms a part of the theatre of war. . . . the littoral sea the State attacking has none of the rights of the adjacent State; . . . cannot, like the latter, invoke a right of sovereignty; it therefore does not belong to it to oblige neutrals by all means that it deems useful; it must adopt such combatant powers them as is permitted by the law of war, that is to say, blockade by means of ships."

This view of the matter did not prevail in the Institute, which placed the two belligerents on a footing of perfect equality. We are able to state that the text drawn up by the committee of examination follows an intermediate line between the two opinions by admitting exceptions to the principle of equality.

ARTICLE 5

> Within the sphere of their immediate activity, the belligerents have likewise a right to lay unanchored automatic contact mines outside the limits fixed in Articles 2 to 4 of the present regulations.
>
> Mines used outside the limits fixed in Articles 2 to 4 must be so constructed as to become harmless within two hours at most after the person using them has abandoned them.

At the beginning of the discussion in the subcommission two diametrically opposed views were advanced. The British delegation aimed at excluding all laying of anchored mines on the open sea, whilst the German delegation was of opinion that there could be no prohibition of the laying of such mines by belligerents in the theatre of war—including therein the high sea—and it was explained that under the denomination of 'theatre of war' should be included 'the sea area upon which an operation of war is taking place or has just taken place, or upon which such an operation may take place in consequence of the presence or the approach of the naval forces of the two belligerents'. In support of the first view, Captain Ottley referred to the dangers for navigation that result from the laying of anchored mines on the open sea; these mines may be the cause of disasters long after the war; once placed they are no longer in all circumstances under the effective control of the belligerent, who often has not time to remove them, and even if he has the time, can not always find them. The high sea will thus be infested in a manner incompatible with the rights of neutrals.

On the other hand, Rear-Admiral Siegel emphasized the impossibility of limiting the action of belligerents by assigning to them an absolutely circumscribed zone within which the laying of mines will be permitted; in the course of hostilities such a limit can never be scrupulously observed—therefore it is better not to lay down provisions which will not be applied in practice. Moreover, if the theatre of war may legitimately extend beyond the coastal waters of the two parties, it will be necessary to permit belligerents to make use of anchored mines for military purposes wherever strategy requires the use of this weapon. The furthest we could think of going would be to lay an obligation upon belligerents in a general way to take every possible precaution to safeguard the rights of neutrals; particularly they might be obligated to make use of only such mines as are constructed in such a way as to become harmless after a more or less limited length of time—in order that danger from them may not continue long after the war—or to indicate, as soon as military necessity permits, the dangerous regions.

In spite of the agreement which was easily arrived at respecting the necessity of imposing such measures of precaution in every use of anchored mines (Article 6), the question of principle remained in controversy; on the one hand some members of the committee insisted upon an absolute prohibition of the laying of anchored mines on the open sea, whilst on the other the formula of 'the theatre of war' was replaced by a more general idea, the delegation of Germany having suggested that the laying of anchored mines be permitted 'within the sphere of the immediate activity of the belligerents'. A proposal[1] of the delegation of the Netherlands was then presented as a compromise measure. His Excellency Vice-Admiral Röell proposed to permit only *controlled* anchored contact mines on the open sea within the sphere of the immediate hostilities of the belligerents, or as was said in a later and more explicit rendering of this same idea, mines 'which when left to themselves become harmless within a very limited length of time (two hours at the most)'. It is only under such conditions that neutrals could be safeguarded effectively without depriving belligerents of an indispensable weapon. If this condition presents technical difficulties, it was said, they would appear not to be insurmountable, and once the obligation is laid down in an international convention, science will not be slow in finding means to meet it satisfactorily.

But the intermediate proposal of the Netherlands did not succeed in gaining unanimity. Rear-Admiral Sperry observed that in his opinion the clause whereby mines should be constructed 'in such a way as to become harmless within a period of two hours, &c.', presents 'a technical requirement which has never been realized'; 'besides', said he 'by this whole stipulation an unacceptable restriction would be imposed upon the right of defending places such as the outer entrances of ports, bridges, and tunnels situated near the sea, as the ordinary range of naval artillery exceeds twelve thousand metres'. A vote was then taken upon the question whether in principle the laying of anchored mines should be permitted outside the zones indicated in Articles 2 to 4 in the sphere of the immediate activity of the belligerents; the committee by a majority of nine votes

[1] *Ibid.*, p. 685.

to seven and one abstention, decided for the affirmative, some of the members at the same time formally declaring that they intended to vote for paragraph 1 of Article 5 on the condition that the restriction proposed by the Netherland delegation should be added thereto. The Netherland addition itself obtained ten votes to four and three abstentions. The committee thus decided that mines could be placed in the sphere of the immediate activity of belligerents, 'provided that these mines are so constructed as to become harmless within a period of two hours if they do not remain under surveillance'.

This last restriction was still again changed; in accordance with an observation of Captain Ottley, accepted by the majority, and assuming the impossibility of having mines constructed so as to *become* harmless of themselves at the moment they are abandoned, it was necessary to state that the obligation imposed consists in making use of mines that can be *rendered* harmless within a period of two hours at the most, counted from the moment when these mines are abandoned. Doubts having again arisen as to the technical possibility of realizing this obligation, the committee was called upon to vote on the new English formula; it was accepted by ten votes to four, with two abstentions.

VII

Although an agreement could not be reached on all points with respect to the places where mines may be placed and with respect to the conditions of the construction of mines, there existed, on the other hand, from the beginning a unanimous wish to impose upon States making use of mines very strict obligations as to the precautions to be taken to safeguard peaceful navigation in the greatest possible measure.

These are the precautions contemplated by Articles 6 to 8 of the draft.

Article 6

When anchored automatic contact mines are used, every possible precaution must be taken for the safety of navigation.

The belligerents undertake, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, by a notice to shipowners, communicated also to the Governments through the diplomatic channel, and to do their utmost to render them harmless within a limited time.

The original proposals [1] of the British delegation as well as the amendments to those proposals presented by the delegations of the Netherlands [2] and the United States of America [3] contain provisions along the same line.

> In a general way (according to the British project) the necessary precautions shall be taken to safeguard neutral vessels engaged in a legitimate trade; and it is desirable that by reason of the very measures taken in the construction of automatic submarine contact mines these engines cease to be dangerous at the end of a suitable period.

The same provision was repeated in the amendment of the delegation of the Netherlands, with the sole difference that it was also specified that 'the laying of mines in territorial waters should be published'. The American proposal, on the other hand, contented itself in a more general way with imposing the obligation to take 'the precautions desirable for the security of neutrals'.

The examination of these formulas was referred to the committee, where a propos of the delegation of Germany [4] was presented combining these different provisions.

Rear-Admiral Siegel stated that 'in order to co-operate in the work, the purpose of which was to defend the interests of neutrals and safeguard the security to which they

[1] *Post*, p. 681.
[2] *Post*, p. 684.
[3] *Post*, p. 684.
[4] *Post*, p. 689.

are entitled by adopting every measure that might seem practical and acceptable from a military point of view', he proposed the following formula:

> If anchored contact mines are employed, all necessary precautions must be taken for the safety of legitimate navigation.
>
> The belligerents undertake especially, in case these mines are left to themselves, to notify, as soon as possible, the danger zones to the public, or to render them harmless within a limited time, so that a peril to legitimate shipping may, as far as possible, be removed.

It is this last text which served as a basis for the discussion of the committee, and which, after modification, appears in the project submitted to the Commission. At first, in order to do away with scruples of a legal nature that had been expressed concerning the possibility of restricting the precautions to be taken to *legitimate* navigation, this last qualification was omitted.

Thereupon a substitution was made in paragraph 1 of the words '*possible* precautions' for the words '*necessary* precautions', in accordance with an amendment that had already been offered in the subcommission by Captain Ivens Ferraz in the name of the delegation of Portugal and taken up again in the committee by his Excellency Turkhan Pasha. This change does not carry any essential modification; it is natural that the necessary precautions be taken so far as they are possible. Nevertheless, the purpose of the proposed amendment was manifestly to weaken the obligation and to emphasize the idea that it lies within the judgement of each State to determine in detail the measures to be taken.

The committee took the opposite view, and by a majority (twelve votes for and four votes against) decided to combine the two obligations contained in the second paragraph of the article proposed and constituting, according to the German text, an alternative. It thus changed the words '*or* to make provision' into '*and* to make provision', and at the same time it inserted, in order to remove doubts that had arisen on the subject of the technical possibility of having mines that become harmless after a limited length of time, the words 'so far as possible'. The last phrase in paragraph 2 of the German text was omitted as being already contained in the first paragraph; the other modifications adopted are likewise purely of form. Finally, it was specified that the dangerous regions shall be indicated by notice given to shipping through publications, and communicated, for additional security, also through the diplomatic channel; but this last addition received only twelve votes, five members of the committee abstaining.

In spite of the more or less vague character of the different obligations laid down in Article 6, there was agreement as to their efficacy, assuming that of course every State will do its duty in observing them strictly, especially by giving the notifications as soon as possible where military requirements permit this to be done. As to the conditions of construction spoken of in paragraph 2 of the article and to 'the limited lapse of time' there provided, although there was unanimity in the view that it was for the State laying anchored mines to fix this period in order that these mines might not continue to be dangerous long after the end of hostilities, there was a long discussion on the possibility from the technical point of view, of meeting these obligations. Captain Otthey remarked on this point 'that the laws of electro-galvanic action between two dissimilar metals when submerged afford an easy and economical method of altering the coverings of even existing mines so as to satisfy the condition of Article 6; it would be sufficient to bore a hole of a few centimetres in the covering of a mine and to close the hole with a stopper made of metal such as zinc. By changing the metallic character of the disk and changing its thickness, the period during which the mine will stay afloat and active can be regulated; the thinner the disk is, the shorter will be the active life of the mine.'

These statements presented by the British delegation in one of the last meetings of the committee met with no objection on the part of the other technical delegates present;

nevertheless, the committee thought that it could not accept the proposal, renewed by the British delegation, to omit the words 'so far as possible', which had been adopted previously.

ARTICLE 7

Any neutral State which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerent States in the use of similar mines.

However, a neutral State shall not anchor mines outside the limits indicated in Article 2.

A neutral State must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice shall be communicated at once to the Governments through the diplomatic channel.

When the question of regulating the laying of mines by neutrals again came before the committee of examination, the discussion on this subject that had already taken place in the subcommission was resumed. Indeed, two proposals had been brought before the subcommission regarding the rights and duties of neutrals in this matter. A proposal of Brazil,[1] providing for the laying by neutrals 'for the purpose of ensuring respect for their neutrality' of 'submarine mines exploding under the action of an impulse given with the knowledge of the authorities of a State', and a broader proposal of the Netherland delegation,[2] applying to neutrals all the provisions in the original British project for the laying of mines by belligerents and allowing neutrals to place unforbidden mines in their territorial waters to prevent access to their coasts.

The fundamental idea contained in these two proposals was the same; the Brazilian proposal merely placing a greater restriction as to area upon the mines that neutrals could use.

His Excellency Vice-Admiral Roell called the attention of the subcommission to the necessity of regulating this subject from two points of view; on the one hand in order to recognize expressly the power of neutrals to lay mines for the preservation of their neutrality, while at the same time conforming to the duties incumbent upon them with regard to the two belligerents, and on the other hand in order to impose upon them with respect to the use of mines the same obligations that are imposed on belligerents in the interest of peaceful navigation. Captain Burlamaqui explained the necessity of completing the British project in this sense as it appeared to deal only with belligerents; at the same time he urged the necessity of a notification by neutrals, general or special according to the circumstances of the moment, of the regions where they had placed mines. In support of these considerations he relied upon the decisions reached by the Institute of International Law in its session at Ghent and the opinions of several well-known writers on international law; and he concluded in favour of a right in neutral States to lay mines based on their fundamental right of self-preservation.

These arguments were resumed and developed at length in the committee by the naval delegate of Brazil, who remarked that a substantial guaranty of neutrality would have as a consequence the localization of armed conflicts between nations, and would contribute to their more speedy termination, an object that everybody should favour, inasmuch as it is impossible to do away entirely with war, and that it would be necessary to attempt to preserve neutrals as much as possible from any violation of their neutrality by permitting them also to use for this purpose in their own waters weapons that belligerents are permitted to use on the high seas. While neutrals have the right not to become involved in any way in the hostilities, they have heavy responsibilities as well as difficult duties. It is necessary to give them the means of discharging the obligations laid upon them while facilitating their friendly attitude with regard to the two belligerents; they must be strong in order to be respected and in order to be able to remain apart from the consequences of the conflict.

[1] *P. A*, p. 684. [2] *P. C*, p. 85.

The discussion took place upon the basis of a text offered by his Excellency Mr Hag[illegible] in the following terms :

> Every neutral State which places automatic submarine contact mines [illegible] its coast must observe the same rules and take the same precautions as are impos[illegible] upon belligerent States in the use of similar mines.

It was at first stated that the meaning of this proposal was identical with that o[illegible] the one presented to the Commission by his Excellency Mr. Tcharykow from the dele[illegible]tion of Russia with a view to assimilate, as to the technical considerations to be obser[illegible] the use of mines by belligerents and by neutrals (see III, *supra*).[1]

But it was asked whether the assimilation of neutrals to belligerents should also ex[illegible] to the places where submarine mines could be anchored, and whether precautions to b[illegible] taken by neutrals ought not to be stricter and more definite than those provided f[illegible] belligerents. Rear-Admiral Arago stated that as regards neutrals it should be enoug[illegible] to allow them to lay mines only within the three-mile zone ; they should also be oblige[illegible] to give navigators a *previous* notice of the places where they wished to lay mines, and t[illegible] communicate this notice *at once* to the other Governments ; the military reasons su[illegible]he, that give more latitude to belligerents can not be invoked in behalf of neutrals ; th[illegible] zone of ten miles has been granted belligerents mainly in view of the danger of having their ports bombarded by hostile naval forces ; this danger does not exist in the ca[illegible] of neutrals. The latitude granted belligerents as to notification answers imperativ[illegible] demands of warfare ; the neutral is in no such situation : it can always notify, and s[illegible] ought to do it in advance, because its waters are deemed to be open to the free pass[illegible] of peaceful vessels.

To the objections based on the right of neutrals to defend places to the same ex[illegible] as belligerents and on the power which should be granted neutrals to prepare themselv[illegible] eventually for war, it was answered that neutrals need not defend themselves, but m[illegible] only defend their neutrality, and that this does not imply an equality of rights w[illegible] belligerents. As to preparations for an eventual war it would be evident that these pr[illegible]parations are not contemplated by the provisions restricting neutrals in having mi[illegible] to a zone of three miles.

For these reasons the committee took the view that there should be a greater restri[illegible] upon neutrals ; accordingly, paragraphs 2 and 3 of Article 7, which were drawn up b[illegible] the president of the committee, received a majority of votes, to wit, paragraph 2 receive[illegible] eleven votes against four and two abstentions, and paragraph 3 received thirteen vote[illegible] against one and three abstentions.

The naval delegate of the United States of Amer[illegible] expressly declared that he woul[illegible] at that time refrain from voting on this article.

ARTICLE [illegible]

> At the end of the war, at the latest, the belligerent States shall be obliged to do [illegible] in their power to remove respectively, the mines which they have each laid.
>
> As regards anchored automatic contact mines which one of the belligerents ma[illegible] have placed along the coasts of the other, the belligerent States agree to notify th[illegible] other party of their location, and each State must proceed with the least possib[illegible] delay to remove the mines in its own waters.

The provisions of Article 8 complet[illegible] those [illegible] Articles 6 and 7 by imposing an obligation to remove after the close of the war the mines placed by belligerents or by neutrals. Here again States must [illegible] all means at their disposal to conform to the obligation. This formula, which [illegible] does not carry with it any danger [illegible] to the interests appearing [illegible] of the obligation assumed, but it is intended to avoid eventu[illegible] the [illegible] possible. It may be, as was explained by Rear-Admiral Sperry, that in [illegible] some [illegible] the charts and records

[1] [illegible]

of the positions of mines are lost; it may be also that in some rare cases the anchored mines that have been placed can not be found. The restriction laid down is not intended to release the State from the serious duty of making every provision for the need stated in Article 8; its only purpose is to take into account cases of *force majeure* which would render impossible a strict application of the principle.

The provision of Article 8 has its origin in the project of the British delegation;[1] the proposal was repeated in the amendments offered by the delegation of the Netherlands[2] and in the project submitted by the delegation of Germany.[3] In the British proposition, which did not provide for laying mines outside of coastal waters, the question was naturally only of mines placed within these limits; the Netherland amendment, starting with the idea of a regulation of the placing of mines also by neutrals, provided likewise the same obligation for these neutrals. The German proposition extended the obligation to mines placed in virtue of Article 5, to wit, in the immediate sphere of the belligerents outside of the limits traced in Articles 2 to 4.

The committee, a majority of which had accepted paragraph 1 of Article 5, declared in favour of this extension of the obligation to be laid down; we do not need to point out that this extension of the obligation to mines placed in the sphere of the immediate activity of the belligerents conformably to Article 5, paragraph 1, would become useless after the adoption of paragraph 2 of that article in case the technical conditions imposed in the said paragraph 2 obtain general consent.

For the rest, the provisions of Article 8 explain themselves; it is natural that recourse be had to a mutual notification by belligerents of the mines that each of them has placed before the coasts of the other, in order to allow each State to make search only in its own waters; any other solution would be difficult to apply at the moment a war has just ended. Moreover, the idea that belligerents should remove also the mines that each of them has placed before the coasts of the other has been done away with in view of the dangers of new conflicts that might ensue.

It will belong to the States to regulate in the terms of peace or in a later stipulation how the belligerents shall eventually effect the exchange of mines belonging to each other that have been recovered in their waters.

VIII

Articles 9 and 10 form, so to speak, the last chapter of the present regulations; their purpose is to determine the duration of these stipulations and to define their mode of application, while taking into account practical necessities resulting from the putting into use of perfected mines.

Article 9

The signatory States which do not at present own perfected mines of the kind contemplated in the present regulations, and which consequently could not at present carry out the rules laid down in Articles 1 and 6, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

Until a belligerent has become supplied with mines constructed so as to answer to the conditions of Article 5, paragraph 2, he is forbidden to place anchored automatic contact mines outside the limits fixed in Articles 2 to 4.

It is forbidden to use unanchored automatic contact mines which do not answer to the condition stipulated in Article 1, paragraph 1, one year after the present Convention goes into force.

Article 9 contains transitory provisions. It had its origin in a proposal[4] filed by his Excellency Mr. Tcharykow for the Russian delegation, providing that "sufficient time shall be granted Governments to put perfected mine equipment into use". In

[1] *Post*, p. 681.
[2] *Post*, p. 683.
[3] *Post*, p. 689.
[4] *Post*, p. 685.

support of this proposal Captain Behr expressed doubts respecting the existence of a protective apparatus generally adopted or even in the experimental stage and susceptible of rendering mines harmless. Moreover, said he, if a war should break out on the morrow of the adoption of a project prohibiting certain kinds of mines, States would find themselves deprived of a very important means of defence. It would therefore seem proper in all the cases indicated to give Governments the necessary time to furnish their navies with the new apparatus required by the Convention. The delegation of Great Britain did not oppose this view, provided that the time be fixed in the Convention.

When the committee of examination took up this question the term of three years was at first proposed as being sufficient, but it was objected to by several members of the committee. Rear-Admiral Shimamura remarked 'that the adoption of such a period of time would result, during such time, in all kinds of mines being made use of, however dangerous they were, and these not only in territorial waters, but even within the immediate sphere of the belligerents on the high seas, which would create great dangers for neutral shipping. Thus the result obtained after these long deliberations would be sensibly reduced.'

On the other hand it was at the same time maintained that as the technical difficulties vary in respect to the different conditions laid down for the construction of the different kinds of mines provided for in the project, it would also be necessary to vary the periods of time to be granted Governments; especially, a period of eighteen months would suffice for the transformation of the mines mentioned in paragraphs 1 and 3 of Article 1. However, the delegation of Austria-Hungary maintained that any period fixed in advance would be unacceptable for States not already possessing in their navies certain of the perfected apparatus required by the Convention. Rear-Admiral Haus declared in a memorandum read in the committee that

> Especially with regard to the mines referred to in paragraph 2 of Article 1, the Austro-Hungarian navy has not at the present time apparatus rendering harmless anchored automatic contact mines when they break loose from their moorings. In order to conform to the clause in question, the Austro-Hungarian navy would therefore be under the necessity of proceeding to a transformation in its mine material, and for this transformation no period fixed in advance could be accepted, as a measure of this kind contains independently of individual volition an element of uncertainty that is inconsistent with entering into a formal engagement that perhaps could not be fulfilled.
>
> In every improvement in technical matters the time when one may reach a satisfactory solution of a problem under study can scarcely be indicated in advance. Even if the scientific principle upon which the invention to be made rests were most simple from a theoretical point of view, obstacles absolutely unforeseen and very often difficult to overcome may at any turn occur to prevent the practical realization of the idea.
>
> It is also necessary not to lose sight in the case before us of the fact that it would not be sufficient to construct an apparatus of perfect action by means of which a mine on breaking from its moorings would be automatically rendered harmless, there is equally the problem, and this seems to me to be of no less importance, of giving the apparatus in question such a construction that the other mechanical parts of the mine are not altered to the prejudice of its military value, so that the mine remains simple and not dangerous to handle without losing its effectiveness. It is only after having tested the apparatus to be constructed from different points of view, which in all probability will necessitate a series of lengthy experiments, that we can accomplish the change in the material of mines and then indicate approximately the time in which this operation can be brought to an end.
>
> Now if in existing circumstances we were to fix in conventional form a period running from now on for the adoption of perfected mines, and if at the expiration of the time the change in question were not yet executed by one of the contracting

Powers, this latter would find itself in a most embarrassing situation. For it would be obliged, if a war should break out in the interval, either to renounce the use of mines not yet converted or to fail in its conventional engagement. Both of these eventualities must necessarily be obviated. It therefore seems to us that if we take seriously the engagement in question, we can not accept a period fixed in advance in the matter.

In accordance with these ideas the delegation of Austria-Hungary proposed [1] to omit the period of three years and to add to paragraph 2 of Article 1 a new provision worded as follows:

> The maritime Powers which do not at present own these perfected mines, and which consequently could not at present be a party to this prohibition, undertake to convert, as soon as possible, the *matériel* of their mines so as to bring them into conformity with the foregoing condition.

The memorandum of the Austro-Hungarian delegation concluded with these words:

> The fact that the conversion of mines is desirable not only for humanitarian reasons but also in the very interest of the Powers, offers a sufficient guarantee that the undertaking set forth in the above proposal will be faithfully carried out. In this way the humanitarian aim in view will be attained as soon as the means are provided. To do otherwise and to accept a particular period measured from the present for the conversion of mines would be, in the opinion of the delegation of Austria-Hungary, to make an engagement with a mental reservation which evidently would hardly be in harmony with the absolute obligation resulting from a conventional stipulation.
>
> As to the unanchored mines referred to in the first paragraph of Article 1, the delegation of Austria-Hungary entirely supports the observations presented on this subject by the naval delegate of Great Britain, and thinks that we might well get along without a provision analogous to that just mentioned or of any other provision fixing a definite time.
>
> As to the provision of the second paragraph of Article 5, the delegation of Austria-Hungary has no proposal to make, as the clause in question seems to it unacceptable in principle.

The majority of the committee supported, as to the mines referred to in paragraph 2 of Article 1, the view of the Austro-Hungarian delegation, whose proposal relative thereto was accepted by eight votes to four and five abstentions. But it was decided that the same provision should be applied to the apparatus mentioned in Article 6 in order that the mines there contemplated should likewise be the subject of an engagement by the Powers to furnish themselves therewith as soon as possible. Accordingly it was necessary to assign to this provision a different place than that proposed by the delegation of Austria-Hungary; it was thought that a special article should be made of it to be placed in this last chapter.

As to unanchored automatic contact mines it seemed equally necessary to fix a period for the change of existing material. One year, counted from the coming into effect of the Convention to be concluded, was deemed sufficient by the majority of the committee by twelve votes against five abstentions; it is to these considerations that the present form of paragraphs 1 and 3 of Article 9 is due.

There remained the question of the time to be fixed for the mines mentioned in paragraph 2 of Article 5. For this a British proposal,[2] offered in agreement with the delegation of Japan, was adopted by nine votes to two and six abstentions to the following effect:

> Until a belligerent is provided with mines constructed so as to fulfil the condition contained in the second paragraph of Article 5, it is forbidden to place anchored automatic contact mines beyond the limits fixed by Articles 2 to 4.

[1] *Actes et documents*, vol. iii, p. 673, *annexe* 27.

[2] Ibid., p. 674, *annexe* 28.

By this provision, which appears as paragraph 2 of the article in question, and which is naturally accepted only by the States that do not object to the admission of paragraph 2 of Article 5, while avoiding the fixing of a delay for the putting into use of mines answering the requirements of paragraph 2 of Article 5, there is introduced an indirect sanction by forbidding the use of mines not answering the conditions laid down in the said article outside of the limits established by Articles 2 to 4.

Captain Ottley, in support of his proposal, put the question, whether mines that do not possess safeguards should be used elsewhere than in territorial waters before mines fulfilling these conditions are available? A negative answer should be given this question.

> The opinion (said he) that international law permits the use of unperfected automatic mines everywhere beyond territorial waters where the immediate sphere of the activity of belligerents lies, seems rather pessimistic. It will perhaps be more exact to say that it was rather the lack of a special law on this subject that caused the unrestricted use of mines of this dangerous type during the recent war in the Far East.
>
> The deplorable effects of such use with respect to merchant vessels and neutrals have been pointed out to us by our colleague from China. The conscience of the human race is now awakened, and it has become our absolute duty to take such measures that in the future these terrible events will never be repeated.
>
> Therefore (concluded he) I sincerely beg my colleagues to insist that in the future mines of the unperfected kind that were used in the Far East shall never be allowed.

ARTICLE 10

> The stipulations of the present Convention are concluded for a period of five years from the date on which the present Convention takes effect.
>
> The signatory Powers express the hope that they may have occasion to resume consideration of the question of the use of submarine mines before the expiration of the period provided in the foregoing paragraph.

This article may be passed without comment; it was accepted by seven votes against five. His Excellency Count Tornielli, with a view to facilitating a revision of the present Convention, especially on account of the technical difficulties which on several occasions have come up in the course of the discussions in the committee, proposed that the Convention be concluded for a period fixed in advance. The term of five years proposed by Rear-Admiral Siegel was accepted after some hesitation between this term and a longer term proposed by the English delegation, and after the rejection of a proposal of Rear-Admiral Shimamura, supported by Colonel Ting (by seven votes to five), fixing the duration of the Convention to the next Conference. It is to be noted that Colonel Ting gave notice that he would take up this last proposal again before the Commission.

The *vœu* contained in the second paragraph completes to a certain degree the provision of paragraph 1 by urging the conclusion of a new agreement to replace the present Convention; it was adopted unanimously on the motion of Rear-Admiral Siegel.

IX

Before closing this report it is necessary to speak of a question which was debated in the subcommission and in the committee of examination, but which did not result in the insertion of an express provision in the draft: to wit, the question of the responsibility that might arise out of the laying of automatic submarine contact mines.

Here again we find a proposal on the part of the delegation of the Netherlands[1] according to which an article of the following tenor would be added at the end of the regulations:

[1] *Post*, p. 683.

The loss of non-hostile personnel or material caused by the placing of mines outside of notified regions must be compensated for by the Government that laid them.

In support of this proposal, his Excellency Vice-Admiral Röell expressed the wish of the Netherland delegation to co-operate in finding a formula regulating the indemnity due for damage caused by a want of precaution on the part of Governments. Although a satisfactory solution was very difficult to formulate, he nevertheless believed that the establishment of a principle setting forth the responsibility would be indispensable.

An analogous proposal was presented by the delegation of Brazil [1] as an addition to its amendment on the laying of mines by neutrals; Captain Burlamaqui said that 'the calculation of the damage should be made in an ordinary suit; in case of disagreement the fixing of the indemnity should rest with the Permanent Court of Arbitration, to which the interested States should send within six months after the accident all documents necessary for the defence of their rights. The payment of the indemnity should take place three months after the Court of Arbitration gives judgement.'

The general principle outlined in these proposals was opposed by nobody; it was recalled that the Institute of International Law,[2] in its session at Ghent, had also answered the question in this sense. 'A violation of one of the preceding rules', so read the provisional text adopted by the Institute, 'entails responsibility therefor on the part of the State at fault.'

But on the other hand attention was drawn to the practical difficulties in applying the general rule by which, according to the expression of his Excellency Count Tornielli, 'he who causes damage unjustifiably should make reparation therefor'. It would be decided that in certain regions the two belligerents might lay mines; which of the two would pay the damages if unfortunately a peaceful ship should be destroyed in a region where the two belligerents had made use of submarine mines? And how could it be proved which State was at fault?

In presence of these objections, his Excellency Vice-Admiral Röell proposed, in order to ensure a wider application of the principle, to make no mention of fault in the placing of mines and to extend the responsibility even to a chance case and without there being any infraction of the adopted rules on the part of the State that has made use of them. The laying of mines should in itself suffice to involve the responsibility of the State that has made use of a weapon so dangerous for peaceful navigation. This extension of the principle could not secure a majority vote; it was rejected by five votes to three, with eight abstentions; several among the naval delegates expressly declared that they must refrain from voting upon the strictly legal question. But on the proposal of his Excellency Mr. van den Heuvel it was decided by the committee that it would not be necessary to make any express rule respecting the question, inasmuch as the general principles of law are sufficient to solve all cases that may arise. Indeed, any legitimate mine-laying could not involve liability, and there would be no reason to depart in this matter from rules that are applied to the other operations of war. If there is a question of damage caused by unlawful use in contravention of adopted rules, the general principles of law equally suffice to lay the responsibility upon the State at fault. The question of difficulties in proof should not be brought into the discussion: it could not in any way lead to modifications in the material rules of law to be applied. With this in mind the committee refrained from adding any provision on this subject.

Such, gentlemen, is the project of the regulations we have the honour to submit to the judgement of the Commission: it represents a first attempt to regulate in an international convention this difficult and relatively new subject. We believe, however, that if it is adopted by all States in its essential provisions and applied in harmony with the spirit that has originated it, an important step in advance will be made in the path of progress and civilization.

[1] *Post* p. 684.

[2] *Resolutions of the Institute of International Law* (New York, 1916), p. 108. This provision was adopted by the Institute at Madrid in 1911.

ANNEX 3[1]

DRAFT REGULATIONS CONCERNING LAYING OF AUTOMATIC SUBMARINE CONTACT MINES[2]

ARTICLE 1

It is forbidden:

1. To lay unanchored automatic contact mines which do not become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

ARTICLE 2

It is forbidden to lay anchored automatic contact mines beyond a distance of three nautical miles from low-water mark, throughout the length of the coast-line, as well as along the islands and islets adjacent thereto.

In the case of bays, the zone of three nautical miles shall be measured starting from a straight line drawn across the bay in its part nearest the entrance at the first point where the opening does not exceed ten miles in width.

ARTICLE 3

The limit for the laying of anchored automatic contact mines is extended to a distance of ten nautical miles off military ports and ports where there are either military arsenals or establishments of naval construction or repair.

As military ports are considered those ports which have been decreed as such by the nation to which they belong.

ARTICLE 4

Off the coasts and ports of their adversaries, the belligerents may lay anchored automatic contact mines within the limits indicated in the two preceding articles.

However, they shall not exceed the limit of three nautical miles off ports which are not military ports, unless establishments of naval construction or repair belonging to the State are situated therein.

It is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping.

ARTICLE 5

Within the sphere of their immediate activity, the belligerents have likewise a right to lay anchored automatic contact mines outside the limits fixed in Articles 2 to 4 of the present regulations.

Mines used outside the limits fixed in Articles 2 to 4 must be so constructed as to become harmless within two hours at most after the person using them has abandoned them.

ARTICLE 6

When anchored automatic contact mines are used, every possible precaution must be taken for the safety of navigation.

The belligerents undertake, in case these mines should cease to be under surveillance, to notify the danger zones, as soon as it can be done, by a notice to ship-owners, communicated also to the Governments through the diplomatic channel, and to do their utmost to render them harmless within a limited time.

[1] *Actes et documents*, vol. III, p. 427, *annexe B*.

[2] Text submitted to the Third Commission.

ARTICLE 7

Any neutral State which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerent States in the use of similar mines.

However, a neutral State shall not anchor mines outside the limits indicated in Article 2.

A neutral State must inform ship-owners, by a notice issued in advance, where automatic contact mines will be anchored. This notice shall be communicated at once to the Governments through the diplomatic channel.

ARTICLE 8

At the end of the war, at the latest, the signatory States shall be obliged to do all in their power to remove, respectively, the mines which they have each laid.

As regards anchored automatic contact mines which one of the belligerents may have placed along the coasts of the other, the signatory States agree to notify the other party of their location, and each State must proceed with the least possible delay to remove the mines in its own waters.

ARTICLE 9

The signatory States which do not at present own perfected mines of the kind contemplated in the present regulations, and which consequently could not at present carry out the rules laid down in Articles 1 and 6, undertake to convert the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

Until a belligerent has become supplied with mines constructed so as to answer to the conditions of Article 5, paragraph 2, he is forbidden to place anchored automatic contact mines outside the limits fixed in Articles 2 to 4.

It is forbidden to use unanchored automatic contact mines which do not answer to the condition stipulated in Article 1, paragraph 1, one year after the present Convention goes into force.

ARTICLE 10

The stipulations of the present Convention are concluded for a period of five years from the date on which the present Convention takes effect.

The signatory Powers express the hope that they may have occasion to resume consideration of the question of the use of submarine mines six months before the expiration of the period provided in the foregoing paragraph.

ANNEX 4[1]

PROPOSITION OF THE BRITISH DELEGATION

ARTICLE 1

The use of unmoored automatic submarine contact mines is forbidden.

ARTICLE 2

Automatic submarine contact mines which on leaving their mooring-place do not become harmless are prohibited.

ARTICLE 3

The use of automatic submarine contact mines to establish or maintain a commercial blockade is forbidden.

[1] *Actes et documents*, vol. iii, p. 660, *annexe* 9.

Article 4

Belligerents can make use of automatic submarine contact mines only in their territorial waters or those of their enemies. Nevertheless, before fortified military ports this zone may be extended to a distance of ten miles from shore batteries, with the responsibility for the belligerent which places these mines to give notice thereof to neutrals and moreover to take the steps that circumstances permit in order to prevent, so far as possible, merchant ships that could not have received this notice from being exposed to destruction.

Only ports possessing at least a large graving-dock and equipped with the apparatus necessary for construction and repair of war vessels, and which a staff of workmen paid by the State to effect the construction and repair of war vessels is maintained in time of peace, shall be considered as within the category of military ports.

Article 5

In a general way the necessary precautions shall be taken to safeguard neutral vessels engaged in a legitimate trade; and it is desirable that by reason of the very measures taken in the construction of automatic submarine contact mines these engines cease to be dangerous at the end of a suitable period of time.

Article 6

At the end of the war the belligerents shall mutually communicate so far as possible the necessary information as to the location of the automatic contact mines that each may have placed along the coasts of the other, and each belligerent must proceed with the utmost speed to remove the mines found in these territorial waters.

ANNEX 5[1]

PRELIMINARY MOTION OF THE ITALIAN DELEGATION

Article 1

Unanchored automatic submarine contact mines must be furnished with an apparatus rendering them harmless one hour at the most after their placement.

Article 2

Anchored automatic contact mines must be constructed in such a way as to become harmless when, having broken their moorings, they are adrift on the sea.

ANNEX 6[2]

AMENDMENT OF THE JAPANESE DELEGATION TO THE BRITISH PROPOSITION[3]

Replace Article 1 with the following provisions:

Article 1

Unmoored automatic submarine contact mines are forbidden, with the exception of those manufactured in a way to become absolutely harmless after a limited time of submersion so as to offer no danger to neutral vessels outside the immediate sphere of hostile actions.

[1] *Actes et documents*, vol. iii, p. 661, *annexe* 10.

[2] Ibid., p. 661, *annexe* 11.

[3] *Ante*, p. 681.

ANNEX 7 [1]

AMENDMENTS OF THE NETHERLAND DELEGATION TO THE PROPOSITION OF THE BRITISH DELEGATION [2]

ARTICLE 4

Omit the part of the article after the words ' guns on land '.
Insert the following phrases :

The same applies to neutrals wishing to place mines in their territorial waters to prevent access to their territory.

In all cases straits uniting two open seas can not be barred.

ARTICLE 5

Add the following phrase at the beginning of the article : ' The laying of mines in territorial waters should be published, and besides '.
Omit the word ' neutral ' in the second line.

ARTICLE 6

Insert the words ' or neutral ' at the fourth line after the word ' belligerent '. Change the word ' these ' in the last line into ' its '.

Add an article worded thus :

ARTICLE 7

The loss of non-hostile personnel or material caused by the placing of mines outside of notified regions must be compensated for by the Government that laid them.

Text of Articles 4, 5, and 6 as modified by the above amendments

ARTICLE 4

Belligerents can make use of automatic submarine contact mines only in their territorial waters or those of their enemies. Nevertheless, before fortified war ports this zone can be extended up to a distance of ten miles from the guns on land. The same applies to neutrals wishing to place mines in their territorial waters to prevent access to their territory.

In all cases straits uniting two open seas can not be barred.

ARTICLE 5

The laying of mines in territorial waters should be published, and besides in a general way the necessary precautions shall be taken to safeguard vessels engaged in a legitimate trade ; and it is desirable that by reason of the very provisions made in the construction of automatic submarine contact mines these engines cease to be dangerous at the end of a suitable period of time.

ARTICLE 6

At the end of the war the belligerents shall mutually communicate so far as possible the necessary information as to the location of the automatic contact mines that each may have placed along the coasts of the other, and each belligerent or neutral must proceed with the utmost speed to remove the mines found in its territorial waters.

[1] *Actes et documents*, vol. iii, p. 661, *annexe* 12.

[2] *Ante*, p. 681.

ANNEX 8[1]

AMENDMENT OF THE BRAZILIAN DELEGATION TO THE BRITISH PROPOSITION[2]

Add a new article :

Submarine mines exploding under the action of an impulse given with the knowledge of the authorities of a State can be laid by that State in its territorial waters for the purpose of ensuring respect for its neutrality.

Once these submarine mines are set, a notice thereof should be given, and from that moment it will have no further responsibility in case of displacement of these mines.

ANNEX 9[3]

AMENDMENTS OF THE SPANISH DELEGATION TO THE PROPOSITION OF THE BRITISH DELEGATION[2]

ARTICLE 2

So long as there have not been found means recognized as efficacious by an international technical commission for rendering automatic contact mines harmless when they leave their moorings, they are prohibited.

ARTICLE 4

Belligerents can make use of submarine contact mines only in their territorial waters or in those of their enemies *when they exercise effective control over them.*

ANNEX 10[4]

AMENDMENT OF THE GERMAN DELEGATION TO THE PROPOSITION OF THE BRITISH DELEGATION[2]

ARTICLE 4

Add the following provision :

The laying of automatic contact mines shall also be permitted on the theatre of war ; and that area of the sea shall be considered as a theatre of the war upon which is taking place or has just taken place an operation of war or upon which such an operation may take place in consequence of the presence or the approach of the armed forces of the two belligerents.

ANNEX 11[5]

AMENDMENT OF THE DELEGATION OF THE UNITED STATES TO THE PROPOSITION OF THE BRITISH DELEGATION[2]

1. Unanchored automatic contact mines are prohibited.
2. Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.
3. If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals.

[1] *Actes et documents*, vol. iii, p. 662, *annexe* 13.
[2] *Ante*, p. 681.
[3] *Actes et documents*, vol. iii, p. 663, *annexe* 14.
[4] Ibid., p. 663, *annexe* 16
[5] Ibid., p. 664, *annexe* 17.

ANNEX 12 [1]

AMENDMENT OF THE RUSSIAN DELEGATION TO THE PROPOSITION OF THE BRITISH DELEGATION [2]

1. Belligerents shall use anchored automatic submarine contact mines constructed so far as possible in such a way as to become harmless when they have broken from their moorings.
2. Automatic floating mines shall be constructed so far as possible in such a way as to become harmless after a certain period following their placing.
3. Torpedoes shall be constructed so far as possible in such a way as to become harmless when they have missed their mark.
4. Sufficient time shall be granted Governments to put perfected mine equipment into use.

ANNEX 13 [3]

SYNOPTIC TABLE OF THE PRECEDING PROPOSITIONS AND AMENDMENTS [4]

ARTICLE 1

It is forbidden to lay anchored automatic submarine contact mines beyond the limit indicated in Article 2.

German Amendment

Nevertheless, the laying of automatic contact mines shall also be permitted on the theatre of war; and that area of the sea shall be considered as a theatre of the war upon which is taking place or has just taken place an operation of war or upon which such an operation may take place in consequence of the presence or the approach of the armed forces of the two belligerents.

ARTICLE 2

(The limit mentioned in Article 1 extends to three nautical miles from the low-water mark along the whole extent of the coast. For bays it follows the sinuosities of the coast except that it is measured from a straight line drawn across the bay in the part nearest the opening towards the sea where the spread between the two coasts of the bay is six nautical miles in width.)* Before fortified military ports the limit may be extended to a distance of ten miles from shore batteries.

(Fortified ports shall be considered as war ports if they possess at least a large graving-dock and are equipped with the apparatus necessary for construction and repair of war vessels, and if there is maintained there in time of peace a body of workmen paid by the State to effect the construction and repair of war vessels.)

*The text between parentheses is new.

Netherland Amendment

Omit the phrase between parentheses.

[1] Ibid., p. 664, *annexe* 18.
[2] *Ibid.*, p. 681.
[3] *Actes et documents*, vol. iii, p. 695, *annexe* 19.
[4] The British proposition, slightly modified as to form, is taken as a basis.

ARTICLE 3

Spanish Amendment

It is forbidden to lay submarine contact mines in waters where the Government laying them does not exercise effective control.

ARTICLE 4

It is forbidden to employ automatic submarine contact mines to establish or maintain a commercial blockade.

ARTICLE 5

Netherland Amendment

In straits uniting two seas it is forbidden to lay mines in such a way that these straits cannot be passed by neutral vessels.

ARTICLE 6

Italian Amendment accepted by the British Delegation

It is forbidden to employ unanchored automatic contact mines which are not furnished with an apparatus rendering them harmless at the most . . . after laying them.

Japanese Amendment

Unmoored automatic submarine contact mines are forbidden with the exception of those constructed in a way to become absolutely harmless after a limited time of submersion so as to offer no danger to neutral vessels outside the immediate sphere of hostile actions.

Russian Amendment

Automatic floating mines shall be constructed so far as possible in such a way as to become harmless after a certain period following their placing.

American Amendment

Unanchored automatic contact mines are prohibited.

ARTICLE 7

Submarine contact mines which on breaking their moorings do not become harmless are prohibited.

Italian Amendment

Anchored automatic contact mines must be constructed in such a way as to become harmless when, having broken their moorings, they are adrift on the sea.

Spanish Amendment

So long as there have not been found means recognized as efficacious by an international technical commission for rendering automatic contact mines harmless when they leave their moorings, they are prohibited.

Russian Amendment

Belligerents shall use anchored automatic submarine contact mines constructed so far as possible in such a way as to become harmless when they have broken from their moorings.

American Amendment

Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.

Brazilian Amendment

Submarine mines exploding under the action of an impulse given with the knowledge of the authorities of a State can be laid by that State in its territorial waters for the purpose of ensuring respect for its neutrality. Once these submarine mines are set a notice thereof should be given, and from that moment it will have no further responsibility in case of displacement of these mines.

ARTICLE 8

Russian Amendment

Torpedoes shall be constructed so far as possible in such a way as to become harmless when they have missed their mark.

ARTICLE 9

The laying of automatic contact mines must be *published*,* and besides in a general way the *necessary* † precautions must be taken to safeguard neutral vessels engaged in a legitimate trade. At the end of the war the belligerents mutually communicate so far as possible the necessary information as to the location of the automatic contact mines that each may have placed along the coasts of the other, and each belligerent *or neutral* ‡ must proceed with the utmost speed to remove the mines that they have placed.

* *Netherland Amendment*

† Alternative : *possible*.

‡ *Netherland Amendment*

American Amendment

If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals.

ARTICLE 10

Netherland Amendment

The loss of non-hostile personnel or *matériel* caused by the placing of mines beyond the notified areas must be made good by the Government that laid them.

ARTICLE 11

Russian Amendment

A sufficient period of time shall be accorded Governments to put into use perfected mine apparatus.

ANNEX 14[1]

AMENDMENT OF THE GERMAN DELEGATION TO THE SYNOPTIC TABLE[2]

ARTICLE 1

Add the following provision:

The laying of automatic contact mines shall also be permitted in the area of the immediate activity of the belligerents, provided precautions are taken for the safety to which neutrals are entitled.

ANNEX 15[3]

AMENDMENT OF THE NETHERLAND DELEGATION TO THE SYNOPTIC TABLE[2]

ARTICLE 1

Add the following provision:

Nevertheless, anchored contact mines, if under control, may also be employed in the area of the immediate activity of the belligerents, provided the necessary precautions are taken for the safety to which neutrals are entitled.

ANNEX 16[4]

AMENDMENTS OF THE NETHERLAND DELEGATION TO THE SYNOPTIC TABLE[2]

ARTICLE 1

Add the following provision:

Nevertheless, anchored automatic contact mines shall be permitted within the area of the immediate activity of the belligerents, provided precautions are taken for the safety to which neutrals are entitled; it is especially necessary if these mines are left to themselves that they cease to be harmful after a maximum period of two hours.

ARTICLE 5

In any case, the communication between two open seas cannot be barred entirely, and passage will be permitted only on conditions which are indicated by the competent authorities.

[1] *Actes et documents*, vol. III, p. 668, annex 20.
[2] *Ante*, p. 685.
[3] *Actes et documents*, vol. III, p. 669, annex 21.
[4] Ibid., p. 669, annex 22.

ANNEX 17[1]

PROPOSAL OF THE GERMAN DELEGATION BASED ON THE DIFFERENT PROPOSITIONS AND AMENDMENTS ALREADY SUBMITTED

I

United States, Japan, Germany

The laying of automatic contact mines is permitted to belligerents only in their territorial waters and those of their adversaries, and in the area of the immediate activity of the belligerents.

II

Japan

Unanchored automatic contact mines are forbidden with the exception of those constructed in such a way as to become harmless after a limited time, so as to offer no danger to neutral vessels.

III

United States

Anchored automatic contact mines which do not become innocuous on getting adrift are prohibited.

IV

United States, Netherlands, Germany

If anchored contact mines are employed, all necessary precautions must be taken for the safety of legitimate navigation.

The belligerents undertake especially in case these mines are left to themselves to notify, as soon as possible, the danger zones to the public, or to render them harmless within a limited time, so that a peril to legitimate shipping may, as far as possible, be removed.

V

Russia

A sufficient period of time shall be given Governments to put into use perfected mine apparatus.

VI

England

At the latest, at the end of the war each belligerent removes the mines placed outside its territorial waters. Moreover, belligerents mutually communicate the necessary information as to the placing of the automatic contact mines that each has laid along the coasts of the other, and each belligerent or neutral must proceed as soon as possible to the removal of the mines found in its waters.

ANNEX 18[2]

AMENDMENT OF THE NETHERLAND DELEGATION TO THE SYNOPTIC TABLE[3]

ARTICLE 2

Before military ports the limit may be extended to a distance of six nautical miles from the shore batteries.

Military ports shall be considered to be those which appear as such in the official list of the navy.

[1] Ibid., p. 669, *annexe* 23.

[2] Ibid., p. 670, *annexe* 24.

[3] Annex 13, *ante*, p. 685.

ANNEX 19[1]

AMENDMENT OF THE BRITISH DELEGATION TO THE DRAFT REGULATIONS[2] PRESENTED TO THE COMMISSION

ARTICLE 5

Omit this article.

In case this amendment is accepted:

ARTICLE 9

Omit paragraph 2 of this article.

ARTICLE 4

Substitute the following for paragraph 3:

It is forbidden to lay automatic contact mines before the ports of the adversary other than those which are considered as war ports, according to the definition contained in Article 3, paragraph 2.

ARTICLE 10

Substitute the following for this article:

The stipulations of the present Convention are concluded for a period of seven years, beginning with the taking effect of the present Convention or until the closing of the Third Peace Conference, if that date is earlier.

The signatory Powers engage to take up the question of the use of submarine mines six months before the expiration of the period of seven years provided for in paragraph 1, in case it has not been taken up and settled the Third Peace Conference at an earlier date.

ANNEX 20[3]

AMENDMENT OF THE NETHERLAND DELEGATION TO THE DRAFT REGULATIONS PRESENTED TO THE COMMISSION

As no mention of 'straits' has been made in the Draft Regulations respecting the laying of automatic contact mines it might be thought that the different stipulations relating to mines contained in these regulations apply quite as well to straits as to other regions of the sea.

But this interpretation is found to be utterly inconsistent with what is said in the report preceding the Draft Regulations. In short, we there read the following:[4]

> Owing to these reservations and declarations the committee unanimously decided to omit any provision concerning straits, which should remain unaffected by any stipulation in the present Regulations; it was clearly established that by the stipulations of the Convention to be concluded no change whatever is made in the present statns of straits, which is in nowise affected by the provisions on the use of mines.

As is seen, there is a capital contradiction between the Draft Regulations and the report as regards the status of straits in their relation to mines. In order to define clearly what the Convention is meant to establish, the delegation of the Netherlands proposes to add to the Draft Regulations an article worded as follows:

ARTICLE 10

This Convention does not modify the present status of straits in any degree.

[1] *Actes et documents*, vol. iii, p. 677, *annexe* 32.
[2] *Ante*, p. 680.
[3] Ibid., p. 678, *annexe* 33.
[4] *Ante*, p. 664.

ANNEX 21[1]

AMENDMENT OF THE BRITISH DELEGATION TO THE DRAFT REGULATIONS[2] ADOPTED ON THE BASIS OF THE DELIBERATIONS OF THE COMMISSION

ARTICLE 6

Add to the article a paragraph as follows :

The prohibition against using automatic contact mines which do not answer to the conditions of Article 1 shall come into force for unanchored mines one year and for anchored mines three years after the ratification of the present Convention.

ANNEX 22[3]

EXTRACT FROM THE PROCÈS-VERBAL OF THE EIGHTH PLENARY SESSION OF THE CONFERENCE, OCTOBER 9, 1907.

His Excellency SIR ERNEST SATOW: Having voted for the mines Convention which the Conference has just accepted, the British delegation desires to declare that it cannot regard this arrangement as furnishing a final solution of the question, but only as marking a stage in international legislation on the subject.

It does not consider that adequate account has been taken in the Convention of the right of neutrals to protection, or of humanitarian sentiments which cannot be neglected. The British delegation has done its best to bring the Conference to share its views, but its efforts in this direction have remained without result.

The high seas, gentlemen, form a great international highway. If in the present state of international laws and customs, belligerents are permitted to fight out their quarrels upon the high seas, it is none the less incumbent upon them to do nothing which might, long after their departure from a particular place, render this highway dangerous for neutrals who are equally entitled to use it. We declare without hesitation that the right of the neutral to security of navigation on the high seas ought to come before the transitory right of the belligerent to employ these seas as the scene of operations of war.

Nevertheless, the Convention as adopted imposes upon the belligerent no restriction as to the placing of anchored mines, which consequently may be laid wherever the belligerent chooses, in his own waters for self-defence, in the waters of the enemy as a means of attack, or finally on the high seas, so that neutral navigation will inevitably run great risks in time of naval war, and may be exposed to many a disaster. We have already on several occasions insisted upon the danger of a situation of this kind. We have endeavoured to show what would be the effect produced by the loss of a great liner belonging to a neutral Power. We did not fail to bring forward every argument in favour of limiting the field of action for these mines, while we called very special attention to the advantages which the civilized world would gain from this restriction, since it would be equivalent to diminishing to a certain extent the causes of armed conflicts. It appeared to us that by acceptance of the proposal made by us at the beginning of the discussion, dangers would have been obviated which in every maritime war of the future will threaten to disturb friendly relations between neutrals and belligerents. But, since the Conference has not shared our views, it remains for us to declare in the most formal manner that these dangers exist, and that the certainty that they will make themselves felt in the future is due to the incomplete character of the present Convention. As this Convention, in our opinion, constitutes only a partial and inadequate solution of the problem, it cannot, as has already been pointed out, be regarded as a complete exposition of the international law on this subject Accordingly, it will not be permissible to presume the legitimacy

[1] *Actes et documents*, vol. iii, p. 680, *annexe* 37. [2] *Ante*, p. 655. [3] Ibid., vol. i, p. 281.

of an action for the mere reason that this Convention has not prohibited it. This is a principle which we desired to affirm, and which it will be impossible for any State to ignore, whatever its power.

His Excellency Baron Marschall von Bieberstein: In view of the declaration just made by his Excellency the delegate of Great Britain, I would like to repeat what I have already said in the Commission:

> That a belligerent who lays mines assumes a very heavy responsibility towards neutrals and towards peaceful shipping is a point on which we are all agreed. No one will resort to this instrument of warfare unless for military reasons of an absolutely urgent character. But military acts are not solely governed by stipulations of international law. There are other factors: Conscience, good sense, and the sentiment of duty imposed by principles of humanity will be the surest guides for the conduct of sailors and will constitute the most effective guaranty against abuses. The officers of the German navy, I loudly proclaim it, will always fulfil in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization.
>
> I have no need to tell you that I entirely recognize the importance of the codification of rules to be followed in war. But it would be a great mistake to issue rules the strict observance of which might be rendered impossible by the law of facts. It is of the first importance that the international maritime law which we desire to create should only contain clauses the execution of which is possible from a military point of view—is possible even in exceptional circumstances. Otherwise the respect for law would be lessened and its authority undermined. It would also seem to us to be preferable to maintain at present a certain reserve, in the expectation that seven years hence it will be easier to find a solution which will be acceptable to the whole world.

As to sentiments of humanity and civilization, I cannot admit that there is any Government or country which is superior to the one I have the honour to represent.

CONVENTION (IX) CONCERNING BOMBARDMENT BY NAVAL FORCES IN TIME OF WAR[1]

(For the heading see the Convention for the pacific settlement of international disputes.[2])

Animated by the desire to realize the *vœu*[3] expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages ;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application which would safeguard the rights of the inhabitants and assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulations of 1899 respecting the laws and customs of land war ;

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war ;

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed the following as their plenipotentiaries :

[Here follow the names of plenipotentiaries.]

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions :

CHAPTER I.—*The Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings*

ARTICLE 1

It is forbidden to bombard by naval forces undefended ports, towns, villages, dwellings or buildings.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbour.

ARTICLE 2

Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

[1] *Acts et documents*, vol. i, p. 654. [2] *Ante*, p. 292. [3] *Ante*, p. 21.

If for military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

ARTICLE 3

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

These requisitions shall be in proportion to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

ARTICLE 4

The bombardment of undefended ports, towns, villages, dwellings, or buildings for non-payment of money contributions is forbidden.

CHAPTER II.—*General Provisions*

ARTICLE 5

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white.

ARTICLE 6

If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do his utmost to warn the authorities.

ARTICLE 7

It is forbidden to give over to pillage a town or place even when taken by storm.

CHAPTER III.—*Final Provisions*

ARTICLE 8

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 9

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Netherland Minister of Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

ARTICLE 10

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere shall notify its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 11

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 12

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 13

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 9, paragraphs 3 and 4, as

well as the date on which the notifications of adhesion (Article 10, paragraph 2) or of denunciation (Article 12, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Report to the Conference from the Third Commission on Bombardment by Naval Forces in Time of War[1]

(Reporter, Mr. Georgios Streit)

The question of the bombardment of ports, towns, and villages by naval forces incidentally engaged the attention of the First Peace Conference. The Conference did not succeed in disposing of it in a positive manner but instead passed, by an almost unanimous vote of the Powers there represented, a resolution which appears in the Final Act of 1899 and reads as follows:

> The Conference utters the *vœu* that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent conference for consideration.

Indeed, as his Excellency the first plenipotentiary of Belgium has rightly reminded the Third Commission, the very useful codification of the laws and customs of war on land by the First Conference, on the basis already prepared in 1874 by the resolutions of the Conference of Brussels would appear incomplete if there were not also settled the question of bombardment by naval forces of ports, towns, and villages: a question so intimately connected with the one settled by the Regulations of 1899 on the subject of bombardment by land forces of undefended towns, villages, and habitations.

Without ignoring the differences which may exist in respect of bombardment between

[1] The report on this subject was presented to the Third Commission by a committee of examination created by the first subcommission and presided over by his Excellency Mr. Hagerup (Norway), president of that subcommission. The committee was composed of the following members: Rear-Admiral Siegel (Germany), Rear-Admiral Sperry (United States), Rear-Admiral Haus (Austria-Hungary), his Excellency Mr. van den Heuvel (Belgium), Colonel Ting (China), Rear-Admiral Scheller (Denmark), Captain Chacón (Spain), Rear-Admiral Arago and Captain Lacaze (France), Captain Ottley (Great Britain), Professor Georgios Streit, reporter (Greece), his Excellency Mr. Pierre Hudicourt (Haiti), his Excellency Count Tornielli and Captain Castiglia (Italy), Rear-Admiral Hayao Shimamura (Japan), his Excellency Vice-Admiral Röell (Netherlands), Captain Sturdza (Roumania), Captain Behr (Russia), his Excellency Mr. Hammarskjöld and Captain G. af Klint (Sweden), and his Excellency Vice-Admiral Mehemed Pasha (Turkey). *Actes et documents*, vol. 1, p. 111.

The project submitted with this report (ibid., vol. 1, p. 118, *annexe* F) was adopted by the Conference, August 17, 1907. Save some changes in style (*ante*, p. 224), it is identical with Articles 1–7 of the Convention as signed (*ante*, pp. 693–694).

war on land and naval war, it cannot be denied that when bombardment is directed by naval forces against the land the operation is not a purely naval one. Whatever it may be, the fundamental principles ruling bombardment by land forces of undefended towns, villages, and habitations should, it seems, be equally applied to bombardment of such ports, towns, villages, etc., by belligerent naval forces, since the same reasons which dictated the prohibition laid down in Articles 25 *et seq.* of the Regulations mentioned exist also here in nearly their full force. It is necessary to limit the means that belligerents may employ to injure their enemy in a degree corresponding with the exigencies of modern warfare.

Apparently, considerations of this kind led the Institute of International Law, when it considered the question of bombardment of undefended towns by naval forces at its session in Venice, to apply to it, in principle, the provisions on bombardment voted by the Institute in its regulations concerning war on land. This is seen in the very form given by the Institute to its Venice resolutions on bombardment,[1] for it contented itself with referring to the provisions contained in its regulations concerning war on land, and merely added thereto some special rules that seemed requisite to give a certain latitude demanded by the needs of naval warfare.

It is also this same fundamental idea that seemed to inspire the proposals submitted to the first subcommission of your Third Commission, all of which remind us of the analogies existing between the two cases.

The proposals presented to the subcommission are five in number—one each from the United States, Spain, Italy, Netherlands, and Russia.[2] The last four are grafted on the proposal of the delegation of the United States, itself borrowed from the Naval Code of the United States of 1900; they all have one common point of departure. It consequently seemed possible and useful to combine these different proposals into a single text to be submitted in the name of all the above-mentioned delegations to the consideration of the subcommission. His Excellency Count Tornielli took the initiative in thus greatly facilitating the special business of the subcommission; and in the two meetings at which he presided, to which the members of the bureau of the subcommission[3] were invited besides the representatives designated for this purpose by the delegations which had drawn up the proposals, a single text was agreed upon to serve as a basis for the deliberations of the subcommission.

This combined project, which was presented in the name of the five delegations,[4] was discussed as a whole and in detail by the subcommission, which adopted much of it unanimously and made no very considerable changes in its substance. The duty of the final drafting and co-ordination of the texts into one project was entrusted to a committee of examination composed of the bureaus of the Third Commission and the subcommission, as well as the naval delegates of the Powers that had submitted proposals or amendments or that desired to be represented. The result of the work of this committee of examination was submitted for the approval of the Third Commission and discussed by it in its session of August 8. It was then adopted with some purely formal modifications offered

[1] *Resolutions of the Institute of International Law* (New York, 1916), p. 132.

[2] *Post*, pp. 703, 704.

[3] Thus the following attended these meetings: Rear-Admiral Sperry (United States), his Excellency Mr. de Villa Urrutia (Spain), Mr. Guido Fusinato (Italy), his Excellency General den Beer Poortugael (Netherlands), his Excellency Mr. Tcharykow (Russia), and in addition his Excellency Mr. Hagerup (Norway), his Excellency Mr. van den Heuvel (Belgium), Mr. Georgios Streit (Greece).

[4] *Post*, p. 705.

by the delegation of Belgium,[1] and with one amendment[1] touching its substance and presented by the delegation of France (Article 2, paragraph 3); this latter amendment, however, could not succeed in winning unanimous support. On the other hand, the proposal made by the English delegation in the Commission, looking to the omission of paragraph 2 of the first article, did not obtain a majority of votes. Thus, with the exception of these two provisions (paragraph 2 of Article 1 and paragraph 3 of Article 2), the text which is appended to the present report and is submitted by the Third Commission for adoption by the Conference has been voted unanimously.

I

In conformity with the suggestions made by his Excellency Mr. Tcharykow, the provisions voted were separated into two *chapters*—one containing the general rules applicable to every bombardment, the other dealing with the prohibition of bombardment of undefended ports, towns, villages, etc., as well as with the exceptions which this prohibition carries in naval war. But we thought it best to commence with this second chapter, thus inverting the order in the combined project as submitted to the subcommission, in order that we might be able to place in the opening article the provision which enunciates the ruling principle of this whole subject.

The first article of the project which we have the honour to submit to the Conference corresponds in its first paragraph to Article 25 of the Regulations of 1899 respecting the laws and customs of war on land; it extends to naval forces the prohibition against bombardment of undefended ports, towns, villages, dwellings, or buildings. We did not think it best to specify, as did the original propositions of the United States and Netherlands,[2] that the prohibition relates to undefended 'and unfortified' towns, etc. In the first place, it could be shown that the existence of fortifications does not of itself suffice to permit the bombardment of the place fortified if the fortifications are not defended; and secondly, every legitimate anxiety seems to be swept away by the provision of Article 2 which, even in the case of undefended towns, etc., concedes the possibility of directing a bombardment against them for the purpose of destroying by cannon fire, under certain conditions, military works, or military or naval establishments, and consequently any fortifications.

With respect to the meaning of 'undefended'—and the attention of the subcommission was particularly drawn to this point by his Excellency General den Beer Poortugael and Captain Burlamaqui, who considered especially the case of a town defended only on the side of the sea—we believed that we should refrain from expressing any distinction in the text itself of the project, in view of the difficulty of defining precisely this purely negative idea. The identical wording of the Regulations on war on land, we may add, has not given rise to controversy on this head. But the subcommission expressly referred to the explanations given in the meeting of July 18 of the first subcommission of the Third Commission, in order that they may serve as an interpretation of its text. His Excellency General den Beer Poortugael drew a particular distinction between the defence of a coast and the defence of a town situated near the coast. The defence of the coast

[1] *Post*, pp. 706–708.

[2] *Post*, pp. 703, 704.

might necessitate firing on the instruments themselves of such defence, but a right of bombarding the town which the defence of the coast might indirectly serve, unless the town itself were defended, should not be granted. The Commission saw no objection to this manner of viewing the subject.

Another question along the same line was examined. It was common to the two topics assigned to this subcommission, and was settled by the technical committee charged with the final drafting of the regulations concerning the laying of mines. The question was whether a town should be considered as defended in the sense of paragraph 1 by the sole fact that automatic submarine contact mines are anchored off its harbour. It seemed to the majority of the Commission (22 votes against 5, and 10 abstentions) that the question should receive a negative answer, as the sole fact of the existence of automatic contact mines before a place could not justify a bombardment of that place. Nevertheless, there was some hesitation as to the phrasing to give this particular idea, and some members of the Commission declared themselves in favour of omitting this second paragraph of Article 1. To this end, they recalled the dangers to peaceful shipping generally lurking in mines; they also asserted as a reason for omitting the provision contained in paragraph 2 that it would appear illogical that a town defended by means of submarine contact mines should be held to be inviolable, while the same privilege is refused a town defended by guns. Laying mines should even be considered as useless when it is granted that an undefended town is not liable to bombardment. Finally, it was said, there is a fundamental principle applicable to this question, namely, that when a belligerent accords immunity to an undefended hostile place, he is entitled to make use of that place, without running any risks by approaching it. This reasoning did not convince the majority, which remained of the opinion that by omitting this provision we should run the risk of rendering illusory the prohibition of bombardment of undefended places; and it was decided to retain the second paragraph of Article 1.

Article 2 is so closely related to the provision of Article 1, as is also apparent from the use of the word 'however', that a union of the two articles into one was thought of. After mature reflection the committee of examination decided otherwise, in order that the principle laid down in the first article might receive the greater prominence unfettered with any subsidiary consideration.

The first exception to this principle is dealt with in Article 2. It seems to be necessary owing to the special needs of naval warfare. Indeed, whilst in land warfare the belligerent will have the opportunity of taking possession of an undefended place and, without having recourse to bombardment, of proceeding to any destruction there that may serve his military operations, the commander of naval forces will sometimes be obliged, under certain conditions, to destroy with artillery, if all other means are lacking, enemy structures serving military ends, when he has not at his disposal a sufficient landing force or when he is obliged to withdraw speedily; likewise, he will perhaps find himself under the necessity of destroying with artillery in analogous situations hostile war-ships found in a port, even in the case where these war-ships would not be of service in defending the town and when, too, the town is not defended.

On the principle of this first exception everybody was agreed. They also ended by unanimously recognizing that there should be added to the structures which may be destroyed by bombardment when circumstances required, 'plant' which can be utilized

for the needs of the hostile fleet or army (for example, railway tracks or floating-docks). The broader proposal to add also 'supplies' (for example, coal stacks) was withdrawn by its author, as the expression 'war *matériel*', contained in this article, satisfied him; and as the objection was advanced in several quarters that such an amendment would have too broad a range and might jeopardize the real meaning of the prohibition.

But the subcommission was unable to reach an agreement, and attempts in this direction in the committee of examination were equally fruitless, on the conditions which should permit a commander of naval forces before an undefended place to proceed to destroy with artillery military establishments, etc., in the absence, of course, of other less dangerous means of which he might avail himself.

Whilst the majority of the subcommission was of opinion that a bombardment to effect such a destruction must not take place until after a formal summons to the local authorities and only in the case when, after the expiration of a reasonable time of waiting, those authorities refuse themselves to destroy the works, etc., enumerated in Article 2, the military exigencies not exceeding these limits—several technical delegates advanced serious objections to the restrictions imposed on belligerent operations. They pointed out the possibility that a naval force might have to act immediately, lacking the time to give a previous summons or to wait until a reasonable time had passed for the local authorities to comply with the demands of the naval commander. Particularly, it was said, the commander of the naval force should, if need be, be in a position to attack immediately with artillery vessels in the roadstead in order to prevent them from joining a hostile fleet which might be in the neighbourhood, if there was any danger of their so doing.

When this controversy came before the Commission for settlement, the delegation of France presented a new plan,[1] designed to satisfy, in the exceptional cases of imperative military necessity, those considerations of a technical nature, without doing away with the humanitarian principle laid down in Article 2, which in itself had met with no objection. His Excellency the first delegate of France, as well as Captain Lacaze, developed the idea that in the interest of facilitating the signature of a convention constituting a real advance in the law of nations, it was necessary to avoid any too strict prohibition that might, by imposing an obligation to grant time in all circumstances, not sufficiently take into account certain unavoidable necessities of warfare.

The French proposal therefore had for its object to reconcile these urgent necessities which constitute the exception, with the humane considerations that have prompted the general rule. The majority of the Commission (24 ayes against 1 nay, and 10 abstentions) supported this view; the French plan was adopted and appears as paragraph 3 of Article 2.

With regard to paragraph 2 of this same article, there was no debate; it was not contested that in exceptional cases when the commander of naval forces undertakes a bombardment in conformity with Article 2, the fire must be aimed exclusively at the points therein mentioned; but it is not less true that any damage that is unavoidable, and this is a proper qualification, caused by the bombardment outside those limits, will be borne by the inhabitants of the bombarded towns, the commander of the naval forces incurring no responsibility therefor.

Article 3 states the second exception to the prohibition contained in the first article. Although it appeared in the combined text, his Excellency Count Tornielli felt obliged

[1] *Post*, p. 706.

to say at the beginning of the discussion that the initiative of this proposal was not due to the Italian delegation. The delegation of Belgium for its part likewise repudiated this article, which it desired to see disappear entirely, without, however, making any motion to that end. Moreover, the debates did not bear on the existence itself of this exception, which seemed to be considered as a necessary concession to the necessities of naval war, as naval forces are often obliged to procure by means of requisitions provisions and supplies that they cannot do without. Stress was laid on the question what should be the extent of the requisitions permitted. On this point the Spanish delegation had asked with regard to the proposal of the United States, which spoke of reasonable requisitions, that it be defined what are the requisitions that should be considered as reasonable and a refusal of which would render towns, etc., liable to bombardment.[1] The delegation of Spain proposed at the same time that these requisitions should be limited to the necessary materials and supplies that ships of belligerent Powers might rightfully procure in a neutral port. Likewise, his Excellency Vice-Admiral Mehemed Pasha, in the name of the Ottoman delegation, asked for the addition of a paragraph specifying that 'the commander of naval forces should not have recourse to bombardment if it is proved that the ports, towns, villages, and dwellings in question are not in a position to furnish provisions or other supplies necessary for the immediate use of the naval force present'. His Excellency Count Tornielli having proposed to restrict requisitions to such as are 'in proportion to the local resources', and his Excellency the first delegate of Belgium having suggested that there would be still other provisions drawn from the Regulations respecting the laws and customs of war on land that should be applied to the requisitions that naval forces might claim, the Commission, while not deeming itself competent to regulate *ex professo* the question of requisitions for naval war in general, decided to add at the end of Article 3 a provision similar to that already adopted in Article 52 of the Regulations mentioned, and specifying that the furnishing of these provisions or supplies ought not only to correspond with the needs for the time being of the naval forces present, but ought also to be in proportion to the resources of the place. These requisitions shall only be demanded in the name of the commander of the said naval force; and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

Article 4 was accepted without discussion.

It corresponds in a way to the last paragraph of the original proposals of the United States and the Netherlands,[2] according to which bombardment for non-payment of a ransom is forbidden. In the preparatory committee it was agreed to omit this clause, which, contrary to the views of the author of the proposal mentioned, was believed to suggest that a demand for ransom is not prohibited in principle. It was therefore preferred to make no allusion to ransom and to forbid a bombardment for the purpose of obtaining money contributions, a prohibition which also precludes *a fortiori* bombardment for non-payment of a ransom. Nevertheless, even this allusion to money contributions is not intended, according to the explanations given in the subcommission, to give naval forces a right to demand such contributions. On the contrary, this question was left open as not being cognizable by the Third Commission. The only purpose of the article is to lay it down that even in a case where money contributions might be required, a bombardment undertaken with the design of imposing them by force should not be permitted.

[1] *Post*, p. 703.

[2] *Post*, pp. 703, 704.

II

The articles of the second chapter are applicable to every bombardment, and correspond to the provisions contained in Articles 26 to 28 of the Regulations respecting the laws and customs of war on land adopted by the First Conference. The Commission thought it should reproduce these, so that the whole matter would be regulated in the project submitted to the present Conference. At the same time, advantage was taken of the opportunity to define and supplement in certain particulars the general rules on bombardment when undertaken by naval forces.

Thus, with respect to Article 5, besides a small addition accepted on the motion of the Greek delegation with the object of assuring *historic monuments* the protection due them in case of bombardment, a provision was added at the end on the subject of the signs with which the inhabitants shall mark the buildings, etc., that should be spared. In view of the difficulty that may lie, in case of bombardment by naval forces, in the way of a previous notification on the part of the inhabitants of the signs which they are going to use to mark the protected buildings, it seemed that the corresponding provision of the Regulations on land warfare ought to be supplemented in the project before us.

The request that an understanding be reached on this point in order to fix in advance and once for all the sign to be used, was made by the delegation of Russia and supported by his Excellency Count Tornielli, who had already filed a similar proposal with the preparatory committee. As no objection was raised in the Commission, the question was referred to the committee of examination. But there a difference of opinion arose: some members, especially the representatives of the United States and Japan, were averse to deciding in advance upon a distinctive sign; they said that there could not be any one sign that could be used and be recognizable in all cases; that a sign fixed upon in advance might not be found at hand at a given time by the inhabitants, who would then see themselves deprived of the means of marking buildings for protection; and that abuses would be possible, as has happened with the distinctive sign of the Geneva Convention.

The majority did not take this view.

If, for bombardment by naval forces, it was needful, in order to avoid delays prejudicial to the fleet, not to admit the necessity of a previous notification by the inhabitants as to the sign that they would employ, it seemed indispensable that this sign be fixed for all time. With the sign once settled upon, the inhabitants of towns liable to bombardment from the sea would certainly not fail to make timely provision, and the fault would be theirs if they did not take steps to that end. As to abuses, these might happen to any sign. It was therefore decided that a small committee composed of Admiral Arago, Captain Castiglia, and Captain Behr should devise a distinctive sign that can be easily used in all circumstances and is adapted for being visible anywhere and for being lighted up at night. The formula proposed by that committee, which is to be found at the end of Article 5, was accepted without debate by the Third Commission.

The committee also took care to explain 'that the stiff panels could be made of wood or of cloth or even painted on the wall; the number and the disposition of the panels on each building to be protected would be determined by the requirement of rendering them easily visible from any one of the directions whence they might be struck by the artillery of enemy vessels'.

Article 6 owes its present form to a wording adopted unanimously by the Commission on the basis of the discussion that took place in the subcommission in consequence of an argument delivered by Captain Ottley and supported by the Japanese delegation. It was said that the rule under which the commander of naval forces should in all circumstances do his utmost to warn the authorities before commencing a bombardment was too stringent and might in some cases place the naval forces at a disadvantage. There might be circumstances in which the admiral's duty will require him to destroy as speedily as possible an enemy fortress or arsenal, and the success of such operations might be endangered by an obligation to give a previous warning. But it was unanimously recognized that only an exceptional military situation should free the admiral from this obli- [illegible] It was with this understanding that the principle of the proposal made by his [illegible]cy the first delegate of Roumania and amended by Rear-Admiral Siegel was [illegible] by the commission, which charged the committee of examination to find a formula [illegible] the rule laid down in Article 6 an exception for cases where the military [illegible] omit of a previous warning.

[illegible] merely a repetition of Article 28 of the Regulations on land warfare. [illegible] the word 'even', proposed by Mr. Renault, is only a change in [illegible]

[illegible] is the project which is to-day presented by the Third Commission [illegible] to the Conference.

[illegible] the rules which the Third Commission has the honour to recommend, [illegible] would usefully complete the work commenced in 1899 and would, [illegible] difficult problem bequeathed to it by the First Peace Conference, make a substantial contribution to the codification of international law in time of war.[1]

ANNEX 1[2]

PROPOSAL OF THE DELEGATION OF THE UNITED STATES

CONCERNING THE BOMBARDMENT BY A NAVAL FORCE OF UNFORTIFIED TOWNS, ETC.

The bombardment, by a naval force, of unfortified and undefended towns, villages, or buildings is forbidden, though such towns, villages, or buildings are liable to the damages incidental to the destruction of military or naval establishments, public depots of munitions of war, or vessels of war in port; and such towns, villages, or buildings are liable to bombardment when reasonable requisitions for provisions and supplies at the time essential to the naval force are withheld, in which case due notice of bombardment shall be given.

The bombardment of unfortified and undefended towns and places for the non-payment of ransom is forbidden.

ANNEX 2[3]

PROPOSAL OF THE SPANISH DELEGATION

The Spanish delegation, while accepting the proposal of the delegation of the United States of America relative to the bombardment by naval force of unfortified and undefended towns, as well as the addition proposed by the delegation of Russia for the application in

[1] The appended text (*Actes et documents*, vol. I, p. 118) submitted to the Conference differed from Articles 1–7 of the Convention as signed only in a few matters of style. See the report of the General Drafting Committee, *ante*, p. 224.

[2] *Actes et documents*, vol. III, p. 655, *annexe* 1.

[3] Ibid., p. 655, *annexe* 2.

case of bombardment of Article 27 of the Regulations respecting the laws and customs of war on land, thinks that in order to avoid possible abuses it would be desirable to specify what are the requisitions that should be considered reasonable and a refusal of which would render towns liable to bombardment.

The Spanish delegation is of the opinion that these requisitions should be paid for at current prices, and should be limited to the necessary provisions and supplies that might be rightfully requested in a neutral port.

ANNEX 3[1]

PROPOSAL OF THE ITALIAN DELEGATION

The provisions of Articles 25 to 28 of the Regulations respecting the laws and customs of war on land of July 29, 1899, are applicable also to bombardment by naval forces.

However, bombardment by a naval force of undefended ports, towns, villages, dwellings or buildings is admissible, so far as necessary, for the purpose of destroying military or naval establishments, depots of munitions of war, or ships of war in the harbour.

ANNEX 4[2]

PROPOSAL OF THE NETHERLAND DELEGATION

The bombardment by a naval force of unfortified and undefended ports, towns, and villages is prohibited.

These ports, towns, or villages are nevertheless liable to the unavoidable damage resulting from destruction of military or naval establishments, depots of munitions of war, or war-ships in a harbour.

They may even be bombarded when provisions or supplies for the reasonable immediate needs of the naval force, exceptionally requisitioned, are refused.

In these cases previous notice of bombardment will be given.

Bombardment for non-payment of a ransom or of a war contribution is prohibited.

When the commander of a naval force proceeds to the bombardment of a town or village he will take all necessary measures to spare, as far as possible, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick and wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such edifices or places by special signs, which shall be notified in advance to the commander of the naval force.

ANNEX 5[3]

PROPOSAL OF THE RUSSIAN DELEGATION

Include in the text of the agreement to be reached on the subject of bombardments of ports, towns, and villages by a naval force the following article:

> In bombardments by a naval force of ports, towns, and villages the commander of the attacking naval forces shall take all necessary measures to spare, as far as possible, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes. [See Article 27 of the Convention respecting the laws and customs of war on land of July 29, 1899.]

[1] *Actes et documents*, vol. III, p. 656, *annexe* 3.
[2] Ibid., p. 656, *annexe* 4.
[3] Ibid., p. 657, *annexe* 5.

ANNEX 6 [1]

PROPOSAL OF THE DELEGATIONS OF THE UNITED STATES OF AMERICA, SPAIN, ITALY, NETHERLANDS, AND RUSSIA IN SUBSTITUTION OF THE PROPOSALS PREVIOUSLY PRESENTED BY THE SAME DELEGATIONS [2]

ARTICLE 1

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible historic monuments, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by special visible signs.

ARTICLE 2

The commander of the attacking naval force, before commencing the bombardment, shall do his utmost to warn the authorities.

ARTICLE 3

It is forbidden to give over to pillage even a town or place taken by storm.

ARTICLE 4

It is forbidden to bombard undefended ports, towns, villages, dwellings or buildings.

ARTICLE 5

When the necessities of the military operations require the destruction of military works, military or naval establishments, depots of arms or war *matériel*, workshops used for the needs of the hostile fleet or army, or ships of war in the harbour, the commander of the naval force may himself proceed to said destruction by bombardment, if the local authorities, after a formal summons and after the expiration of a reasonable time of waiting, have refused to satisfy these requirements.

Under such circumstances ports, towns and villages, dwellings or buildings are liable to unavoidable damage resulting from bombardment.

ARTICLE 6

The bombardment of ports, towns, villages, dwellings or buildings is admissible after notice thereof has been given, when the furnishing of provisions or supplies necessary for the immediate needs of the force present, after formal summons given to the local authorities, is refused.

ARTICLE 7

The bombardment of undefended ports, towns, villages, dwellings or buildings for the non-payment of a money contribution is prohibited.

[1] Ibid., p. 657, *annexe 6*.

[2] *Ante*, pp. 703, 704.

ANNEX 7[1]

TEXTS SUBMITTED TO THE DELIBERATIONS OF THE COMMISSION RESPECTING BOMBARDMENT BY NAVAL FORCES

Text adopted by the committee of examination (see report)

Amendment presented by the French delegation after the close of the debates in committee of examination

Formulas presented by the delegation of Belgium after the close of the debates in the committee of examination

CHAPTER I

The bombardment of undefended ports, towns, villages, &c.

ARTICLE 1

It is forbidden to bombard by naval forces undefended ports, towns, villages, dwellings or buildings.

A town is not considered defended by the sole fact that submarine mines are anchored off the harbour.

ARTICLE 2

However, when the necessities of military operations require the destruction of military works, military or naval establishments, depots of arms or of war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, or war vessels in the harbour, the commander of the naval force may himself proceed to said destruction with artillery, if all other means are impossible, and if the local authorities have, after formal summons and after the expiration of a reasonable time of waiting, refused to satisfy these requirements.

Under such circumstances the ports, towns, and villages, dwellings or buildings are liable for any unavoidable damages resulting from bombardment.

ARTICLE 2

Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized fo the needs of the hostile flee' or army, and the ships e. war in the harbour, are not, however, included in this prohibition; these the commander of a naval force may destroy with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

If for imperative military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the preceding case, and then the commander shall take all due measures in order that the town may suffer as little harm as possible.

ARTICLE 2

However, when the necessities of military operations require the destruction of military works . . . and when the local authorities, warned by a formal summons, shall not have effected this destruction within a reasonable time, the commander of the naval forces may proceed therewith, even with artillery, if it is impossible to have recourse to other means.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

[1] *Actes et documents*, vol. III, p. 362, *annexe* B.

ANNEX 7 (*continued*)

TEXTS SUBMITTED TO THE DELIBERATIONS OF THE COMMISSION RESPECTING BOMBARDMENT BY NAVAL FORCES (*continued*)

Text adopted by the committee of examination	*Amendment presented by the French delegation after the close of the debates in committee of examination*	*Formulas presented by the delegation of Belgium after the close of the debates in the committee of examination*
ARTICLE 3 Bombardment of ports, towns, villages, dwellings or buildings is admissible, after notice is given, when the furnishing of food or necessary supplies for the immediate needs of the naval force present, after a formal summons given to the local authorities, is refused. The provisions contained in Article 52 of the regulations respecting laws and customs of war on land for an analogous application as to the requisitions mentioned in paragraph 1.		ARTICLE 3 After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question. The extent of these requisitions and the conditions upon which they may be made are regulated by the analogous application of Article 52 of the regulations respecting the laws and customs of war on land.
ARTICLE 4 Bombardment of undefended ports, towns, villages, dwellings or buildings for non-payment of a money contribution is prohibited.		ARTICLE 4 The bombardment of undefended ports, towns, villages, dwellings or buildings for the non-payment of money contributions is forbidden.
CHAPTER II *General Provisions* ARTICLE 5 In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible historic monuments, sacred edifices, buildings used for artistic, scientific, or charitable purposes, hospitals and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.		

ANNEX 7 (*continued*)

TEXTS SUBMITTED TO THE DELIBERATIONS OF THE COMMISSION RESPECTING BOMBARDMENT BY NAVAL FORCES (*continued*)

Text adopted by the committee of examination	*Amendment presented by the French delegation after the close of the debates in committee of examination*	*Formulas presented by the delegation of Belgium after the close of the debates in the committee of examination*
It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large rectangular panels, made of wood or of cloth, divided diagonally into two coloured triangular portions—the upper portion black, the lower portion white.		
ARTICLE 6 The commander of the attacking naval forces before commencing bombardment must do his utmost to warn the authorities, if the military situation permits.		ARTICLE 6 If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do what he can to warn the authorities.
ARTICLE 7 It is forbidden to give over to pillage a town or place even when taken by storm.		

CONVENTION (X) FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION [1]

(For the heading see the Convention for the pacific settlement of international disputes.[2])

Animated alike by the desire to diminish, as far as depends on them, the inevitable evils of war ;

And wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of July 6, 1906 ;

Have resolved to conclude a Convention for the purpose of revising the Convention of July 29, 1899, relative to this question, and have appointed the following as their plenipotentiaries :

Here follow the names of plenipotentiaries.

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions :

ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.[3]

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, if the belligerent Power to which they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the control of one of the

[1] *Actes et documents*, vol. 1, p. 958. For the corresponding Convention (III) of 1899, see *ante*, p. 156.
[2] *Ante*, p. 202.
[3] See *post*, p. 834, Article 14.

belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

Hospital ships which, in the terms of Article 4, are detained by the enemy must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

ARTICLE 6

The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 7

In case of a fight on board a war-ship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 8

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

ARTICLE 9

Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

ARTICLE 10

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands the same allowances and pay which are given to the staff of corresponding rank in their own navy.

ARTICLE 11

Sailors and soldiers on board when sick or wounded, as well as other persons officially attached to fleets or armies, to whatever nation they belong, shall be respected and tended by the captors.

ARTICLE 12

Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

ARTICLE 13

If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, every possible precaution must be taken that they do not again take part in the operations of the war.

ARTICLE 14

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 15

The shipwrecked, wounded, or sick, who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 16

After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpse.

ARTICLE 17

Each belligerent shall send, as early as possible, to the authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

ARTICLE 18

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 19

The commanders-in-chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ARTICLE 20

The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ARTICLE 21

The signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

ARTICLE 22

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

ARTICLE 23

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers taking part therein and by the Netherland Minister for Foreign Affairs.

Subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

ARTICLE 24

Non-signatory Powers which have accepted the Geneva Convention of July 6, 1906, may adhere to the present Convention.

The Power which desires to adhere notifies its intention to the Netherland Government in writing, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

The said Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 25

The present Convention, duly ratified, shall replace as between contracting Powers the Convention of July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva Convention.

The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention.

ARTICLE 26

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 27

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them at the same time of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 28

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 23, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 24, paragraph 2) or of denunciation (Article 27, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Report to the Conference on Amendments to the Hague Convention of July 29, 1899, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864[1]

(Reporter, Mr. Louis Renault)

In proceeding to render an account of the work assigned us of preparing a text to serve as a basis for your deliberations, it seemed wise to make a few observations of a general nature before outlining our reasons in support of each of the propositions which we shall have the honour of submitting to you.

The framers of the Convention of 1899 were naturally inspired with the fundamental principles of the Convention of 1864, which were regarded as the starting-point for the regulations to be laid down for naval warfare; they endeavoured to formulate rules in harmony with these principles which would render it possible to secure at sea the humanitarian results already secured on land. An agreement was easily reached in the Conference, and it may be serviceable to recall the fact that the committee of examination which had worked out the draft and had been unanimous in its support was for the most part made up of naval officers.

We now have before us the new Geneva Convention of July 6, 1906, destined to replace the Convention of August 22, 1864. As it has been signed by the representatives of more than thirty States and has already been ratified by eleven of them, the question has naturally arisen whether it would not be well to take advantage of the new convention to complete the work of 1899.[2] Not that the Convention of 1906 has modified that of 1864 in its essential features; the fundamental principles remain the same; its purpose was not to undertake anything new but merely to combine the results of experience and study, to fill in the gaps, and to clear away obscurity. We are now in the same situation with respect to the Convention of 1899. We do not believe that there is need of any essential change; the only thing to be done is to ascertain whether in the light of the Convention of 1906, there is not some need of *completing* the Convention of 1899, while remaining constant to the spirit that created it.

A great debt of gratitude is due the German delegation for the conscientious work which it has performed for the purpose of adapting to the Convention of 1899 the extensions and additions made to the Convention of 1864.[3] Our labour has thereby been much lessened. We shall merely have to discover what differences in some particulars may exist between naval and land warfare to prevent us from applying one and the same solution to both cases. Sometimes analogies are more apparent than real.

The proposals of the French delegation[4] have likewise in view the *completion* rather

[1] This report was made to the Third Commission by a committee of examination presided over by his Excellency Count Tornielli, president of the Third Commission, and comprising delegates from Germany (Rear-Admiral Siegel, assisted by Mr. Göppert), Austria-Hungary (Rear-Admiral Haus), Belgium (his Excellency Mr. van den Heuvel), China (Colonel Ting), France (Mr. Louis Renault, reporter), Great Britain (Captain Ottley), Italy (Captain Castiglia), Japan (Rear-Admiral Shimamura), Netherlands (his Excellency Vice-Admiral Roell), Russia (Colonel Ovtchinnikow), and Switzerland (his Excellency Mr. Carlin). *Actes et documents*, vol. I, p. 70.

[2] *Ibid.*, p. 150.

[3] *Post*, p. 729.

[4] *Post*, pp. 720, 721.

than the *modification* of the Convention of 1899 by providing for cases not dealt with in th latter. Certain of the amendments proposed by the delegation of the Netherlands,[1] o the contrary, seem calculated to modify the principles of the 1899 Convention.

The Commission had first to decide the preliminary question whether the Conventio of 1899 should be continued with amendments or whether a new Convention should b drawn up combining the provisions retained and the new ones adopted. The latter cours was unhesitatingly decided upon. The supplementary texts are rather long and deal wit matters too distinct to be inserted in the existing conven.on without great practica difficulty. In a matter of this kind, where rules to cover difficult situations are to be lai down, the text adopted should be clear, precise, and easy to consult.

The Convention of 1899 comprises fourteen articles; the project[2] which we submit t you has twenty-six. The difference should not cause dismay, nor should it be feared tha any very great changes have been made in the work of 1899, for it conserves its own feature unaltered by the proposed additions, and these cannot give rise to any serious difficulty

Obviously, the title of the Convention must be changed, and the substitution of the date ' July 6, 1906 ', for ' August 22, 1864 ', suffices.

Articles 1 and 2, relating to military hospital ships and to the hospital ships of belli gerents, are Articles 1 and 2 of the Convention of 1899 retained without change.

Article 3, on the contrary, modifies Article 3 of the Convention of 1899. The majority of the Commission has in fact adopted an amendment proposed by the German delegation and suggested by Article 11 of the Convention of 1906. To understand the difficulty arising here we must compare the case contemplated by the latter Convention with the analogous case occurring in naval warfare.

When a relief society of a neutral country wishes to come to the aid of one of the belli gerents in land warfare, subject to what conditions may it do so? Such a society must first obtain the consent of the Government of its own country, and then the consent of the belligerent which it wishes to help and under whose direction it must place itself. It will temporarily form a part of the sanitary service of the belligerent, as is shown by the obligation imposed by Article 22, paragraph 1 [1906], to fly the national flag of this belligerent beside the flag of the Red Cross.

In 1899, when the question arose as to the status of hospital ships of neutral countries disposed to lend their charitable aid, there was no precedent to follow, as the Convention of 1864 had not provided for the case of neutral ambulances. Until the Convention of 1906 it was a disputed question whether such ambulances could fly their national flag or whether they should fly that of the belligerent. In this connexion the committee in 1899 expressed its view as follows:[3]

> There was some thought of requiring neutral hospital ships to place themselves under the direct authority of one or other of the belligerents, but careful study has convinced us that this would lead to serious difficulties. What flag would these ships fly? Would it not be somewhat inconsistent with the concept of neutrality for a ship with an official commission to be incorporated in the navy of one of the belligerents? It seemed to us sufficient to have these vessels, which are primarily under the control of the Government from which they have received their commissions, subjected to the authority of the belligerents to the extent provided in Article 4.

[1] *Post*, p. 731. [2] *Post*, p. 722. [3] *Ante*, p. 102.

Certain members of the Commission believe that these reasons have retained all their force. They feel that the text of Article 11 of the Convention of 1906 is not sufficient to invalidate them. A neutral ambulance wishing to assist in the hospital service of a belligerent must by the very nature of the circumstances be incorporated in that service; it is hard to imagine its being free from control within the lines of the belligerent who must be responsible to his adversary for its acts and who should consequently have authority over it. The case seems to be different for a neutral hospital ship, as it operates on the open sea where it enjoys an independence of action which an ambulance cannot possess. It is further said that a neutral hospital ship may intend to help one belligerent no more than the other, but may proceed to the vicinity of the naval operations ready to assist both parties, and that this presents no inconvenience because belligerents have means at their disposal to prevent any abuses that might accompany the charitable assistance.

This reasoning did not convince the majority of the Commission, which voted in favour of modifying Article 3, so as to bring it into accord with Article 11 of the Convention of 1906. Military considerations, it is said, require this provision, in that if independent action were allowed the neutral hospital ship, a way would be open to serious abuses which Article 4 does not contemplate and could not check.

This is the reason why the Commission proposes a modification of Article 3, to conform to the Convention of 1906. This Article 3 refers solely to the obligation for the neutral hospital ship to place itself at the service (hospital service, of course) of one of the belligerents. Paragraph 4 of the new Article 5 makes the logical application of this provision respecting the flag to be flown by the neutral ship so employed. It is worth while to note that the text there is not, whatever may be said, in perfect harmony with Article 11 of the Convention of 1906, in accordance with which a neutral ambulance displays *two flags*—that of the Geneva Convention and that of the belligerent—for the new paragraph of the fifth article provides that the ship shall carry *three flags*—the flag of the Geneva Convention, its own national flag, and besides, the flag of the belligerent displayed at the mainmast. We know of no precedent to this effect. The text proposed by the German delegation has been changed, because it was thought unnecessary to require that the hospital ship *place itself in the service of the belligerent*; it is enough that it place itself *under its control*.

Article 4 is not changed. It seems to have provided the belligerents with sufficient powers to prevent abuses.

Article 5 is retained for the most part. Its purpose is to indicate how hospital ships shall make themselves recognizable.

A modification of the fourth paragraph and the addition of two new paragraphs are to be noted.

The modification has been explained above in connexion with the status created by the draft for neutral hospital ships. If the plan adopted by the Commission be not retained by the Conference, it would be necessary to return to the text of the Convention of 1899.

The new paragraph 5 is intended to apply the provision of Article 21, paragraph 2, of the Convention of 1906, to the matter of which we treat. That provision reads as follows: 'Sanitary formations *which have fallen into the power of the enemy* shall fly no other flag than that of the Red Cross so long as they continue in that situation.' The situation is not identical in the case of a hospital ship, which would not, it seems, *fall into the power of the enemy* in the same way as an ambulance, which, in point of fact, is within the lines of the enemy and more or less liable to be confused with his own organization.

The provision was intended to apply to the case of ships *detained* under the terms of Article 4, paragraph 5, and the wording of the German amendment was accordingly slightly changed. The rule found in Article 5, paragraph 5, *new*, has a very wide application and comprises all cases. If the hospital ship of a belligerent is detained by the adversary, it hauls down its national flag and only retains the flag of the Red Cross. In the case of a neutral hospital ship it hauls down the flag of the belligerent into whose service it entered but not its own national flag.

The other new paragraph, the sixth, regulates the distinctive marks to be used to make the hospital ships recognizable at night. The German delegation proposed the following provision: 'As a distinguishing mark, all hospital ships shall carry during the night three lights—green, white, green—placed vertically, one above the other, and at least three metres apart.'[1] It was objected that this provision seemed imperative in character whereas a hospital ship accompanying a squadron cannot be required to reveal its presence to the enemy. It should be free to do so or not, subject to the risk of being attacked if its character is not apparent. It was further objected that other ships might make an improper use of the lights in order to effect their escape. The Commission adopted a text which meets these objections: it is incumbent upon the ships which wish to ensure by night the freedom from interference to which they are entitled, to take, with the assent of the military authorities, the necessary measures to secure their recognition—in other words, they must see to it that their special painting, as indicated in paragraphs 1 to 3 of the same article, shows distinctly. This seems to be possible and does not allow the abuses to which lights might give rise.

The new article 6 is based upon Article 23 of the Convention of 1906. It can give rise to no difficulty.

Article 7, which is new, provides for a situation analogous to that covered by Articles 6 and 15 of the Convention of 1906, but rarer nowadays, at least, in naval warfare than in war on land. A slight misunderstanding arose with regard to the amendment of the German delegation, which read: '*During the fight* the sick wards on board the war vessels shall be respected and spared as far as possible.' At first only fights at a distance were thought of, as these are by far the more frequent, and naturally it was hard to understand how during such fights the sick wards could be respected. But the provision refers to a fight on board, which makes it perfectly comprehensible. A slight modification in the phrasing of the amendment sufficed to dispel this obscurity.

Article 8 is new.

The principle laid down in the first paragraph is borrowed from Article 7 of the Convention of 1906, and is self-evident

The second paragraph is drawn from Article 8 of the Convention of 1906, but it has not seemed necessary to reproduce all the provisions of that article. The staffs of the hospital ships and the sick wards of men-of-war may be armed, either for maintaining order on board or for protecting the sick and wounded. This fact is not a sufficient reason for withdrawing protection, as long as the arms are used only for the purposes indicated. For a similar reason, the commissioner put on board a hospital ship by a belligerent, in conformity with section 5 of Article 4, should not be made prisoner of war if he falls into the power of a cruiser of the country to which the hospital ship belongs upon which he is found. His presence is explained, like that of the picket guarding sick quarters, by the necessity of

[1] *Post*, p. 729.

permitting a ship to fulfil its charitable mission ; this justifies the exemption from captivity in both cases.

The German delegation had provided for the case in which ' the hospital ship is armed with pieces of light ordnance to guard against the dangers of navigation, and more particularly as a protection against any act of piracy '. A discussion took place in the drafting committee in regard to the ordnance which a hospital ship might carry, and the opinion which finally prevailed was that arming the ship is by no means necessary. Merchant ships are not armed and do not run greater risks. Of course, it would be permissible to have a cannon on board for the purpose of signalling.

The delegation of the Netherlands had proposed to offer explanations on the subject of wireless telegraphy apparatus on board. After discussion, the majority of the Commission felt that the presence of such an outfit was not in itself a sufficient ground for withdrawing protection. A hospital ship may have to communicate with its own squadron or with land in order to carry out its mission. It is not every use of radio-telegraphic apparatus but only certain uses which may be considered illicit, and it is well to recall here Article 4, paragraph 2, by which the Governments undertake not to use hospital ships for any military purpose. The execution of such a provision, like many others, depends upon the good faith of the belligerents. Moreover, the provisions of Article 4 will allow commanders of men-of-war to take the measures necessary to prevent abuses ; a commissioner can supervise the use of the wireless ; in case of need the transmitting apparatus may be temporarily removed.

Article 9 is, as a whole, new, although it contains the substance of Article 6 of the Convention of 1899.

According to paragraph 1 belligerents may appeal to the charity of neutral merchant ships to take on board and tend the wounded or sick. This provision is based upon Article 5 of the Convention of 1906 ; it is specified that the assistance of the neutral ships is entirely voluntary, and the text of the German amendment (' belligerents may *ask* ') was altered to avoid ambiguity.

Paragraph 2 regulates the status of vessels which respond to this appeal, and also those which have of their own accord rescued wounded, sick, or shipwrecked men. (The position of the individuals found on board will be examined further on.) It is said that these vessels *shall enjoy special protection and certain immunities*. These expressions, borrowed from the Convention of 1906 (Article 5), have been criticized for their undeniable vagueness. It is hardly possible to proceed otherwise, as everything depends upon circumstance. A war-ship may appeal to a ship perhaps far off, promising, for example, not to search it. It is evident that the advantages of the immunities do not hold the place here that they do on land, where the inhabitants to whom an appeal is made are exposed to a series of rigorous measures on the part of the invader or occupant. Above all, it is a question of good faith. A belligerent should keep to the promise which he has made in order to obtain a service, and the neutral ought not to be enabled by a show of zeal to escape the risk to which his conduct may have rendered him liable. It is, however, certain, on the one hand, that the vessels in question may not be captured for carrying the shipwrecked, wounded, or sick of a belligerent, and, on the other hand, as is expressly stated by Article 6 of the Convention of 1899, that they are liable to capture for any violation of neutrality they may have committed (contraband of war, blockade running).

Article 10 reproduces Article 7 of the Convention of 1899, with one unimportant

modification intended to harmonize the provisions relating to land and naval war a regards the pay of the members of the hospital staff temporarily detained by the enemy. It is needless to add that, in naval as well as in land warfare, the official personnel only i concerned, the personnel of a relief society not being entitled to receive pay.

Article 11 corresponds to Article 8 of the Convention of 1899, which it completes t harmonize with Article 1, paragraph 1, of the Geneva Convention.

Article 12 is new; it corresponds to an amendment presented by the German delegation, but makes the provision general. We do not think that the rule is new; if the formul is not written into the Convention of 1899, the spirit of that Convention is clear. It is a important point upon which there should be no uncertainty.

When a belligerent cruiser meets with a military hospital boat, a hospital ship, or a merchant ship, it has the right, either by virtue of Article 4 of the Convention or by virtu of the common law of nations, to visit them whatever their nationality. If it finds ship wrecked, wounded, or sick men on board it has the right to have them delivered up to it because they are its prisoners, as stated in Article 9 of the Convention of 1899, which is reproduced in Article 14 of our draft. We have here but the application of a general principle, by virtue of which the combatants of a belligerent who fall into the hands of the adversary thereby become its prisoners. Obviously, it will not always be to the interest of the belligerent to make use of this right. Often it will be to his advantage to leave the wounded or sick where they are and not to take charge of them. But, in some cases, it will be indispensable not to allow wounded or sick to go free who are still in condition to render great services to their country; this is easily seen in regard to shipwrecked men who are in good health. It has been said that it would be inhuman to compel a neutral vessel to hand over the wounded whom it had charitably picked up. To overcome this objection, it is only necessary to consider what would be the situation were there no Convention. The positive law of nations would permit not only the capture of the combatants found on board a neutral vessel, but even the seizure and confiscation of the vessel as having rendered *unneutral* service. Moreover, if shipwrecked men, for example, were permitted to escape captivity by the mere fact of their having been taken on board a neutral vessel, the belligerents would disregard the philanthropic action of the neutrals the moment such action might result in causing them irreparable injury. Humanity would not gain by this.

It is well to add that Article 12 of the draft shows by limitation what a belligerent cruiser may do in regard to neutral merchantmen; it cannot divert them from their course or compel them to proceed on a certain route. Article 4 of the Convention of 1899, preserved by this draft, gives such a right only as against vessels specially devoted to hospital service, which must bear the consequences attendant upon the particular rôle assigned them. Nothing of the kind could be imposed upon such merchant vessels as may occasionally be willing to aid in a charitable work. There can be no argument against Article 9 of the 1899 Convention, which we propose to retain as Article 14, because this article does not relate to vessels, but only treats of the sick and wounded.

Article 13, proposed by the French delegation, is new; it fills a gap in the Convention of 1899 and can cause no difficulty.[3] This case arose during the recent war, and was

[1] Cf. Article 13 of the Convention of 1906.
[2] See the last paragraph under Article 6, *post*, p. 730.
[3] *Actes et documents*, vol. iii, p. 687, *annexe* 41.

decided, after some hesitation, in accordance with the idea in our draft. The sick, wounded, or shipwrecked picked up by a neutral war-ship are in exactly the same situation as that of combatants who take refuge in neutral territory. They are not handed over to their enemy, but they must be detained.

Article 14 simply reproduces Article 9 of the Convention. Certain amendments proposed by the German delegation and the delegation of the Netherlands were withdrawn by reason of the restoration of Article 10 of the Convention.

The scope of Article 14 has been determined by the considerations expressed above in regard to Article 12; it has to do only with the disposition of individuals, not of vessels, which are provided for elsewhere.

Article 15 is merely a reproduction of Article 10 of the Convention, which, for special reasons having nothing to do with the principle of the article, had not been ratified. Its restoration was agreed to, upon the proposal of the French delegation,[1] without any difficulty. The case contemplated was where war vessels disembark wounded or sick in a neutral port and thus gain liberty of action. There might be some question whether the neutral does not lend assistance inconsistent with neutrality, and might not be held responsible to the other belligerent. The proposed solution, however, seemed to take sufficient account of the respective interests. It was remarked that Article 15 seems to impose quite a heavy burden upon the neutral State, since it could not answer in all cases for the escape of the interned men. Would it not be sufficient to say, as in Article 13, that it is to take measures to this end? It was replied that the difference in the wording of the two articles is explained by the difference in circumstances. The commander of the neutral war-ship who has picked up wounded or sick cannot *keep* the individuals which he has so picked up; it is otherwise with the authorities of a neutral country. Only it is understood that all that can be demanded of the authorities of the neutral country is not to be negligent; liability presupposes fault.

If a neutral merchant vessel which has casually picked up wounded or sick, even shipwrecked men, arrives in a neutral port without having met a cruiser and without having entered into any agreement, the individuals which it disembarks do not come under the provision; they are free.

Article 16 is new; it is borrowed from the Convention of 1906 (Article 3). It has been thought strange that the words 'burial' and 'cremation' were kept, as, naturally, they will not often be applicable in the case of naval operations. But it must be remembered that an engagement may take place near the coast and that the provision applies to the individuals who may be on land.

Article 17 is new. It corresponds to Article 4 of the Convention of 1906.

Article 18 is the same as Article 11 of the Convention of 1899.

Article 19 is new and corresponds to Article 25 of the Convention of 1906.

Article 20, which is new, and corresponds to Article 26 of the Convention of 1906, we consider very important. The best of rules becomes a dead letter if steps are not taken in advance to bring it to the knowledge of those who will have to apply them. Especially will the personnel on board hospital ships often be called upon to perform some very delicate mission. They must be convinced of the necessity of not taking advantage of the immunities they enjoy in order to commit belligerent acts; this would ruin the Convention and all the humanitarian work of the two Peace Conferences.

[1] Ibid., *annexe* 42.

Article 21 is new. It corresponds to Articles 27 and 28 of the Convention of 1906, an has given rise to no difficulty.

Article 22 is new. It presents no difficulties. In the case of military operations takin place at the same time on land and sea, the new Convention must be applied to the force afloat, and the Convention of 1906 to the forces operating on land.

Article 23 is a reproduction of Article 12 of the Convention of 1899.

Article 24 is a reproduction of Article 13 of the Convention of 1899, changing only th date of the Geneva Convention.

Article 25 is new, and corresponds to Article 31 of the Convention of 1906.

The Convention based on the draft we submit to you is to supersede the Convention o 1899 as between those Powers which shall have signed and ratified it. Where two Power are parties to the Convention of 1899, and only one of them a party to the new Convention the Convention of 1899 will necessarily continue to govern their relations.

Article 26 is a reproduction of Article 14 of the Convention of 1899.

Such is the project which we submit for your approval. It is a modest work, in whic we have been guided by our predecessors of 1899 and 1906. We nevertheless consider i very useful, and we think that the enactment of the project into a diplomatic convention would constitute an important step in the direction of the codification of the law of nations

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ANNEX 1 [1]

THE CONVENTION OF JULY 29, 1899, AND THE DRAFT REVISION SUBMITTED TO THE CONFERENCE

Text of the Hague Convention of July 29, 1899, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864

ARTICLE 1

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE 2

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall

Project of Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6, 1906 [2]

ARTICLE 1 [3]

Military hospital ships, that is to say ships constructed or assigned by States specially and solely with a view to assist the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE 2 [3]

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall

[1] *Actes et documents*, vol. i, p. 77, *annexe* B.
[2] Text proposed to the Conference by the Third Commission.
[3] These articles are identical with the corresponding articles of the 1899 Convention.

likewise be respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and has notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 4

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3

likewise be respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships shall be provided with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 4[1]

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These ships must in nowise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall enter in the log of the hospital ships the orders which they give them.

ARTICLE 5

Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3

[1] Identical with Article 4 of 1899.

shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention.

shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention,[1] and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

Hospital ships which, in the terms of Article 4, are detained by the enemy, must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

ARTICLE 6 (*new*)

The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 7 (*new*)

In the case of a fight on board a war-ship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the *material* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 8 (*new*)

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

[1] Identical to this point with Article 5 of 1899.

ARTICLE 6

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE 7

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands[1] the enjoyment of their salaries intact.

ARTICLE 8

Sailors and soldiers on board when sick or wounded, to whatever nation they belong, shall be protected and tended by the captors.

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

ARTICLE 9

Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

ARTICLE 10

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.

The belligerents must guarantee to the said staff when it has fallen into their hands[1] the same allowances and pay which are given to the staff of corresponding rank in their own navy.

ARTICLE 11

Sailors and soldiers on board when sick or wounded, as well as other persons officially attached to fleets or armies, to whatever nation they belong, shall be respected and tended by the captors.

ARTICLE 12 (*new*)

Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

[1] These articles are thus far identical.

ARTICLE 9

The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other, are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 10

(*Not ratified*[2])

The shipwrecked, wounded, or sick who are landed at a neutral port, with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded belong.

ARTICLE 13 (*new*)

If sick, wounded, or shipwrecked pers
are taken on board a neutral war-sh
measures must be taken that they do
again take part in the operations of the w

ARTICLE 14[1]

The shipwrecked, wounded, or sick of
of the belligerents who fall into the pow
of the other, are prisoners of war.
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stances, whether to keep them, send th
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ARTICLE 15[1]

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operations of the war.

The expenses of tending them in hospi
and interning them shall be borne by t
State to which the shipwrecked, sick,
wounded belong.

ARTICLE 16 (*new*)

After every engagement, the two belli
rents, so far as military interests permi
shall take steps to look for the shipwrecke
sick, and wounded, and to protect them,
well as the dead, against pillage and il
treatment.

They shall see that the burial, whether b
land or sea, or cremation of the dead sha
be preceded by a careful examination of th
corpse.

ARTICLE 17 (*new*)

Each belligerent shall send, as early a
possible, to the authorities of their country
navy, or army the military marks or docu
ments of identity found on the dead and th
description of the sick and wounded picke
up by him.

The belligerents shall keep each othe
informed as to interments and transfer
as well as to the admissions into hospita
and deaths which have occurred among th

[1] These articles are identical with the corresponding articles of the 1899 Convention
[2] See *ante*, p. 158, footnote.

ARTICLE 11 [1]

The rules contained in the above articles are binding only on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, &c., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

ARTICLE 18 [1]

The rules contained in the above articles are binding on the contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

ARTICLE 19 (*new*)

The commanders-in-chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ARTICLE 20 (*new*)

The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ARTICLE 21 (*new*)

The signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

[1] These articles are identical. Article 18 of the 1907 draft was subsequently modified in the Genera Drafting Committee. See *ante*, p. 219.

ARTICLE 12

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

ARTICLE 13

Non-signatory Powers which have accepted the Geneva Convention of August 22, 1864, may adhere to the present Convention.

For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

ARTICLE 14

In the event of one of the high contracting parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall have effect only in regard to the notifying Power.

In faith of which the respective plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Ha[illegible], July 29, 1899, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

ARTICLE 22 (*new*)

In the case of operations of war betwe the land and sea forces of belligerents, t provisions of the present Convention do n apply except between the forces actually board ship.

ARTICLE 23[1]

The present Convention shall be ratifi as soon as possible.

The ratifications shall be deposited The Hague.

On the receipt of each ratification a *pro verbal* shall be drawn up, a copy of wh duly certified, shall be sent through the dip matic channel to all the contracting Powe

ARTICLE 24[1]

Non-signatory Powers which have a cepted the Geneva Convention of July 1906, may adhere to the present Conventi

For this purpose they must make t adhesion known to the contracting Pow by means of a written notification addres to the Netherland Government, and by communicated to all the other contracti Powers.

ARTICLE 25 (*new*)

The present Convention, duly ratifi shall replace as between contracting Stat the Convention of July 29, 1899.

The Convention of 1899 remains in force between the Powers which signed it but wh do not also ratify the present Convention

ARTICLE 26[1]

In the event of one of the high contracti parties denouncing the present Conventio such denunciation shall not take effect un a year after the notification made in writi to the Netherland Government, and forth with communicated by it to all the oth contracting Powers.

This denunciation shall have effect on in regard to the notifying Power.

In faith of which the respective ple potentiaries have signed the present Conve tion and have affixed their seals thereto.

Done at The Hague . . . in a sing original, which shall remain deposited the archives of the Netherland Gover ment, and copies of which, duly certifie shall be sent through the diplomatic chann to the contracting Powers.

[1] These articles, which follow the wording of the 1899 Convention, were redrafted in the Drafting Committee, *ante*, p. 210.

ANNEX 2[1]

PROPOSAL OF THE GERMAN DELEGATION

ARTICLE 3

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture on condition that they are placed in the service of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter notifies their name to his adversary at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE 5

At the end of the article a new paragraph :

As a distinguishing mark all hospital ships shall carry during the night three lights—green, white, green—placed vertically, one above the other, and at least three metres apart.

ARTICLE 5 *a* (*new*)

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent in whose service they are placed.

Hospital ships which fall into the power of the enemy must lower the national flag of the belligerent to whom they belong.

ARTICLE 5 *b* (*new*)

The distinguishing signs referred to in Article 5 and in paragraph 1 of Article 5 *a* can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ARTICLE 5 *c* (*new*)

During the fight the sick wards on board the war vessels shall be respected and spared as far as possible.

The sick wards and the *matériel* belonging to them remain subject to the laws of war ; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commanders, however, of the vessels can apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ARTICLE 5 *d* (*new*)

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

ARTICLE 5 *e* (*new*)

The following are not sufficient reasons for withdrawing the protection mentioned in Article 5 *d* :

1. The fact of the staff of the hospital ships or sick wards of the vessels being armed and using its arms for its own defence and for that of its sick and wounded.

2. The fact that in the absence of armed members of the medical staff the hospital ship is guarded by a picket or sentinels regularly appointed.

3. The fact that there is found on board of the hospital ship or in the sick ward of the vessel arms and cartridges taken from the wounded and not yet delivered to the proper office.

4. The fact that the hospital ship is armed with pieces of light ordnance to guard against the dangers of navigation and particularly as a protection against any act of piracy.

[1] *Actes et documents*, vol. III, p. 683, *annexe* 30.

ARTICLE 6 (*new*)

Belligerents may ask neutral merchant ships, yachts or boats to take on board and tend, under their control, the sick and wounded, and may give to the vessels that respond to such request special protection and certain immunities.

Every vessel of war of one of the belligerent parties may claim the return of the sick, wounded, or shipwrecked received on board in the conditions above indicated (paragraphs 1 and 2), whatever be the party to which they belong.

ARTICLE 7

The last paragraph to read :

The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances in pay which are given to the staff of corresponding rank in their own navy.

ARTICLE 8

Sailors and soldiers on board, as well as other persons officially attached to fleets or armies, when sick or wounded, whatever their nationality, shall be respected and tended by the captors.

ARTICLE 9

The last paragraph to read :

If they are going to a neutral port, the neutral State cannot, without the consent of the adversary, undertake the engagement and intern them to the end of hostilities. If they are bound to a port of the adversary, the prisoners thus returned to their country cannot serve again while the war lasts.

ARTICLE 10 (*new*)

After every engagement, the two belligerents, to the extent that military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpse.

ARTICLE 10 *b* (*new*)

Each belligerent shall send, as early as possible, to the authorities of their country, navy, or army, the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers, as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, &c., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

ARTICLE 11 *a* (*new*)

The commanders-in-chief of the belligerent fleets must see that the above articles are properly carried out ; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ARTICLE 11 *b* (*new*)

The signatory Governments shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ARTICLE 11 *c* (*new*)

The signatory Governments likewise undertake to enact or to propose to their legislatures, if their military criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 (and in paragraph 1 of Article 5 *a*) by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

ARTICLE 11 *d* (*new*)

In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

ANNEX 3[1]

AMENDMENTS TO THE PROPOSAL OF THE GERMAN DELEGATION[2] SUBMITTED BY THE NETHERLAND DELEGATION

ARTICLE 5 *e* (*new*)

Sub. 1. Omit the words: 'and using its arms'.

Insert at the end the words: 'against acts of piracy'.

Sub. 4. Omit entirely and substitute by the following clause: 'the fact that the hospital ship is equipped with wireless telegraphy apparatus'.

ARTICLE 6

Third paragraph: Omit the whole paragraph.

ARTICLE 8

Word the article as follows:

Sailors, soldiers, and other persons officially attached to fleets or armies, when sick or wounded, whatever their nationality, shall be respected and tended by the captors.

ARTICLE 9

Omit the German amendment.

ARTICLE 10

Retain the original text and add a new paragraph:

In case a belligerent obtains permission to disembark shipwrecked, wounded, or sick prisoners of war, it waives the right of capture and they are free.

ARTICLE 11

Second paragraph, second line, read: 'of the Netherland Government'.

[1] *Actes et documents*, vol. III, p. 686, *annexe* 40.
[2] *Ante*, p. 729.

CONVENTION (XI) RELATIVE TO CERTAIN RESTRICTIONS WITH REGARD TO THE EXERCISE OF THE RIGHT OF CAPTURE IN NAVAL WAR[1]

(*For the heading see the Convention for the pacific settlement of international disputes.*[2])

Recognizing the necessity of more effectively ensuring than hitherto the equitable application of law to the international relations of maritime Powers in time of war

Considering that, for this purpose, it is expedient, in giving up or, if necessary, in harmonizing for the common interest certain conflicting practices of long standing, to commence codifying in regulations of general application the guarantees due to peaceful commerce and legitimate business, as well as the conduct of hostilities by sea ; that it is expedient to lay down in written mutual engagements the principles which have hitherto remained in the uncertain domain of controversy or have been left to the discretion of Governments ;

That, from henceforth, a certain number of rules may be made, without affecting the common law now in force with regard to the matters which that law has left unsettled ;

Have appointed the following as their plenipotentiaries.

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions :

CHAPTER I.—*Postal Correspondence*

ARTICLE 1

The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port.

ARTICLE 2

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

[1] *Actes et documents*, vol. i, p. 664. [2] *Ante*, p. 202.

CHAPTER II.—*The Exemption from Capture of certain Vessels*

ARTICLE 3

Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

ARTICLE 4

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

CHAPTER III.—*Regulations regarding the Crews of Enemy Merchant Ships captured by a Belligerent*

ARTICLE 5

When an enemy merchant ship is captured by a belligerent, such of its crew as are nationals of a neutral State are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts.

ARTICLE 6

The captain, officers, and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war.

ARTICLE 7

The names of the persons retaining their liberty under the conditions laid down in Article 5, paragraph 2, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

ARTICLE 8

The provisions of the three preceding articles do not apply to ships taking part in the hostilities.

CHAPTER IV.—*Final Provisions*

ARTICLE 9

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 10

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed the representatives of the Powers taking part therein and by the Netherland Minis for Foreign Affairs.

Subsequent deposits of ratifications shall be made by means of a written notifi tion, addressed to the Netherland Government and accompanied by the instrum of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratificatio of the notifications mentioned in the preceding paragraph, as well as of the inst ments of ratification, shall be at once sent by the Netherland Government, throu the diplomatic channel, to the Powers invited to the Second Peace Conference, as w as to the other Powers which have adhered to the Convention. In the cases co templated in the preceding paragraph, the said Government shall inform them the same time of the date on which it received the notification.

ARTICLE 11

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherla Government, forwarding to it the act of adhesion, which shall be deposited in t archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certifi copy of the notification as well as of the act of adhesion, mentioning the date which it received the notification.

ARTICLE 12

The present Convention shall come into force in the case of the Powers whi were a party to the first deposit of ratifications, sixty days after the *procès-verbal* that deposit, and, in the case of the Powers which ratify subsequently or which adhe sixty days after the notification of their ratification has been received by the Netherla Government.

ARTICLE 13

In the event of one of the contracting Powers wishing to denounce the prese Convention, the denunciation shall be notified in writing to the Netherland Governmer which shall at once communicate a duly certified copy of the notification to all t other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and or year after the notification has reached the Netherland Government.

ARTICLE 14

A register kept by the Netherland Ministry for Foreign Affairs shall give the da of the deposit of ratifications made in virtue of Article 10, paragraphs 3 and 4, a

well as the date on which the notifications of adhesion (Article 11, paragraph 2) or of denunciation (Article 13, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[Here follow signatures.]

Extract from the General Report of the Fourth Commission [1]

(Reporter, Mr. Henri Fromageot)

VIII

PROTECTION OF POSTAL CORRESPONDENCE AT SEA

The two provisions which follow [2] relate to a question which did not figure in the programme of the Conference or in the *questionnaire* of the Fourth Commission. They arose from a proposition which was presented by the delegation of Germany,[3] as a sort of annex to its project concerning contraband, and referred to the special subcommittee which was charged with this question.[4] The following project is far from being unimportant; its adoption would be of considerable advantage to commerce.

In the present state of international law the transportation of postal correspondence at sea is not effectively guaranteed in time of war. A distinction is indeed made according to whether the correspondence is official or private, whether or not the senders and addressees belong to the enemy's service, whether or not the vessel is a regular mail carrier, and according to the place of departure and destination. The result is none the less that mail-bags carried by sea in time of war do in fact ordinarily undergo seizure, opening, rifling, confiscation, if need be, and at any rate delay or even loss.

The Institute of International Law as early as 1896 passed resolutions [5] proposing certain guaranties in this respect. The draft regulations that follow are intended to satisfy all the indisputable needs of commerce, by proclaiming the inviolability of correspondence.

The German delegation, in presenting its project, explained [6] that as so many private commercial interests at the present day depend upon regular mail service, it is

[1] *Actes et documents*, vol. i, p. 266; see *ante*, p. 612. For the action of the Drafting Committee with respect to Convention XI, see *ante*, p. 221.

[2] *Post*, p. 741, annex 2.

[3] Ibid., annex 1.

[4] Fourth session of subcommittee, September 14, 1907, and fifth session, September 24, 1907.

[5] *Resolutions of the Institute of International Law* (New York, 1916), p. 131.

[6] Speech of Mr. Kriege, July 24, 1907 (*Actes et documents*, vol. iii, p. 801).

indispensable to remove this service from the disturbances of naval warfare. T advantages to be gained by belligerents from the control of the postal service is out all proportion to the harm done to inoffensive commerce. Telegraphy and radiotelegrap offer belligerents more rapid and surer methods of communication than the mail.

Although the question was set forth in connexion with contraband of war, and althou dispatches are, by analogy, often considered articles of contraband, it is proper to no that the question is, on the whole, quite independent, since it arises, whatever may the flag of the vessel carrying mail, whether neutral or enemy. However, this distinc between neutral and enemy nationality had to be put in the text, by reason of the appr hension of certain Powers in the matter of mail carried under an enemy flag.

As was pointed out by the German delegation, the best guaranty to the postal servi would assuredly have been to exempt regular mail-carrying vessels from the right search and from the ordinary treatment of merchant ships in time of war. That did n appear to be possible, because of the conditions of common law, under which these sam vessels were in all other respects. But it was thought advisable to state expressly tha in case the search of a mail-carrying ship is necessary, it should be done with all possib dispatch.

The project was unanimously adopted by the subcommittee, except for the reserv tion of the delegation of Russia concerning paragraph 2, Article 1.

IX

CREWS OF ENEMY MERCHANT SHIPS CAPTURED BY A BELLIGERENT

In present international practice, the men, the officers, and the captain composin the crew of a captured enemy merchant ship are treated as prisoners of war. The righ of capture is, in a manner, applied to the crew as well as to the ship itself, often witho endeavouring to distinguish between neutral subjects and enemy subjects.

To justify this mode of action, it is argued that it is to the interest of the capturin belligerent to weaken the power of the enemy by depriving him of effective forces intended more or less, to serve on war-ships.

However equitable it may be, this practice has given rise to difficulties on severa occasions. It has been criticized because of the hardship caused by treating as prisoner of war private persons who take no part in hostilities, the majority of whom are poo people, whose arduous business is their only way of earning a living, and who deserve a much consideration as individual foreigners in armies and in enemy territory.

This matter did not figure in the Russian programme for the Conference. It was lai before the Fourth Commission in a British proposition,[1] which contemplated only neutra sailors; afterwards in a Belgian proposition,[2] which extended the benefit of freedom ever to enemy sailors.

As there was no discussion of the question before the Commission, and as the Britis delegation declared itself ready to accept the Belgian amendment, the question wa referred to the committee of examination.

[1] *Post*, p. 741.

[2] *Post*, p. 742.

The committee admitted unanimously in principle the desirability of modifying the treatment of the crews of captured, inoffensive enemy ships, which are taking no part in the war, on condition that by so doing the legitimate interests of the capturing belligerent are not prejudiced by such crews increasing the effective force of the enemy.

The provisions which follow were prepared from this point of view. The principle is laid down that the crews of captured enemy ships are not made prisoners of war, but that, in certain cases, their liberty should depend upon certain conditions, in order that the capturing belligerent may be assured that his rights will be respected so far as is compatible with humanity.

This project obtained a unanimous vote [1] in Commission.

Article 1

When an enemy merchant ship is captured by a belligerent, such of its crew as are subjects or citizens of a neutral Power are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise subjects or citizens of a neutral Power, if they promise formally in writing not to serve on an enemy ship while the war lasts.

Article 1 contemplates neutrals who form part of the crew of a captured enemy vessel. In principle they are not made prisoners.

Nevertheless the article makes a distinction between the men of the crew and the captain and officers.

In the first place, it was proposed [2] to require both officers and men to bind themselves not to embark on any enemy vessel, whether war-ship or merchant ship. But it appeared that to exact a promise from sailors, the scope of which they would hardly understand and the execution of which it might at times be very difficult to control, would impose a hardship frequently impossible to enforce. Hence the distinction established by the text. The sailors are purely and simply free; the captain and officers are set free only if they promise formally and in writing not to serve on an enemy ship as long as the war lasts.[3]

This promise is in the form of a written agreement. There had been question of an oath; but that formality appeared to offer serious difficulties, by reason of the differences in the practice followed in different countries, and it could not be established.

Article 2

The captain, officers, and members of the crew, when enemy subjects or citizens, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of war.

Article 2 treats of enemy subjects, whatever their capacity on board; the men of the crew as well as the captain and officers are set free only upon their promise not to make use of their liberty against the military interests of the captor.

The engagement not to undertake any service bearing upon war operations as long as the war lasts was understood to include embarking on board a war-ship as well as land service in the arsenals or in the army, or any other military or naval service.

[1] *Actes et documents*, vol. III, p. 910. [2] Proposition of British delegation, *post*, p. 742.
[3] Committee of examination, fifth session, August 16, 1907, *Actes et documents*, vol. III, p. 95; *post*, p. 74- annex 6.

ARTICLE 3

The names of the persons retaining their liberty under the conditions laid down in Article 5, paragraph 2, and in Article 2, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

The object of this provision is to assure the execution of the engagement imposed by the preceding articles, whether upon neutral officers, or upon all enemy subjects. The captor State must send to the other belligerent a copy of the list of individuals thus retaining their liberty, and the latter must not knowingly enroll them in its service.

ARTICLE 4

The preceding provisions do not apply to ships taking part in the hostilities.

The only object of the regulations, as we explained at the beginning, is to protect the crews of ships peacefully pursuing a commercial enterprise. It seemed that because of the innocent character of their occupation these crews should not be made prisoners of war and treated as if they were taking part, even indirectly, in the hostilities. It is therefore natural that there should be no benefit in cases where the cause does not exist.

Whether a ship is peacefully engaged in a commercial enterprise or participating in the hostilities is a question of fact, which it seemed to be impossible to reduce to a fixed rule.

X

EXEMPTION FROM CAPTURE OF COASTAL FISHING BOATS AND CERTAIN OTHER VESSELS IN TIME OF WAR

According to a very ancient custom,[1] coastal fishing vessels are considered exempt from capture in time of war, and it may be added that at the present day this practice is universally approved.[2] Nevertheless it is, according to the country, more or less legally assured, and it may appear advisable to establish the principle definitively in a conventional provision.

Moreover, although this question did not figure expressly in the Russian programme for the Conference, it was inserted by our president, his Excellency Mr. Martens, among the questions submitted to the Fourth Commission [3] for consideration, in order to satisfy the desires of various persons.

The reason for this exemption is, and always has been, one of humanity. The favoured treatment is given, not to the fishing industry, but to the poor people who are engaged in it. Its object is not to protect one maritime industry more than another, but merely to avoid doing poor people, who are especially deserving of interest, an injury which would be of no benefit to the belligerent. However, it is clear that this favour should

[1] See more particularly the old documents contained in Pardessus, *Collection de lois maritimes antérieures au XVIII^e siècle*, vol. iv, p. 319.

[2] His Excellency Mr. Choate (*Actes et documents*, vol. iii, pp. 911, 913) mentioned, in this regard, the decision of the Supreme Court of the United States in the case of the fishing boats *Paquete Habana* and *Lola* (Decision of January 8, 1900, United States Supreme Court Reports, vol. 175, p. 677).

[3] *Actes et documents*, vol. iii, p. 1133, *annexe* 1, *Questionnaire*, question 8: 'Are coastal fishing boats, even when belonging to citizens of a belligerent State, liable to capture?'

not become an obstacle to naval operations, and that it ceases to be justified if the fisherman engages in hostilities.

This immunity, thus understood, was already contemplated by the Belgian general proposition relating to the rights of belligerents in respect to enemy private property.[1] It was the subject of a more complete special proposition on the part of the delegation of Portugal.[2] The delegation of Austria-Hungary added to it a proposition including vessels engaged in local trade.[3] Finally, the delegation of Italy proposed the establishment of a similar principle for vessels engaged in scientific or humanitarian work.[4]

These propositions did not meet with any objection in Commission.[5] Their scope was specified and the committee of examination was charged with the elaboration of a text.

This project received a unanimous vote in Commission.

ARTICLE 1

Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

In the very beginning, so far as fishing is concerned, the immunity is recogni[illegible]nly in respect to vessels *used exclusively for fishing along the coast*.

It appeared to be impossible to specify a tonnage limit or a maximum crew, or a [illegible]cial build. All these things vary according to the locality. But it was understood that all these elements should be taken into consideration, if the case arose, in determining the *exclusive use* contemplated by the text.[6]

Furthermore, it did not appear to be possible to specify the method of propulsion - whether sail or mechanical propulsion—for a fishing boat is propelled by sail, by oars, or by a small motor, according to the locality. In short, the essential thing is that there shall be exemption whenever the fishing boat in question is, *in fact*, really the harmless and peaceful craft of a fisherman who is deserving of protection.

There was a desire shown in the Commission to fix the distance of the so-called *coastal* fishery.[7] This likewise appeared to be impossible because of the many different kinds of coasts and fishing grounds, which sometimes are beyond territorial waters, and at varying distances.[8]

It will be noted likewise that the text does not mention exclusively coastal fishery in the waters of the enemy, because such fishery may be engaged in along the coasts of a State other than the belligerent State and beyond the protection of its territorial waters.

[1] *Ante*, p. 617, Article 2.
[2] *Post*, pp. 743, 744.
[3] *Post*, p. 743.
[4] Remark of his Excellency Count Tornielli, twelfth session of Commission, August 7, 1907.
[5] Minutes of Commission, eleventh session, August 2; and twelfth session, August 7, 1907.
[6] Minutes of committee of examination, sixth session, August 21; and seventh session, August 23, 1907.
[7] Remark of his Excellency Mr Beernaert, *Actes et documents*, vol. III, p. 911.
[8] Remarks of Captain Ivens Ferraz, sixth session of the committee, August 21, 1907.

The Portuguese delegation, in its explanations—the eminently practical and humanitarian spirit of which the committee of examination did not fail to recognize—mentioned more particularly the fishery on the coasts of Morocco.

In conformity with the proposition of Austria-Hungary, the text grants immunity under the same conditions, to small boats employed in local trade; that is to say, boats and barks of small dimensions transporting agricultural products and engaged in small local trade—for example, between the coast and the neighbouring islands or islets.

In all cases, the exemption applies to the boat itself, its fishing and sailing equipment and its cargo.

The moment the boat engages, directly or indirectly, in hostilities and war operations it naturally loses all right to immunity. That is a question of fact.

It was at one time the idea of the committee to define further the position of fishing boats and boats engaged in small coastal trade with respect to belligerent forces, more particularly as regards the right of police or the right of requisition.[1]

It appeared to be preferable not to enter now into the settlement of such questions. The committee confined itself to mentioning in the third paragraph, in conformity with a proposition of the Japanese delegation,[2] that belligerents must not take advantage of the harmless character of the boats in question by using them for ruses of war.

Article 2

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

The provision of this article, due, as has been seen, to a proposition of the delegation of Italy, is in conformity with a custom, one of the most celebrated precedents of which is the expedition of *La Pérouse*.

There could hardly be any objection to the sanction of this principle, and it was unanimously adopted.[4]

It did not appear to be necessary to mention in the text the conditions upon which the enjoyment of this immunity depends. It is clear that this favour is granted only on the condition of not engaging in war operations. In order to avoid difficulties, the State whose flag the vessel in question flies should abstain from involving it in any war service. The favour which is granted gives the vessel a sort of neutralization, which must continue until the end of hostilities and which is incompatible with any change in its character.[5]

[1] Minutes of committee of examination, sixth session, August 21, 1907; and seventh session, August 23; and annexes 10, 11 and 12, *post*, pp. 744, 745.

[2] Minutes of committee, eighth session, August 24, 1907; and the declarations made in the name of the delegations of Austria-Hungary and Sweden, and by their Excellencies Baron von Macchi and Mr. Hammarskjöld, and the remarks of his Excellency Mr. Hagerup, thirteenth session of Commission, September 18, 1907.

[3] Annex 13, *post*, p. 745; minutes of committee, eleventh session, September 4, 1907.

[4] *Actes et documents*, vol. III, pp. 1002, 1003; and annex 14, *post*, p. 745.

[5] Ibid.

ANNEX 1[1]

PROPOSITION OF THE GERMAN DELEGATION

Protection of Postal Correspondence at Sea

ARTICLE 1

Postal correspondence shipped by sea is inviolable, whatever its character, official or private, and whether it is the correspondence of neutrals or of belligerents.

In case of the seizure of the vessel carrying this correspondence, provision shall be made to forward it by the quickest route possible.

ARTICLE 2

Apart from the inviolability of postal correspondence, mail steamers are subject to the same principles as other merchant ships. Nevertheless belligerents shall abstain, in so far as possible, from exercising the right of search with respect to them, and the search shall be pursued with as much consideration as possible.

ANNEX 2[2]

DRAFT AGREEMENT CONCERNING POSTAL CORRESPONDENCE ON THE HIGH SEAS

Text submitted to the Conference

ARTICLE 1

The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay. Exception is made in the case of violation of a blockade, if the blockaded port is the destination or the starting-point of the correspondence.

The provisions of the preceding paragraph apply likewise to postal correspondence found on the high seas on board an enemy ship.

ARTICLE 2

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to merchant ships in general. The ship may not, however, be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

ANNEX 3[3]

PROPOSITION OF THE BRITISH DELEGATION[4]

Draft Regulations concerning the Neutral Members of a Belligerent Crew

When a merchant ship of the enemy, which is sailing on a purely commercial mission, is captured by a belligerent, the members of its crew who are subjects or citizens of a neutral Power shall not be made prisoners of war.

The same shall be true with respect to officers who fulfil the same conditions, if their engagement was prior to the outbreak of hostilities and if they formally promise not to undertake to serve on an enemy vessel while the war lasts.

[1] *Actes et documents*, vol. III, p. 1173, *annexe* 44.
[2] Ibid., vol. III, p. 1174, *annexe* 45.
[3] Ibid., vol. I, p. 274, *annexe* D.
[4] See annex 5, *post*, p. 742.

ANNEX 4[1]

PROPOSITION OF THE BELGIAN DELEGATION

Amendment to the British Proposition[2] relative to the Crews of Enemy Merchant Ships captured by a Belligerent

When a merchant ship of the enemy which is sailing on a purely commercial mission is captured by a belligerent, the members of its crew are not made prisoners.

They are landed as soon as circumstances permit, and are set free upon their promise not to serve against the capturing belligerent as long as hostilities last.

The Government of which they are citizens or subjects is required not to demand of them and not to accept from them any service contrary to their pledged word.

ANNEX 5[3]

PROPOSITION OF THE BRITISH DELEGATION

Amendment to its Proposition concerning the Neutral Members of a Belligerent Crew[2]

When a merchant ship of the enemy which is sailing on a purely commercial mission is captured by a belligerent, the captain and the members of its crew shall not be made prisoners of war, on condition that they promise under oath not to serve against the capturing belligerent as long as hostilities last. Thus, the neutral member of the crew must promise not to serve on board an enemy vessel, whether merchant vessel or war-ship; an enemy member of the crew, on the other hand, must promise not to render any service connected with the hostilities for the belligerent State of which he is a subject or citizen. A belligerent State is forbidden knowingly to employ an individual in violation of such a promise.

ANNEX 6[4]

PROPOSITION OF THE BRITISH AND AUSTRO-HUNGARIAN DELEGATIONS

Draft Regulations concerning the Crews of Enemy Merchant Ships captured by a Belligerent

When an enemy merchant ship which is sailing on a purely commercial mission is captured by a belligerent, the neutral members of its crew shall not be made prisoners of war.

The same shall be true with respect to the captain and the officers, if they are subjects or citizens of a neutral Power, provided they formally promise in writing[5] not to serve on an enemy vessel while the war lasts.

The captain and the officers of the crew who are enemy subjects or citizens shall not be made prisoners of war on condition that they engage by formal written promise not to undertake any service connected with the war operations while hostilities last. A belligerent State is forbidden knowingly to employ an individual who has been released under the above-mentioned conditions.

[1] *Actes et documents*, vol. iii, p. 1174, *annexe* 46.
[2] Annex 3, *supra*.
[3] *Actes et documents*, vol. iii, p. 1175, *annexe* 47.
[4] Ibid., *annexe* 48.
[5] The words 'in writing' were added to the draft on the proposal of Mr. Fusinato (minutes of the seventh session of the committee of examination).

ANNEX 7[1]

PROPOSITION OF THE PORTUGUESE DELEGATION

Coastal Fishing Boats[2]

ARTICLE 1

The citizens or subjects of a belligerent State shall be permitted to carry on the industry of coastal fishing by means of apparatus or boats suitable for this purpose in the territorial waters and in the usual fishing zone on the coasts of the country to which they belong.

These boats may not, however, approach enemy war-ships or hinder in any manner whatever their tactical manœuvres or evolutions.

ARTICLE 2

Boats engaged in deep-sea fishing as well as those which may happen to be, except under special circumstances caused by the sea and the wind, outside of the zones mentioned in the preceding article, shall be considered enemy merchant ships in all respects.

ARTICLE 3

All fishing boats which, taking advantage of the immunities in Article 1, shall have entered into the service of a belligerent squadron and in that way shall have taken part in hostilities, shall be considered war-ships.

ARTICLE 4

When the outcome of an immediate military operation requires it, fishing boats may be detained by the enemy for a certain period of time.

ANNEX 8[3]

PROPOSITION OF THE AUSTRO-HUNGARIAN DELEGATION

Coastal Fishing Boats

As is the case with coastal fishing boats, boats and barks engaged in the territorial waters of certain countries in the transportation of farm products or in small local business are exempt from capture.

Only in cases where military reasons require may the said boats and barks be requisitioned, in consideration of an indemnity, in conformity with the provisions in force respecting war on land.

REASONS

This proposition contemplates only boats and barks of small dimensions intended for the transportation of farm products or of passengers along steep coasts or between the coast and islands lying in front of it, or in the archipelagoes, or, finally, in the channels of flat coasts.

Without, on the one hand, causing any considerable damage to the commerce or resources of the enemy State, and without, on the other hand, bringing any advantage to the captor which is worth considering, the capture of these vessels would in reality

[1] *Actes et documents*, vol. iii, p. 1177, *annexe* 49.
[2] See annex 9, *infra*.
[3] *Actes et documents*, vol. iii, p. 1177, *annexe* 50.

only cause injury to the sailors, the islanders, or the inhabitants of the coast, all of wh
are in a very precarious state of fortune, reduced as they are to the bare product of th
trade.

It would seem, therefore, to be required in the interest of humanity to prohibit t
capture of the boats and barks in question, except in case of military necessity. B
even in this last contingency capture should be allowed only in consideration of
indemnity.

Except for these humanitarian sentiments, capture of the said vessels would clear
seem to be illogical, if this measure is considered from the standpoint of the princip
governing war on land.

For, if the coast should be occupied by land forces, the boats and barks in questio
being private property, necessarily are exempt from capture, and may, at most,
requisitioned.

Also it is impossible to find a logical reason which might be invoked to justify nav
forces that have occupied territorial waters to proceed to capture or even to destroy th
said vessels, without deriving any advantage therefrom.

ANNEX 9[1]

PROPOSITION OF THE PORTUGUESE DELEGATION

Amendment to its Proposition concerning Coastal Fishing Boats[2]

Vessels actually engaged in coastal fishing operations within the usual zone or engage
in small coastal business are exempt from capture.

This exemption ceases to apply whenever there is reason to suspect any participatio
in hostilities, such as refusal to obey the injunctions of a belligerent forbidding temporarily
their approaching a certain zone, transportation of contraband, espionage, the fact o
being armed or of having on board apparatus or signals which are not in use amongs
fishermen.

ANNEX 10[3]

PROPOSITION OF THE BRITISH DELEGATION

Amendment to the Austro-Hungarian Proposition[4] *concerning the Treatment to be accorded to Coastal Fishing Barks*

A belligerent is forbidden to make use of fishing barks belonging to his own subjects
or citizens for the transportation of munitions of war, or to collect or transmit informa
tion as to the movements of the enemy, or to arm them for attacking the enemy.

A belligerent is likewise forbidden to employ enemy coastal fishing boats, which he
may have requisitioned, for the purposes enumerated in the foregoing paragraph.

ANNEX 11[5]

PROPOSITION OF THE NORWEGIAN DELEGATION

Amendment to the Austro-Hungarian Proposition[4]

In case military reasons require, the said boats and barks may be requisitioned
in consideration of an indemnity equivalent to the entire value of the boat or the bark
increased by 10 per cent. This indemnity shall, so far as possible, be paid in cash;
if not, it shall be evidenced by a receipt. Requisition shall not be claimed except under
the authorization of the commanding officer of the naval force present.

[1] *Actes et documents*, vol. iii, p. 1178, *annexe* 51.
[2] Annex 7, *supra*.
[3] *Actes et documents*, vol. iii, p. 1179, *annexe* 52.
[4] Annex 8, *supra*.
[5] *Actes et documents*, vol. iii, p. 1179, *annexe* 53.

ANNEX 12[1]

DRAFT PROVISION RELATIVE TO FISHING BOATS, ELABORATED BY MR. FROMAGEOT

Fishing boats engaged exclusively in coastal fishing or in small local business are exempt from capture, as well as their gear, appliances, and apparatus.

This exemption ceases to be applicable to them the moment they take part in any way in hostilities.

If military reasons require, the said boats may be ordered away by the belligerent, or may be temporarily detained or requisitioned in consideration of an indemnity.

Boats thus requisitioned may in no case be used in battle.

ANNEX 13[2]

PROPOSITION OF THE JAPANESE DELEGATION

Amendment to the Draft Provisions concerning Immunities for Coastal Fishing Barks,[3] elaborated by Mr. Fromageot

Add as a last paragraph :

Belligerents are forbidden to make use of fishing barks for military purposes under the disguise of their peaceful character.

ANNEX 14[4]

PROPOSITION OF THE ITALIAN DELEGATION

Vessels engaged in Scientific, Religious, and Philanthropic Missions

Enemy ships engaged in scientific, religious, and philanthropic missions shall not be captured.

The State to which the vessel belongs must notify the opposing State to this effect, which latter shall furnish a safe conduct indicating the conditions of exemption and shall take the necessary steps to assure its being duly respected.

[1] *Actes et documents*, vol. iii, p. 1179, *annexe* 54.
[2] Ibid., p. 1180, *annexe* 55.
[3] Annex 12, *supra*.
[4] *Actes et documents*, vol. iii, p. 1180, *annexe* 56.

CONVENTION (XII) RELATIVE TO THE CREATION OF A INTERNATIONAL PRIZE COURT[1]

(For the heading see the Convention for the pacific settlement of international disputes.)

Animated by the desire to settle in an equitable manner the differences wh sometimes arise in the course of a naval war in connexion with the decisions of natio prize courts ;

Considering that, if these courts are to continue to exercise their functions the manner determined by national legislation, it is desirable that in certain cases appeal should be provided, under conditions conciliating, as far as possible, the pu and private interests involved in matters of prize ;

Whereas, moreover, the institution of an international court, whose jurisdict and procedure would be carefully defined, has seemed to be the best method attaining this object ;

Convinced, finally, that in this manner the hardships consequent on naval would be mitigated ; that, in particular, good relations will be more easily maintai between belligerents and neutrals and peace better assured ;

Desirous of concluding a Convention to this effect, have appointed the follow as their plenipotentiaries :

[Here follow the names of plenipotentiaries.]

Who, after depositing their full powers, found in good and due form, have agr upon the following provisions :

PART I. GENERAL PROVISIONS

ARTICLE 1

The validity of the capture of a merchant ship or its cargo is decided before a pr court in accordance with the present Convention when neutral or enemy prope is involved.

ARTICLE 2

Jurisdiction in matters of prize is exercised in the first instance by the prize cou of the belligerent captor.

The judgements of these courts are pronounced in public or are officially notif to parties concerned who are neutrals or enemies.

[1] *Actes et documents*, vol. i, p. 668. [2] *Ante*, p. 292

ARTICLE 3

The judgements of national prize courts may be brought before the International Prize Court :

1. When the judgement of the national prize courts affects the property of a neutral Power or individual ;

2. When the judgement affects enemy property and relates to :

(*a*) Cargo on board a neutral ship ;

(*b*) An enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim ;

(*c*) A claim based upon the allegation that the seizure has been effected in violation, either of the provisions of a convention in force between the belligerent Powers, or of an enactment issued by the belligerent captor.

The appeal against the judgement of the national court can be based on the ground that the judgement was wrong either in fact or in law.

ARTICLE 4

An appeal may be brought :

1. By a neutral Power, if the judgement of the national tribunals injuriously affects its property or the property of its nationals (Article 3, No. 1), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that Power (Article 3, No. 2 *b*) ;

2. By a neutral individual, if the judgement of the national court injuriously affects his property (Article 3, No. 1), subject, however, to the reservation that the Power to which he belongs may forbid him to bring the case before the Court, or may itself undertake the proceedings in his place ;

3. By an individual subject or citizen of an enemy Power, if the judgement of the national court injuriously affects his property in the cases referred to in Article 3, No. 2, except that mentioned in paragraph *b*.

ARTICLE 5

An appeal may also be brought on the same conditions as in the preceding article, by persons belonging either to neutral States or to the enemy, deriving their rights from and entitled to represent an individual qualified to appeal, and who have taken part in the proceedings before the national court. Persons so entitled may appeal separately to the extent of their interest.

The same rule applies in the case of persons belonging either to neutral States or to the enemy who derive their rights from and are entitled to represent a neutral Power whose property was the subject of the decision.

ARTICLE 6

When, in accordance with the above Article 3, the International Court has jurisdiction, the national courts cannot deal with a case in more than two instances. The municipal law of the belligerent captor shall decide whether the case may be

brought before the International Court after judgement has been given in first inst
or only after an appeal.

If the national courts fail to give final judgement within two years from the
of capture, the case may be carried direct to the International Court.

Article 7

If a question of law to be decided is covered by a treaty in force between
belligerent captor and a Power which is itself or whose subject or citizen is a p
to the proceedings, the Court is governed by the provisions of the said treaty.

In the absence of such provisions, the Court shall apply the rules of internati
law. If no generally recognized rule exists, the Court shall give judgement in accorda
with the general principles of justice and equity.

The above provisions apply equally to questions relating to the order and m
of proof.

If, in accordance with Article 3, No. 2 *c*, the ground of appeal is the violatio
an enactment issued by the belligerent captor, the Court will enforce the enactme

The Court may disregard failure to comply with the procedure laid down in
enactments of the belligerent captor, when it is of opinion that the consequence
complying therewith are unjust and inequitable.

Article 8[1]

If the Court pronounces the capture of the vessel or cargo to be valid, it s
be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the Court shall order restitution of
vessel or cargo, and shall fix, if there is occasion, the amount of the damages.
the vessel or cargo have been sold or destroyed, the Court shall determine the compen
tion to be given to the owner on this account.

If the national court pronounces the capture to be null, the Court can only
asked to decide as to the damages.

Article 9

The contracting Powers undertake to submit in good faith to the decisions
the International Prize Court and to carry them out with the least possible delay.

Part II.—Constitution of the International Prize Court

Article 10

The International Prize Court is composed of judges and deputy judges, w
will be appointed by the contracting Powers, and must all be jurists of known pr
ficiency in questions of international maritime law, and of the highest moral reputatio

The appointment of these judges and deputy judges shall be made within s
months after the ratification of the present Convention.

[1] See Article 2 of the Additional Protocol, *post*, p. 809.

ARTICLE 11

The judges and deputy judges are appointed for a period of six years, reckoned from the date on which the notification of their appointment is received by the Administrative Council established by the Convention for the pacific settlement of international disputes of July 29, 1899. Their appointments can be renewed.

Should one of the judges or deputy judges die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case, the appointment is made for a fresh period of six years.

ARTICLE 12

The judges of the International Prize Court are all equal in rank and have precedence according to the date on which the notification of their appointment was received (Article 11, paragraph 1), and if they sit by rota (Article 15, paragraph 2), according to the date on which they entered upon their duties. When the date is the same the senior in age takes precedence.

The deputy judges when acting are assimilated to the judges. They rank, however, after them.

ARTICLE 13

The judges enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country.

Before taking their seat, the judges must swear, or make a solemn promise before the Administrative Council, to discharge their duties impartially and conscientiously.

ARTICLE 14

The Court is composed of fifteen judges; nine judges constitute a quorum.

A judge who is absent or prevented from sitting is replaced by the deputy judge.

ARTICLE 15

The judges appointed by the following contracting Powers: Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia, are always summoned to sit.

The judges and deputy judges appointed by the other contracting Powers sit by rota as shown in the table annexed[1] to the present Convention; their duties may be performed successively by the same person. The same judge may be appointed by several of the said Powers.

ARTICLE 16

If a belligerent Power has, according to the rota, no judge sitting in the Court, it may ask that the judge appointed by it should take part in the settlement of all cases arising from the war. Lots shall then be drawn as to which of the judges entitled to sit according to the rota shall withdraw. This arrangement does not affect the judge appointed by the other belligerent.

[1] See *post*, p. 758.

ARTICLE 17

No judge can sit who has been a party, in any way whatever, to the sen pronounced by the national courts, or has taken part in the case as counsel or adv for one of the parties.

No judge or deputy judge can, during his tenure of office, appear as age advocate before the International Prize Court nor act for one of the parties in capacity whatever.

ARTICLE 18

The belligerent captor is entitled to appoint a naval officer of high rank as assessor, but with no voice in the decision. A neutral Power, which is a to the proceedings or whose subject or citizen is a party, has the same right of app ment ; if as the result of this last provision more than one Power is conce they must agree among themselves, if necessary by lot, on the officer to be appoi

ARTICLE 19

The Court elects its president and vice-president by an absolute majority o votes cast. After two baliots, the election is made by a bare majority, and, in the votes are equal, by lot.

ARTICLE 20

The judges on the International Prize Court are entitled to travelling allowa in accordance with the regulations in force in their own country, and in add receive, while the Court is sitting or while they are carrying out duties conf upon them by the Court, a sum of 100 Netherland florins *per diem*.

These payments are included in the general expenses of the Court dealt wi Article 47, and are paid through the International Bureau established by the Con tion of July 29, 1899.

The judges may not receive from their own Government or from that of any Power any remuneration in their capacity of members of the Court.

ARTICLE 21

The seat of the International Prize Court is at The Hague and it cannot, ex in the case of *force majeure*, be transferred elsewhere without the consent of belligerents.

ARTICLE 22

The Administrative Council fulfils, with regard to the International Prize C the same functions as to the Permanent Court of Arbitration, but only representa of contracting Powers will be members of it.

ARTICLE 23

The International Bureau acts as registry to the International Prize Court must place its offices and staff at the disposal of the Court. It has charge of the arch and carries out the administrative work.

The secretary general of the International Bureau acts as registrar.

The necessary secretaries to assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

ARTICLE 24

The Court determines which language it will itself use and what languages may be used before it.

In every case the official language of the national courts which have had cognizance of the case may be used before the Court.

ARTICLE 25

Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

ARTICLE 26

A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a court of appeal or a high court of one of the contracting States, or a lawyer practising before a similar court, or lastly, a professor of law at one of the higher teaching centres of those countries.

ARTICLE 27

For all notices to be served, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

PART III.—PROCEDURE IN THE INTERNATIONAL PRIZE COURT

ARTICLE 28[1]

An appeal to the International Prize Court is entered by means of a written declaration made in the national court which has already dealt with the case or addressed to the International Bureau; in the latter case the appeal can be entered by telegram.

The period within which the appeal must be entered is fixed at 120 days, counting from the day the decision is delivered or notified (Article 2, paragraph 2).

[1] See Article 5 of the Additional Protocol, *post*, p. 810.

ARTICLE 29[1]

If the notice of appeal is entered in the national court, this court, without
sidering the question whether the appeal was entered in due time, will tran
within seven days the record of the case to the International Bureau.

If the notice of appeal is sent to the International Bureau, the Bureau will inf
the national court directly, when possible by telegraph. The latter will tran
the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual the International Bu
at once informs by telegraph the individual's Government, in order to enable i
enforce the rights it enjoys under Article 4, paragraph 2.

ARTICLE 30

In the case provided for in Article 6, paragraph 2, the notice of appeal ca
addressed to the International Bureau only. It must be entered within thirty
of the expiration of the period of two years.

ARTICLE 31

If the appellant does not enter his appeal within the period laid down in Arti
28 or 30, it shall be rejected without discussion.

Provided that he can show that he was prevented from so doing by *force maje*
and that the appeal was entered within sixty days after the circumstances wh
prevented him entering it before had ceased to operate, the Court can, after hea
the respondent, grant relief from the effect of the above provision.

ARTICLE 32

If the appeal is entered in time, a certified copy of the notice of appeal is forthw
officially transmitted by the Court to the respondent.

ARTICLE 33

If, in addition to the parties who are before the Court, there are other par
concerned who are entitled to appeal, or if, in the case referred to in Article
paragraph 3, the Government who has received notice of an appeal has not announ
its decision, the Court will await before dealing with the case the expiration of
period laid down in Articles 28 or 30.

ARTICLE 34

The procedure before the International Court includes two distinct parts:
written pleadings and oral discussions.

The written pleadings consist of the deposit and exchange of cases, counter-cas
and, if necessary, of replies, of which the order is fixed by the Court, as also the peri

[1] See Article 6 of the Additional Protocol, *post*, p. 810.

within which they must be delivered. The parties annex thereto all papers and documents of which they intend to make use.

A certified copy of every document produced by one party must be communicated to the other party through the medium of the Court.

ARTICLE 35

After the close of the pleadings, a public sitting is held on a day fixed by the Court.

At this sitting the parties state their view of the case both as to the law and as to the facts.

The Court may, at any stage of the proceedings, suspend speeches of counsel, either at the request of one of the parties, or on its own initiative, in order that supplementary evidence may be obtained.

ARTICLE 36

The International Court may order the supplementary evidence to be taken either in the manner provided by Article 27, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or the use of threats.

If steps are to be taken for the purpose of obtaining evidence by members of the Court outside the territory where it is sitting, the consent of the foreign Government must be obtained.

ARTICLE 37

The parties are summoned to take part in all stages of the proceedings and receive certified copies of the minutes.

ARTICLE 38

The discussions are under the control of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by a belligerent party cannot preside.

ARTICLE 39

The discussions take place in public, subject to the right of a Government who is a party to the case to demand that they be held in private.

Minutes are taken of these discussions and signed by the president and registrar, and these minutes alone have an authentic character.

ARTICLE 40

If a party does not appear, despite the fact that he has been duly cited, or if a party fails to comply with some step within the period fixed by the Court, the case proceeds without that party, and the Court gives judgement in accordance with the material at its disposal.

ARTICLE 41

The Court officially notifies to the parties decrees or decisions made in absence.

ARTICLE 42

The Court determines without restraint the value to be given to all the evidence, and oral statements.

ARTICLE 43

The Court considers its decision in private and the proceedings remain secre

All questions are decided by a majority of the judges present. If the nur of judges is even and equally divided, the vote of the junior judge the orde precedence laid down in Article 12, paragraph 1, is not counted.

ARTICLE 44

The judgement of the Court must give the reasons on which it is based. It cont the names of the judges taking part in it, and also of the assessors, if any; signed by the president and registrar.

ARTICLE 45[1]

The sentence is pronounced in public sitting, the parties concerned being pre or duly summoned to attend; the sentence is officially communicated to the par

When this communication has been made, the Court transmits to the nati prize court the record of the case, together with copies of the various decisions arr at and of the minutes of the proceedings.

ARTICLE 46

Each party pays its own costs.

The party against whom the Court decides bears, in addition, the costs of trial, and also pays 1 per cent. of the value of the subject-matter of the cas a contribution to the general expenses of the International Court. The amoun these payments is fixed in the judgement of the Court.

If the appeal is brought by an individual, he will furnish the International Bur with security to an amount fixed by the Court, for the purpose of guarantee eventual fulfilment of the two obligations mentioned in the preceding paragra The Court is entitled to postpone the opening of the proceedings until the secu has been furnished.

ARTICLE 47

The general expenses of the International Prize Court are borne by the contrac Powers in proportion to their share in the composition of the Court as laid down Article 15 and in the annexed table. The appointment of deputy judges does involve any contribution.

The Administrative Council applies to the Powers for the funds requisite for working of the Court.

[1] See Article 7 of the Additional Protocol, *post*, p. 810.

ARTICLE 48

When the Court is not sitting, the duties conferred upon it by Article 32, Article 34, paragraphs 2 and 3, Article 35, paragraph 1, and Article 46, paragraph 3, are discharged by a delegation of three judges appointed by the Court. This delegation decides by a majority of votes.

ARTICLE 49

The Court itself draws up its own rules of procedure, which must be communicated to the contracting Powers.

It will meet to elaborate these rules within a year of the ratification of the present Convention.

ARTICLE 50

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Netherland Government, to the contracting Powers, which will consider together as to the measures to be taken.

PART IV. FINAL PROVISIONS

ARTICLE 51

The present Convention does not apply as of right except when the belligerent Powers are all parties to the Convention.

It is further fully understood that an appeal to the International Prize Court can only be brought by a contracting Power or the subject or citizen of a contracting Power.

In the cases mentioned in Article 5, the appeal is only admitted when both the owner and the person entitled to represent him are equally contracting Powers or the subjects or citizens of contracting Powers.

ARTICLE 52

The present Convention shall be ratified and the ratifications shall be deposited at The Hague as soon as all the Powers mentioned in Article 15 and in the table annexed are in a position to do so.

The deposit of the ratifications shall take place, in any case, on June 30, 1909, if the Powers which are ready to ratify furnish nine judges and nine deputy judges to the Court, qualified to validly constitute a Court. If not, the deposit shall be postponed until this condition is fulfilled.

A minute of the deposit of ratifications shall be drawn up, of which a certified copy shall be forwarded, through the diplomatic channel, to each of the Powers referred to in the first paragraph.[1]

[1] See Article 5 of the Additional Protocol, *post*, p. 810.

ARTICLE 53

The Powers referred to in Article 15 and in the table annexed[1] are entitled to sign the present Convention up to the deposit of the ratifications contemplated in paragraph 2 of the preceding article.

After this deposit, they can at any time adhere to it, purely and simply.[2] A Power wishing to adhere, notifies its intention in writing to the Netherland Government, transmitting to it at the same time the act of adhesion, which shall be deposited in the archives of the said Government. The latter shall send, through the diplomatic channel, a certified copy of the notification and of the act of adhesion to all the Powers referred to in the preceding paragraph, informing them of the date on which it has received the notification.

ARTICLE 54

The present Convention shall come into force six months from the deposit of the ratifications contemplated in Article 52, paragraphs 1 and 2.

The adhesions shall take effect sixty days after notification of such adhesion has been received by the Netherland Government, and, at the earliest, on the expiration of the period contemplated in the preceding paragraph.

The International Court shall, however, have jurisdiction to deal with prize cases decided by the national courts at any time after the deposit of the ratifications or of the receipt of the notification of the adhesions. In such cases, the period fixed in Article 28, paragraph 2, shall only be reckoned from the date when the Convention comes into force as regards Powers which have ratified or adhered.

ARTICLE 55

The present Convention shall remain in force for twelve years from the time it comes into force, as determined by Article 54, paragraph 1, even in the case of Powers which adhere subsequently.

It shall be renewed tacitly from six years to six years unless denounced.

Denunciation must be notified in writing, at least one year before the expiration of each of the periods mentioned in the two preceding paragraphs, to the Netherland Government, which will inform all the other contracting Powers.

Denunciation shall only take effect in regard to the Power which has notified it. The Convention shall remain in force in the case of the other contracting Powers, provided that their participation in the appointment of judges is sufficient to allow of the composition of the Court with nine judges and nine deputy judges.

ARTICLE 56

In case the present Convention is not in operation as regards all the Powers referred to in Article 15 and the annexed table, the Administrative Council shall draw up a list on the lines of that article and table of the judges and deputy judges through whom the contracting Powers will share in the composition of the Court.

[1] *Post*, p. 758.

[2] See Article 6 of the Additional Protocol, *post*, p. [illegible].

The times allotted by the said table to judges who are summoned to sit in rota will be redistributed between the different years of the six-year period in such a way that, as far as possible, the number of the judges of the Court in each year shall be the same. If the number of deputy judges is greater than that of the judges, the number of the latter can be completed by deputy judges chosen by lot among those Powers which do not nominate a judge.

The list drawn up in this way by the Administrative Council shall be notified to the contracting Powers. It shall be revised when the number of these Powers is modified as the result of adhesions or denunciations.

The change resulting from an adhesion is not made until the 1st January after the date on which the adhesion takes effect, unless the adhering Power is a belligerent Power, in which case it can ask to be at once represented in the Court, the provision of Article 16 being, moreover, applicable if necessary.

When the total number of judges is less than eleven, seven judges form a quorum.

ARTICLE 57

Two years before the expiration of each period referred to in paragraphs 1 and 2 of Article 55 each contracting Power can demand a modification of the provisions of Article 15 and of the annexed table, relative to its participation in the operation of the Court. The demand shall be addressed to the Administrative Council, which will examine it and submit to all the Powers proposals as to the measures to be adopted. The Powers shall inform the Administrative Council of their decision with the least possible delay. The result shall be at once, and at least one year and thirty days before the expiration of the said period of two years, communicated to the Power which made the demand.

When necessary, the modifications adopted by the Powers shall come into force from the commencement of the fresh period.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers designated in Article 15 and in the table annexed.

Here follow signatures.]

ANNEX TO ARTICLE 15

Distribution of Judges and Deputy Judges by Countries for each Year of the Period of Six Years

	JUDGES	DEPUTY JUDGES	JUDGES	DEPUTY JUDGES
	First Year		*Second Year*	
1	Argentine	Paraguay	Argentine	Panama
2	Colombia	Bolivia	Spain	Spain
3	Spain	Spain	Greece	Roumania
4	Greece	Roumania	Norway	Sweden
5	Norway	Sweden	Netherlands	Belgium
6	Netherlands	Belgium	Turkey	Luxemburg
7	Turkey	Persia	Uruguay	Costa Rica
	Third Year		*Fourth Year*	
1	Brazil	Dominican Rep.	Brazil	Guatemala
2	China	Turkey	China	Turkey
3	Spain	Portugal	Spain	Portugal
4	Netherlands	Switzerland	Peru	Honduras
5	Roumania	Greece	Roumania	Greece
6	Sweden	Denmark	Sweden	Denmark
7	Venezuela	Haiti	Switzerland	Netherlands
	Fifth Year		*Sixth Year*	
1	Belgium	Netherlands	Belgium	Netherlands
2	Bulgaria	Montenegro	Chile	Salvador
3	Chile	Nicaragua	Denmark	Norway
4	Denmark	Norway	Mexico	Ecuador
5	Mexico	Cuba	Portugal	Spain
6	Persia	China	Serbia	Bulgaria
7	Portugal	Spain	Siam	China

Report to the Conference from the First Commission on the Draft Convention relative to the Creation of an International Prize Court [1]

(REPORTER, MR. LOUIS RENAULT)

Although the question of the establishment of an international prize jurisdiction [illegible] not been mentioned in the Russian programme, no objection was raised when during the second plenary meeting their Excellencies Baron Marschall von Bieberstein and Sir Edward

[1] This report was made to the First Commission by a committee composed, first, of the members of the Bureau, their Excellencies Messrs. Barbosa and Mérey, honorary presidents; his Excellency Mr. Léon Bourgeois, president; Mr. Lammasch, associate president; their Excellencies Messrs. [illegible] Pompili, Rangabé, and Kriege, presidents, and Mr. Maura, secretary; then, as having been nominated by the second subcommission in its meeting of July 11, his Excellency Sir Edward [illegible] Britain), his Excellency Baron Marschall von Bieberstein (Germany), Mr. Louis Renault (reporter, their Excellencies Mr. Choate (United States), Count Tornielli (Italy), Mr. Hagerup (Norway), Marquis de Soveral (Portugal), Mr. Loeff (Netherlands), and Mr. Hammarskjöld (Sweden). This report has been supplemented on some points to cover various observations made in the Commission (meeting of September 10). *Actes et documents*, vol. i, p. 180.

Fry announced their intention to present proposals concerning the establishment of such a jurisdiction. His Excellency Mr. Horace Porter cordially seconded the initiative thus taken. As the first delegate of Germany remarked, the proposal is intimately connected with the work of the First Conference; and as it relates to the pacific settlement of disputes, it falls within the class of work assigned to the First Commission'. So the Conference decided.

In its first meeting the First Commission had before it:

1. A proposal of the German delegation on prize jurisdiction [1]

2. A proposal of the English delegation for a draft Convention relative to a Permanent International Court of Appeal [2] The Commission decided to divide itself into two subcommissions, of which the second should consider the questions relating to maritime prizes. It is of the work of this second subcommission that the present report gives an account.

In its meeting of June 25, the subcommission, seeing that it had before it two projects which, although having the same purpose were inspired by very different ideas, felt that it could not accept as a basis for discussion either the German or the British proposals without appearing at the outset to be giving the preference to one over the other. It therefore decided that a list of questions should be drawn up, specifying, according to these projects, the questions to be settled, in order to give an opportunity for an exchange of views thereon. A committee composed of his Excellency Sir Edward Fry and Messrs. Kriege and Renault was directed to prepare this list of questions [3] which gave rise to an important exchange of views in the meetings held July 4 and 11. The highly authoritative representatives of the German, English and American delegations addressed the subcommission in explanation of the principal points of the projects; and other delegates made known their personal views on the subject. The subcommission, on motion of his Excellency Mr. Léon Bourgeois then referred the two propositions for a detailed examination to a committee composed of the members of the bureau, the three authors of the list of questions, and representatives of States designated by the German and British delegations. It is thus that the committee which makes the present report was constituted.

Before the committee of examination really began its work, conferences were held by the two delegations which had taken the initiative with regard to regulating this subject. The delegations soon mingled in these negotiations and as a result the committee had before it a joint proposition of the delegations of Germany, the United States, France, and Great Britain for a convention relative to the establishment of an International Prize Court.[4] This proposition was discussed in the meetings of August 12, 17 and 22, and after passing various readings and being amended in several respects it was adopted by the Commission in the form of the project now submitted to you.

We have of course no idea here of attempting a treatise on the theory or history of this question; our main endeavour will be to comment as clearly as we can on the provisions which we ask you to vote. It nevertheless appears indispensable to preface this commentary with a few general observations.

For a very long time it has been admitted that 'all prizes ought to be passed on impartially' and probably for quite as long a time complaints have been made of the way in which such judgements are given. It is easy to understand why this is so.

[1] *Post*, p. [illegible]. [2] *Post*, p. [illegible]. [3] *Post*, p. 800. [4] *Post*, p. 801.

The intervention of an adjudication, even that of the captor, consti[tutes] in the case an enemy ship a superiority of naval warfare over land warfare wh[ere] the acts of t military authority are followed by no judicial investigation but produce their effect themselves. The right of capture maintained with regard to enemy private property sea requires, in order that its effect be final, a confirmation by judicial authority, a there seems to be here a concession on the part of the belligerent which has perhaps been inspired by the single consideration of self-interest. But the situation is qu different when the seizure is of a neutral vessel. The captor then relies upon a real a pretended violation of neutrality. A question of fact or of law has to be settled concerns the subjects of countries with which the belligerent continues in peaceful relation it has its origin in acts committed on the high seas where no State can invoke a gen right of legislation and jurisdiction. How shall this question be settled? An adjudicati seems in this case to be a necessity rather than a concession, as in the preceding case. whom shall the jurisdiction belong? As a matter of fact it is assumed by the captor. F a long time there was hardly any distinction made between neutrals and enemies; all ca of seizure were incidents of war which could be controlled only by the authorities of t very State to which the captor belonged. The neutral, it was said, is judged less as a neut than as an enemy since by his acts he has lost the benefits of neutrality and cannot cla the protection of his Government. Not only is the neutral dragged before the courts the captor, but he is also almost always subjected to rules of proof or of procedure derogato of the common law. Rationally, as a violation of neutrality ought no more to be presum than a crime, the captor should play the rôle of claimant in order to have the seizu validated and confiscation of the ship or cargo decreed as a consequence. Most often it quite otherwise,—the one whose property has been seized is the claimant and has t burden of proving the illegality of the capture.

Hübner seems to have been the first to have criticized such a practice. He invok the principle of the freedom of the sea and the rule that one cannot be judge in his ow cause. To the argument that the neutral has no right, in the premises, to the benef of neutrality, it was easy to answer that the very question to be decided is th prejudged. The guaranties held out by the jurisdiction of the captor are diminish by the circumstances that agreement does not always prevail among nations on t rules applicable in naval warfare, that this jurisdiction will naturally apply the rul decreed by its own sovereign, and that these rules will not always be in harmony wi international law.[1]

It has doubtless been claimed that prize courts really have an international charact and eminent magistrates have made on this subject declarations that have been mo reassuring from a theoretical standpoint. They have asserted their independence arbitrary orders and 'their right to ignore instructions contrary to the law of nations an to consult only that universal law to which all civilized princes and States recognize th they are subject and to which none of them can pretend to be superior'.[2] As a matter fact the instructions and orders of a Government are presumed by the courts which constitutes to conform to the law of nations, and we find no case where a prize court ha refused to apply an order of its Government on the ground that it was contrary to the la of nations.

[1] Hübner, *De la saisie des bâtimens neutres*, vol. ii, p. 21 (The Hague, 1759).
[2] Sir James Mackintosh.

Indeed, if one goes to the bottom of things one finds that the prize courts are really national courts passing judgements on international questions; they must apply the laws of their country without inquiring whether these laws are in harmony with international law or not. That does not mean that a State can regulate its international relations by its own laws or regulations as it chooses; it is responsible to other States for every violation of the principles of international law whether such violation be the result of a defective legislation or jurisprudence, or of arbitrary acts on the part of the Government or its agents.

It is not surprising that in these circumstances the decisions of prize courts have often given rise to well-founded complaints that they applied arbitrary rules or that they were in themselves incorrect. A magistrate is still a man, he shares the feelings, the prejudices, and the passions of the country to which he belongs, and this is particularly true when his country is engaged in war. Can one always exercise the requisite restraint when balancing in the one scale the acts of officers defending the interests of their country amid most difficult and perilous circumstances, against acts in the other of merchants whom one is inclined to consider as having tried to take advantage of the war to speculate and enrich themselves?

As a rule, individuals have frequently complained to their Government of adverse judgements of prize courts, and when their Government was strong it would espouse their complaints before the Government of the prize tribunals. Diplomatic claims have resulted, some of which have been adjusted directly and others have given rise to disputes settled sometimes by arbitration.

How correct this state of affairs?

Grahame advocated a plan that is very simple in appearance. If the nationality of the captured ship is hostile, the jurisdiction of the captor is naturally competent; but if its neutral character is admitted, the jurisdiction of the captured should decide the case. Such a system had scarcely any chance of success. In the first place, the jurisdiction of the neutral would offer no more guarantees of impartiality than the jurisdiction of the belligerent. Besides, the nationality itself of the vessel might be in dispute. Who would then be the judge?

The Institute of International Law has studied the question for a long time. In 1875, at the session held at The Hague, it appointed a committee to study a project for the organization of an international prize tribunal; but it was not until 1887 that it adopted its international regulations on maritime prizes. So far as jurisdiction is concerned, the principle laid down was that "the organization of prize tribunals of first instance remains regulated by the legislation of each State"; the essential provision being as follows: "At the beginning of every war each belligerent party establishes an international court of appeal for maritime prizes. Each of these tribunals is constituted as follows: The belligerent State shall itself name the president and one of the members. It shall ask a neutral State three neutral States each of which shall choose one of the three other members.

Compared with the project which we submit to you, that project may appear timid. It was nevertheless thought quite venturesome by many, and its authors who in recent years have touched on the matter have remarked that their project met with no favour among the Governments. One of the most authoritative, after having pointed out the grave objections that might be advanced, concluded: "However ideal it may seem at

first sight, the international prize tribunal appears to us to be something that cannot realized. In any case Great Britain is not ready to agree to its creation. English auth do not discuss it ; they do not even mention it.' [1]

Governments, therefore, have in this matter realized what writers have not dared hope for, and it is proper to render homage to the initiative taken by Germany and Gr Britain. They have resolutely renounced ancient errors and have proposed the institut of an international prize tribunal. To be sure, they would not organize it in the same w their ideas differ on several important points ; and at the outset an agreement seem quite difficult, we may say almost impossible, to some of us. Nevertheless, thanks genuine good-will and to a keen desire for an accord, a single project has resulted fr these divergent proposals. It would be a vain task to seek the origin of each of the p of this project in one or other of the original propositions. Those propositions h totally disappeared, to be welded into a single work which alone is now to be consid and which is a great honour for those who first negotiated for an agreement. May we allowed to remark on the beneficent influence of this environment ? How many years diplomatic negotiations would have been necessary to arrive at an agreement upon difficult a subject when starting from positions so opposed ! The Conference has chang years into weeks, thanks to the intimacy which it begets among men and among ideas well, and to the sentiment of justice that it tends to make predominant over parti interests.

The project which we submit to your approval is certainly imperfect in spite of prolonged efforts. Nevertheless, we feel that it constitutes a considerable progress of t idea of justice in international relations and that it does honour to a Peace Confere A superficial view may cause one to say that organizing a prize jurisdiction is workin solely with regard to war. Let us say emphatically that it is also distinctly a work peace, introducing law into a subject hitherto left to arbitrariness and violence. It th are disputes in which the traditional reserves respecting vital interests and national hono especially arise, it is when there are disputes on the correctness of decisions of prize tribu which examine into the validity of captures effected by officers of the navy and inter legality of the enactments in virtue of which the prizes have been taken. We are convinc that, if unfortunately a naval war takes place, not only will the private interests that ha hitherto been left without effective protection find assistance in the new jurisdiction, b that the very existence of this jurisdiction will have a restraining influence on Governme and courts by rendering them more careful to respect the principles of international l and equity. We also think that many of the diplomatic difficulties of a nature sometim to bring about conflict, as has been the case in the past, will be thus swept away and th peace will have a greater chance to prevail between belligerents and neutrals. Finally we think that it is not a matter of indifference, for the orderly development of internatio relations, to have created this first permanent judicial organism, which, in a limited b singularly important field, provides for the needs of the community of States. Could th community bring its conscience more and more to think of its duties as well as of its rights international relations will gain the security needful for them.

[1] *Le droit de la guerre maritime d'après les doctrines anglaises contemporaines*, by Charles Dup... 289. Paris, 1899. A highly esteemed German author, after having mentioned the work of the I... of International Law, added : *'Eine Aussicht auf Verwirklichung bieten aber diese und frühere auf... Ziel gerichtete Bestrebungen für absehbare Zeit nicht'* Perels, *Das internationale öffentliche S... Gegenwart*, 2nd ed., 1903.

Let us now examine the project itself.

The title 'International Prize Court' has been finally accepted to replace that of 'High International Prize Court,' which was found in the German proposal, and that of 'Permanent International Court of Appeal' which appeared in the British proposal. The title which we ask you to adopt is of itself very simple, it well shows the character of the new institution and does away with the objections that the two other names might provoke.

The project is divided into four parts:

I. General provisions;
II. Constitution of the International Prize Court;
III. Procedure in the International Prize Court;
IV. Final provisions.

PART I

GENERAL PROVISIONS

The purpose of this part is to determine the extent of the jurisdiction of the International Court and its powers.

The general principle is that every case of prize shall be decided by a prize court, whether neutral or enemy property is involved, either ship or cargo. The Convention applies only when an international interest is involved. To be sure, in most countries the prize tribunals deal only with matters concerning enemies or neutrals; it may, however, happen that in certain countries such an act on the part of a subject as trading with an enemy is brought before a prize tribunal, whilst in others it would be dealt with in the criminal courts. This matters little from the point of view which we here take. The relations between a belligerent and its nationals are entirely foreign to the present Convention, and this is implicitly affirmed by the following text.

[ARTICLE 1

The validity of the capture of a merchant-ship or its cargo is decided before a prize court in accordance with the present Convention when neutral or enemy property is involved.

It has sometimes been asked whether we might not have only an international prize jurisdiction, and an affirmative opinion thereon was expressed even in our Commission. The authors of this project, however, have thought that in this way matters would be complicated without any appreciable advantage. The international jurisdiction might be weighed down with affairs of little importance which could be settled more simply and quickly in a national jurisdiction. We therefore did not touch on national prize courts, which will continue as in the past to function according to their organization and procedure. The Convention does not disturb the various countries in their usage.

If the national prize tribunals remain competent, we can only say that they decide "*in the first instance*, for it may be true that they also decide on appeal and that the International Court intervenes only afterwards. This is why the expression 'court of appeal' could not be applied to the latter. Every country then continues to organize its procedure, delays and hearings as it chooses; it is when these have reached a final decision that an international appeal may be taken. We shall see farther on (Article 6) that

precautions have been taken to prevent this latitude left to the belligerent captor leading to interminable delays.

The legislation of every country which in the exercise of its sovereignty prescribes organization of its own prize jurisdiction is likewise competent to decide whether judgements there rendered are to be executed or not. It can therefore leave the defin judgement to receive its execution in spite of the appeal, or, on the contrary, it may pe the appeal made to the International Court to act in bar thereof.

The only rule imposed by the Convention with respect to the national courts is their judgements must be pronounced in public or notified to parties concerned who neutrals or enemies. This is indispensable in order that the parties may receive notice and in order that the period within which they may appear before the Internati Court may begin to run against them.

ARTICLE 2

Jurisdiction in matters of prize is exercised in the first instance by the prize co of the belligerent captor.

The judgements of these courts are pronounced in public or are officially noti to parties concerned who are neutrals or enemies.

In what cases may the judgements of the national courts be brought before the In national Court ?

A fundamental distinction is necessary.

1. When the judgement of the national court affects the property of a *neutral* Po or individual there is always a right of appeal. Clearly it is for neutrals especially that establishment of an international jurisdiction can be considered necessary.

Here the neutral Power is concerned to the same extent as the owner who sees his rig infringed by the judgement of a prize court. The case where a neutral State might de to proceed in virtue of its right of sovereignty is dealt with farther on (Article 4, section

2. When the judgement of the national court affects *enemy property* there is only appeal in three special cases.

The first case is that of enemy cargo on board a neutral ship. It concerns for instan the respect to be shown for the principle ' the neutral flag covers enemy's goods ' in t Declaration of Paris, and it is not only the enemy whose goods are on the neutral sh who has an interest in this regard but also the neutral himself.

The second case is where an enemy ship has been captured in neutral territorial wate The right which is in this case first ignored is the right of the neutral Power ; if that Pow has made the capture the subject of a diplomatic claim, this claim must be allowed follow its normal course. The question will be settled directly between the neutral Sta and the belligerent State to which the captor belongs. But it is possible that the neutr Government may not care to intervene diplomatically. It can leave the national tribun to decide and if not satisfied with the judgement it may appear before the Internation Court as provided in Article 4, section 1 ; this is not a case in which the enemy individu is permitted to prosecute an appeal before the International Court.[1]

Finally, an appeal to the International Court is allowed when the enemy individu alleges that the capture has been effected in violation of a provision of a Convention force between the belligerent Powers. The International Court is therefore thus calle

[1] Cf. Article 4, section 2.

upon to ensure respect for an international engagement, and this is quite natural. It is proposed to go a little further. Suppose the belligerent captor had issued certain legal enactments, and that the individual alleges that the tribunal has misconstrued these very enactments in deciding against him. In this case there would be a special injury for which he might ask redress from the International Court. It results from this restricted enumeration that an appeal could take place on the basis of a judicial decision affecting enemy property only if it could be alleged that there had been violated either a conventional rule in force between the two belligerents or an enactment issued by the belligerent captor. The allegation of a violation of a rule of customary law or of a general principle of the law of nations would not suffice. The interests of enemies are not safeguarded to the same degree as the interests of neutrals.

In the cases in which the appeal is allowed, it may be based on fact or law. Has or has not a ship been captured in the territorial waters of a neutral State? What is its nationality? Has it attempted to violate a blockade? and so forth indefinitely.

ARTICLE 3

The judgements of national prize courts may be brought before the International Prize Court--

(1) When the judgement of the national prize courts affects the property of a neutral Power or individual;

(2) When the judgement affects enemy property and relates to:

(*a*) Cargo on board a neutral ship;

(*b*) An enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim;

(*c*) A claim based upon the allegation that the seizure has been effected in violation, either of the provisions of a convention in force between the belligerent Powers, or of an enactment issued by the belligerent captor.

The appeal against the judgement of the national court can be based on the ground that the judgement was wrong either in fact or in law.

In cases where an appeal is admissible, by whom may it be brought?

1. It may be brought by a neutral Power under a variety of circumstances. Naturally this Power can act when it alleges that the judgement of the national tribunals injuriously affects its property; it is then like a neutral individual whose property has been injuriously affected. But besides, a neutral Power may act to defend the interests of its nationals or its own sovereign interests. It is well to lay stress on this. One of the points of difference between the German and British proposals was precisely whether States alone or individuals also should have the right of appeal. For several reasons, especially in order to better safeguard the interests of individuals who might suffer through the negligence or undue reserve on the part of a neutral Government, and also in order to relieve as much as possible neutral foreign offices from irksome business, the appeal was opened to individuals. But while allowing this solution, we have had to bear in mind that in certain cases a neutral Government might judge it necessary either itself to defend the interests of its nationals before the Court or, on the other hand, to forbid them access to this Court. The public interest must outweigh private interests; any difficulty that may arise on this score between a Government and its nationals is a purely domestic one; it does not at all concern the International Court.

There is another case in which a neutral Power may intervene to safeguard sovereignty. This is when it is alleged that the capture of an enemy ship has taken p in its own territorial waters. In such circumstances the neutral Power may choose be tv two procedures. It may select the diplomatic channel and address itself directly to Government of the captor in order to obtain satisfaction; or it may leave the owner of captured ship, if the legislation of the captor permits, to take his complaint of the ir larity of the seizure before the national tribunals, and then, if in spite of his so doing irregularity is not admitted, it may take the matter to the International Court.

The statement of the cases in which a neutral Powe may appear before the Internati Court is to be understood as restrictive.

2. A neutral individual may in principle always appeal when the judgement of national tribunals injuriously affects his property. It is to be borne in mind, howe that, as has been explained above, the Power to which he belongs has the right, eith forbid him access to the Court, or itself to act there in his stead and place. Precautions been taken to permit a neutral Power to make use of the option thus reserved to it.[1]

3. Finally the right to appeal has been recognized in behalf of an individual sub or citizen of an enemy Power though not in all cases, when the judgement of the natio courts concerns enemy property.[2] The case of a vessel captured in neutral water excepted; in which case the Power whose neutrality has thus been violated alone has right to appeal to the International Court.

The cases where an appeal is admissible and the persons qualified to bring it have been indicated. When an appeal has actually been brought, the International Court al is competent to pass on the question whether this appeal is or is not to be received. does not seem necessary to say this expressly; the principle being that a tribuna naturally the judge of its own competence, as is recognized in the Hague Convention July 29, 1899, for the pacific settlement of international disputes (Article 48). In Article 29, paragraph 1, our project provides that the national court in which a notice appeal has been entered is to transmit the record of the case to the International Bur *without considering the question whether the appeal was entered in due time*, it is bec otherwise, as we are there dealing with a mere physical certification, that court must so and come to the conclusion that it is useless to transmit the record of a case definitely settled. It cannot be concluded from such a provision that the court might in other have a power of decision which should not belong to it. It should *always* transmit record, since the International Court is the sole judge of what is to be done with the Such is the explanation given by the reporter to the First Commission[3] in response a request for explanation from his Excellency Mr. Asser. This explanation met with objection and it does not appear necessary to make any addition to the text.

ARTICLE 4

An appeal may be brought:

(1) By a neutral Power, if the judgement of the national tribunals injuri affects its property or the property of its nationals (Article 3, No. 1), or if the capt of an enemy vessel is alleged to have taken place in the territorial waters of t Power (Article 3, No. 2 *b*);

(2) By a neutral individual, if the judgement of the national court injuri affects his property (Article 3, No. 1), subject, however, to the reservation

[1] See Article 29, paragraph 3.

[2] Cf. Article 3, section 2

[3] Meeting of September 10.

Power to which he belongs may forbid him to bring the case before the Court, or may itself undertake the proceedings in his place;

(3) By an individual subject or citizen of an enemy Power, if the judgement of the national court injuriously affects his property in the cases referred to in Article 3, No. 2, except that mentioned in paragraph *b*.

It has been observed that the owners of a ship or cargo are not the only persons that may suffer damage by a capture. Rights may have been granted over a ship or its cargo, rights of mortgage or other similar ones, of such a kind that the real parties in interest will not always be the owners. Is it not necessary to open to them likewise this international appeal? The affirmative has been accepted without difficulty. The only condition is that the persons in question shall have taken part in the proceedings before the national court. If, therefore, according to the legislation of a country, the owners in the strict sense of the term are alone allowed to appear in a prize case, they alone will be able to appeal against the judgement given. The other persons in interest, underwriters, bailees, &c., although injured by the judgement, could not attack it before the International Court. A neutral Power is the only party that can appeal directly against a judgement when it has not appeared in the proceedings wherein this judgement has been rendered.

The interested persons of whom we have just spoken can sue only on the same conditions as those from whom they derive their rights. Thus, such a person, if a neutral, can be prevented from acting by his own State, as has been explained above.[1] But he could not be excluded by the Power of which the owner from whom he has derived his rights is a national. This Power, whose national might have only a small interest in the prize case, might perhaps, for political reasons, surrender too cheaply the case of the true party in interest.

Let us suppose the case of two persons who derive their rights from and are entitled to represent the same owner, and who are of different nationality. For example, the same ship has been insured by two companies located in neutral countries, in Belgium and in Switzerland. On the one hand, it is not necessary that the two insurers combine to bring the appeal, each being able to do so to the extent of its interest. On the other hand, a neutral Government can prevent an appeal on the part of its own nationals only. If one of the insurers is prevented by his Government from proceeding, the other may bring the action to safeguard his own personal interest, unless his own Government prevent him. The explanations given by the reporter to the Commission in the meeting of September 10 met with no objection. They were called forth by observations of their Excellencies Messrs. Asser and Beernaert, and are in explanation of the addition of the second sentence to the first paragraph of Article 5.

It matters little whether we are dealing with persons deriving their interest and title from an individual or from a neutral Power, from the moment that the property of the latter is the subject of the decision.

ARTICLE 5

An appeal may also be brought on the same conditions as in the preceding article, by persons belonging either to neutral States or to the enemy, deriving their rights from and entitled to represent an individual qualified to appeal, and who have taken part in the proceedings before the national court. Persons so entitled may appeal separately to the extent of their interest.

[1] See Article 4, section 2.

The same rule applies in the case of persons belonging either to neutral S
or to the enemy who derive their rights from and are entitled to represent a ne
Power whose property was the subject of the decision.

The national prize courts should decide in the first instance and we have desi
leave them to function according to their own rules. This is what has been clearl
down in Article 2. Nevertheless, it was necessary to reconcile this principle wi
necessity of preventing a prize case from lasting indefinitely. This result has been ob
by means of two distinct rules.

1. Cases within the jurisdiction of the International Court cannot be dealt with by
national tribunals in more than two instances. It is for the legislation of the belli
captor to decide, on the one hand, whether there shall be one or two instances, and, o
other, in case there may be two, whether both must be taken or whether the appeal
be permitted from the judgement in the first instance. Opinions on this point may di

2. The limitation to two instances was not sufficient to avoid the risk of cases las
too long. Even with only one trial the case might remain undecided for an indefinite t
So it was proposed to rule, although in principle the international appeal presup
a final judgement against which it is brought, that the case may be carried direct to
International Court if a final judgement has not been rendered by the national courts w
two years from the date of capture. This can be done whether there has been no judge
at all or whether after a judgement in the first instance the appeal court has not co
a decision within the prescribed period.

The period of two years has been chosen because it is necessary to take into accoun
very different circumstances in which a prize case may be brought before a court
which may lead to delay. Nevertheless, it is to be hoped that prize courts will use
diligence ' and try to do justice in the shortest time possible.

ARTICLE 6

When, in accordance with the above Article 3, the international Court has
diction, the national courts cannot deal with a case in more than two inst
The municipal law of the belligerent captor shall decide whether the case m
brought before the International Court after judgement has been given in first inst
or only after an appeal.

If the national courts fail to give final judgement within two years from th
of capture, the case may be carried direct to the International Court.

What rules of law shall the new prize court apply ?

This is a question of the greatest importance, the delicacy and gravity of which
be overlooked. It has often claimed the attention of those who have given their
the establishment of an international jurisdiction on the subject we are considering.

If the law of maritime warfare were codified, it would be easy to say th
International Prize Court, like the national courts, should apply international l
would be a regular function of the International Court to revise the decisions of the n
courts which had wrongly applied or interpreted international law. International C
and national courts would decide in accordance with the same rules, which it wo
supposed ought merely to be interpreted more authoritatively and impartially
former courts than by the latter. But this is far from being the case. Upon many
of which some are of great importance, the law of maritime warfare is still uncer

each State formulates it in accordance with its own ideas and interests. In spite of the efforts made at the present Conference to diminish these uncertainties, one cannot help realizing that many will continue to exist. Hence there arises a serious difficulty.

It goes without saying that where there are rules established by treaty, whether they are general or are at least common to the States concerned in the capture (the captor State and the State to which the vessel or cargo seized belongs), the International Court will have to conform to these rules. Even in the absence of a formal treaty, there may be a recognized customary rule which passes as a tacit expression of the will of States. But what will happen if positive law, written or customary, is silent? The solution dictated by the strict principles of legal reasoning does not appear doubtful. Wherever the positive law has not expressed itself each belligerent has a right to make his own regulations, and it cannot be said that they are contrary to a law which does not exist. In this case, how could the decision of a national prize court be revised when it has merely applied in a regular manner the law of its country, which law is not contrary to any principle of international law? The conclusion would therefore be that in default of an international rule firmly established, international adjudication shall apply the law of the captor.

Of course it is easy to offer the objection that in this way we should have a law which is very changeable, often very arbitrary and even conflicting, certain belligerents using to an excess the latitude left by positive law. This would be a reason for hastening codification of the latter in order to remove the differences and uncertainties which are complained of and which bring about the difficult situation just pointed out.

However, after mature reflection, we believe that we ought to propose to you a solution, bold to be sure, but calculated considerably to improve the practice of international law. If no generally recognized rule exists the Court shall give judgement *in accordance with the general principles of justice and equity*. It is thus called upon to *create the law*, and to take into account other principles than those to which the national prize court whose judgement is appealed from was required to conform. We are confident that the judges chosen by the Powers will be equal to the high mission thus entrusted to them, and that they will exercise it with moderation and firmness. They will point practice in the direction of justice without upsetting it. A fear of their just decisions may mean the exercise of [illegible] belligerents and national judges, may lead them to make a more serious and conscientious investigation, and thus prevent the adoption of regulations and the [illegible] decisions which are too arbitrary. The judges of the International Court will [illegible] to give two judgements contrary to each other by applying successively to [illegible] vessels seized under the same conditions different regulations established by [illegible]. Moreover, the situation created for the new Prize Court will greatly [illegible] which long existed in the courts of countries where the laws, chiefly [illegible] contrary. These courts made law at the same time that they [illegible] constituted *precedents*, which became an important source of [illegible] have judges who inspire perfect confidence. If we were to [illegible] international law is complete before having judges to apply it, [illegible] positive one which even the youngest of us could hardly expect [illegible] such as the Institute of International Law, was able, by [illegible] works, to prepare a set of international regulations on maritime [illegible] and the procedure of the International Court hold only [illegible] community of civilized nations is more difficult to set in movement

than an association of jurisconsults ; it must be influenced by other considerations or ev other prejudices, the reconcilement of which is not so easy as that of legal opinions. I us therefore agree that a court composed of eminent judges shall be entrusted with t task of supplying the deficiencies of positive law until the codification of international l regularly pursued by the Governments shall simplify their task.

The ideas which have just been set forth will be applicable to questions relating to t order and mode of proof. In most countries arbitrary rules exist regarding the or of proof. To use a technical expression, upon whom does the burden of proof rest ? be logical, one would have to say that it is the captor's place to prove the legality of t seizure that he has made. This is especially true when a violation of neutrality is charg against a neutral vessel. Such a violation should not be presumed. And yet the captur party is frequently required to plead the nullity of the capture, and consequently illegality, so that in case of doubt it is he who, as plaintiff, loses the suit. This is n equitable and will not be imposed in the International Court.

What has just been said respecting the order of proof also applies to the mode of pro regarding which more or less arbitrary rules exist. How shall nationality, ownership, a domicile be proved ? Is it to be only by means of the ship's papers, or also by means documents produced elsewhere ? We intend to leave the Court full power to decide

Finally, in the same spirit of broad equity, the Court is authorized to disregard fail to comply with the procedure laid down in the enactments of the belligerent captor, wh it is of opinion that the consequences of complying therewith are unreasonable. F instance, there may be provisions in the law which are too strict with regard to the ti allowed for taking an appeal or which enable a relinquishment of the claim to be too eas presumed, etc.

There is a case in which the International Court necessarily applies simply the law of t captor, namely, the case in which the appeal is grounded on the fact that the national co has not observed a legal provision enacted by the belligerent captor. This is one of t cases in which a national of the enemy is allowed to appeal.[1]

Article 7, which has thus been commented upon, is an obvious proof of the sentime of justice which animates the authors of the project, as well as of the confidence which th repose in the successful operation of the institution to be created.

ARTICLE 7

If the question of law to be decided is covered by a treaty in force be tw the belligerent captor and a Power which is itself or whose subject or citiz is a party to the proceedings, the Court is governed by the provisions of the s treaty.

In the absence of such provisions, the Court shall apply the rules of internation law. If no generally recognized rule exists, the Court shall give judgement in acc dance with the general principles of justice and equity.

The above provisions apply to questions relating to the order and mode of proo

If, in accordance with Article 3, No. 2 *c*, the ground of appeal is the violati of an enactment issued by the belligerent captor, the Court will enforce su enactment.

The Court may disregard failure to comply with the procedure laid down in th enactments of the belligerent captor, when it is of opinion that the consequenc of complying therewith are unjust and inequitable.

[1] Article 3, No. 2 *c*, at end.

What judgements may the Court render?

Three hypotheses are to be provided for.

The Court affirms the judgement of the national court and, consequently, pronounces the capture of the vessel or cargo to be valid. The vessel or cargo is then disposed of in accordance with the laws of the belligerent captor, which are the only ones applicable in this case.

The Court pronounces the capture to be null, and, consequently, orders restitution of the vessel or cargo found to have been unjustifiably seized. It may happen that such restitution will be sufficient to satisfy the demands of justice. It may also happen that it will not be sufficient, because an unjust injury has been caused and ought to be made good. This will depend on the circumstances, which may be greatly varied. The captain of the captured vessel may have been free from reproach, or he may have given rise to suspicions through his own fault; and it matters not if he justifies his conduct in the end, he will have to bear the injurious consequences of his act. The Court will judge. If the vessel or the cargo have been sold or destroyed, as may happen in many cases, especially if the final judgement of the national court has been executed without regard to the non-suspensory appeal, as was said above, the Court shall determine the compensation to be given on this account to the owner or those deriving interest through him.

The same award of the Court may contain decisions of both kinds, validating, for instance, the capture of the vessel and annulling the seizure of the cargo in whole or in part.

Finally, we may suppose that the capture had been pronounced null by the national court. In this case we can imagine an appeal being made only because the party obtaining the award had asked damages which were not allowed him or which were allowed him only to an extent deemed by him insufficient. He prays the Court for a judgement allowing him damages, and the Court is competent only on this point. A captor who has lost his suit before the national courts of his country can obviously not appeal to the international jurisdiction.

ARTICLE 8

If the Court pronounces the capture of the vessel or cargo to be valid, it shall be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the Court shall order restitution of the vessel or cargo, and shall fix, if there is occasion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the Court shall determine the compensation to be given to the owner on this account.

If the national court pronounced the capture to be null, the Court can only be asked to decide as to the damages.

It goes without saying that the contracting Powers accept in advance the decisions which the International Court may render. And we have thought that we should repeat the formula given in the Convention of July 29, 1899, with respect to arbitral awards.

ARTICLE 9

The signatory Powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay.

PART II

CONSTITUTION OF THE INTERNATIONAL PRIZE COURT

The Court is composed of judges and deputy judges. When the latter actually take t place of judges they have all their powers and enjoy the same advantages.

These magistrates are appointed by the contracting Powers in the proportion wh will be indicated further on. It has not been thought possible to suggest to the Pow the classes from which they ought to select the men, who will have, as has been seen abo a very difficult task to perform, and who ought to present the most positive proofs learning and independence. We have employed only a very general form, which suggested by Article 23, paragraph 1, of the Convention of July 29, 1899.

It is desirable that this appointment be not delayed. This is why we have fixed period within which it must be made. The beginning of this period is defined by t special provision of Article 52, regarding ratification. As the Convention is to take eff six months after ratification, there seems to be a slight contradiction in requiring wit the same period an appointment which will be made in execution of the Conventi This is only a precautionary measure that is indispensable to permit of the Conventi actually becoming effective on the expiration of the time prescribed.

ARTICLE 10

The International Prize Court is composed of judges and deputy judges, w will be appointed by the signatory Powers, and must all be jurists of known p ficiency in questions of international maritime law, and of the highest moral reputati

The appointment of these judges and deputy judges shall be made within months after the ratification of the present Convention.

The appointment is made for a period of six years. This means that they cannot arbitrarily relieved of their offices—a guarantee necessary to their independence.

Their appointment can be renewed.

The term of each judge shall be reckoned from the date when his appointment is notifi to the Administrative Council established by the Convention of July 29, 1899; this Coun represents in a manner the whole of the signatory Powers.

If it is necessary to fill a vacancy by reason of the death or resignation of a judge, t same method of appointment shall be followed. The new judge is appointed for a term six years, not for the remainder of the term of his predecessor. The personnel of the Co will not be changed suddenly, but only gradually.

ARTICLE 11

The judges and deputy judges are appointed for a period of six years, reckon from the date on which their appointment shall have been notified to the Administrati Council established by the Convention of July 29, 1899. Their appointments can renewed.

Should one of the judges or deputy judges die or resign, the same procedure followed for filling the vacancy as was followed for appointing him. In this ca the appointment is made for a fresh period of six years.

The judges are naturally all equal in rank. It is necessary, however, as in every judici body, to establish an order of precedence and this should be free from any hierarchi

idea. It is seniority in office which determines the rank, and we have already seen (Article 11, paragraph 1) what determines seniority; when length of service is equal, it is age that determines. We need only remark that for judges who merely sit by rota (Article 15, paragraph 2), it is the date on which they enter upon their duties which should be taken into consideration, that is to say, the 1st of January of the year in which they are actually entitled to sit.

As has already been said, the deputy judges when acting are assimilated to the judges. Naturally, however, they rank after them.

ARTICLE 12

The judges of the International Prize Court are all equal in rank and have precedence according to the date of the notification of their appointment (Article 11, paragraph 1), and if they sit by rota (Article 15, paragraph 2), according to the date on which they entered upon their duties. When the date is the same the senior in age takes precedence.

The deputy judges when acting are assimilated to the judges. They rank, however, after them.

It has been thought that it would be proper to grant to the magistrates of the International Court the immunities granted by the Convention of July 29, 1899, to the members of a tribunal of arbitration, under the same conditions, in the performance of their duties and when outside their own country.

It was also desired that the character of their mission should be the subject of a declaration in due form by themselves before taking their seats. It has been thought that the Administrative Council, to which notification of their appointments is to be made, is competent to receive this declaration, which is to be made in the form of an oath or a solemn promise. As we are making rules for States having the most varied social and religious conditions, we have chosen a general formula susceptible of being adapted to individual convictions.

ARTICLE 13

The judges enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country.

Before taking their seats the judges must swear, or make a solemn promise before the Administrative Council, to discharge their duties impartially and conscientiously.

All that precedes has only a secondary importance and cannot cause any difficulties. We now come to the most delicate questions relating to the composition of the Court itself.

How many judges shall there be?

We have thought it necessary to constitute a true court and not a judicial assembly. For this, the number of fifteen judges has been taken as a maximum. It would have been too much to require that there should always be fifteen judges present and actually sitting. Various causes may prevent a judge from sitting. Nine judges shall constitute a quorum.

ARTICLE 14

The Court is composed of fifteen judges; nine judges constitute a quorum.

A judge who is absent or prevented from sitting is replaced by the deputy judge.

Since there would be only fifteen judges and as there are forty-six States, every State cannot be given the right to appoint a judge under the same conditions. Here it is that

we run squarely against great obstacles and natural susceptibilities. To avoid embarras ment we may of course conceive of various combinations having the merit of being ve ingenious, but they have also the defect of not being acceptable to States whose concurren is indispensable in founding the new institution. It is requisite that the States whi consider themselves treated less favourably in the allotment of the judges should understa that the Powers that are to have the advantage in the designation of judges are actual those which are making the greatest sacrifice in co-operating to institute an internation jurisdiction. They are those which will most often be belligerents, and are therefore the which are consenting that the decrees of their prize courts shall be revised by the Int national Court and that the latter shall in this way be called upon to pass on the conduc of their naval officers.

Will not the commercial interests of a small neutral State be more effectively safeguarde by the working of the new Court than if that State had to rely entirely on the impartial of the prize court of the captor, or on the result of a diplomatic claim? The reply is n doubtful. The different legal systems will be represented in the Court and it will not possible to say that this or that political influence will preponderate. Moreover, it is to presumed that the judges chosen will, with the sole aim of doing strict justice to all, r themselves of any narrow national attitude; they would destroy their usefulness if were otherwise.

If it is remarked that war is made not only by the great Powers, that it may be mad by a Power less favoured than they with respect to the allotment of the members of th Court, it is proper to reply that the case has been provided for and the essential right every State in this matter has been safeguarded, viz. that of not seeing the judgement of its prize courts invalidated by a court in which it is not represented. According Article 16, a belligerent Power may always ask that the judge or deputy judge appointe by it should take part in the settlement of all cases arising from the war. Therein lie a guarantee the importance of which should not be under-estimated.

After these general considerations, let us briefly describe the plan which the Fir Commission proposes to you.

All the Powers appoint magistrates of the International Court, but these magistrate are not summoned to sit in the same way. Eight Powers seem to have a preponderatin interest through their navies, the tonnage of their merchant marine, or the importanc of their maritime trade, to such an extent that, by reason of a combination of these several factors, the jurisdiction of an international court is of most especial concern to them and their subjects, whether they are neutrals or belligerents. The judges appointed by thes Powers are therefore always summoned to sit. It is not without interest to note that these eight Powers are here on the same footing, they are, nevertheless, far from equal the matter of war-ships and merchant vessels; there is no need to cite examples.

For the other Powers, there is a rotation regulated by a table which will be annexed to the Convention, and which indicates, year by year, the judges and their respective deputy judges. The judge of one Power will sit during the first three years, the judge another the last two years. The endeavour has been made to make an acceptable classification while taking into account the different factors to be dealt with. That the classi may be criticized on this or that point, is possible, and criticism has already been voice with ability and eloquence. It is impossible to enter into the discussion of each particular case. It is not astonishing that inequalities may be found among States placed on th

same category; still greater inequalities, if possible, exist among States which have a permanent judge, as has been said before.

Two observations ought to be added. A Power which has, for instance, the right to have a judge sitting the three first years and a deputy judge for the other three years, will have the power to designate the same person to fill these two positions. It is well to mention this because at first sight it might seem a little strange that after having been judge, one should be a deputy judge. But we are here referring to duties entirely distinct, whose successive discharge by the same person is quite natural.

Furthermore, a Power is by no means bound to select a judge of its own nationality. For the Permanent Court of Arbitration instituted by the Convention of July 29, 1899, some Powers have already placed on their lists the names of jurists who are not their subjects. Nothing therefore would prevent several Powers from designating the same person as judge. For instance, State A having the right to a judge for the first year, State B to a judge for the second year, and State C to a judge for the third year, these three States may choose the same person, who will consequently sit three years under different titles.

ARTICLE 15

The judges appointed by the following signatory Powers: Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia, are always summoned to sit.

The judges and deputy judges appointed by the other Powers sit by rota as shown in the table[1] annexed to the present Convention; their duties may be performed successively by the same person. The same judge may be appointed by several of the said Powers.

We have already spoken of the right reserved to a belligerent Power which would have, according to the rota, no judge or deputy judge sitting in the Court. The exercise of this right should not have the consequence of increasing the number of the judges, which cannot exceed fifteen; especially as there may also be two naval officers acting as assessors (Article 15). One of the judges sitting by rota must withdraw; this judge will be chosen by lot. Obviously this rule should not be applied to the judge appointed by the other belligerent.

According to the project, one of the judges entitled to sit according to the rota should withdraw after the drawing of lots. The first Norwegian delegate reserved the right to propose that the drawing refer to the judges sitting permanently. In a spirit of conciliation, he did not renew his proposal, although expressing an opinion favourable to the omission of Article 16.

It goes without saying that the provision is wholly applicable in the case where there are two belligerent Powers with no judge sitting in the Court.

As is evident from these explanations, we did not wish to exclude the judge appointed by an interested party from the Court called upon to decide a case. The principle is very clearly implied in the provision governing the special case just mentioned. In ordinary arbitration cases the Powers are generally anxious to have their views presented authoritatively and with exactness to the Court which is to decide these cases, and they can be certain of this only if they have a judge of their choice in the Court. In a court of three members, if each of the parties appoints an arbitrator, they are inclined to consider these arbitrators as the defenders of their interests rather than as real judges, and as a matter

[1] *Ibid.*, p. 738.

of fact the award is made by the umpire. This is unsatisfactory. The situation here different. With the quorum required for the Court, the vote of one judge will not so important a factor in the case just referred to. Moreover, it is to be presumed t a judge appointed to act, not in a specific case, but during a definite period, will feel a p fessional pride which will prevent his considering himself the advocate of the Po which appointed him. Without doubt, he will not lay aside his nationality entire but his nationality will not be the only influence exerted upon his judgement.

A final observation must be made in reference to the advisability of having a ju appointed by the Power interested in the case. It will keep out of the award reas which might, without intention on the part of the drafters, be a source of legitimate i tatior ere are different ways of being right and of condemning a litigant, and form should not aggravate the displeasure caused by the substance.

ARTICLE 16

If a belligerent Power has, according to the rota, no judge sitting in the Co it may ask that the judge appointed by it should take part in the settlement of cases arising from the war. Lots shall then be drawn as to which of the judges entit to sit according to the rota shall withdraw. This arrangement does not affect judge appointed by the other belligerent.

To avoid all suspicion of partiality, certain restrictions have been laid down. If a per has taken part in the decision rendered by the national prize courts, or has figured in case as advocate or counsel for a party, naturally he should not sit as a judge in the Co

Another restriction of a general nature is necessary. The judges should constit a court and not merely appear on the same list, as is the case with the members of Permanent Court of Arbitration established by the Convention of July 29, 1899. If members of the latter Court, who act as arbitrators only on occasion, have, without imp priety, been able to act as agents or counsel before a tribunal of arbitration whose memb at times are hardly known to them by name, it would be different with permanent judg who cannot leave their seat in the court one day and resume their place among th colleagues the next.

ARTICLE 17

No judge can sit who has been a party, in any way whatever, to the sente pronounced by the national courts, or has taken part in the case as counsel or advoc for one of the parties.

No judge or deputy judge can, during his tenure of office, appear as agent advocate before the International Prize Court nor act for one of the parties in a capacity whatever.

Prize cases at times involve technical details, for the explanation of which the prese of a seaman would seem to be useful. Moreover, it may often be of the utmost importa to the State whose cruisers have made the seizures, the regularity of which is being attack before the International Court, to have the acts of the commanders of these cruis explained with knowledge and authority. Hence, in one of the original propositi it was stated that the International Court should be composed of five members, two admirals and three members of the Permanent Court of Arbitration at The Hag The award, in reality, would be made by the latter, as the votes of the admirals wo frequently cancel each other. The opinion that prevailed is recorded in Article 10, p

viding that the Court shall comprise only jurists. Nevertheless we wished to satisfy those who believe that seamen should take part in the work of the Prize Court. Each belligerent may designate a naval officer of high rank who shall sit as assessor. A rather vague expression has been employed because a more precise title might not have fitted the terminology used in all navies, and in order to allow every latitude to belligerents. This assessor would act only in a consulting capacity; that is to say, his vote could not affect the award. Except for this important restriction he will take part in the transactions and deliberations of t. Court. It goes without saying that the naval officer designated by a belligerent can. participate in the hearing of any cases except those in which this belligerent is a pa.

It has seemed just to give the same right to a neutral Power which might be a party to the litigation, as may happen in the cases pro ided against by Article 4, paragraph 1 It is even possible that several neutral Powers may be interested, one in the vessel, another in the cargo. In such a case, they must agree upon a single officer. If, however, they cannot so agree, each one shall designate an officer and it shall be decided by lot between them.

Finally, this privilege has been allowed to the belligerent Power whose national is a party to the litigation, as in the cases indicated in Article 4, paragraph 3.

ARTICLE 18

The belligerent captor is entitled to appoint a naval officer of high rank to sit as assessor, but with no voice in the decision. A neutral Power, which is a party to the proceedings, or whose subject or citizen is a party, has the same right of appointment; if as the result of this last provision more than one Power is concerned, they must agree among themselves, if necessary by lot, on the officer to be appointed.

The Court must have a president and a vice-president, who shall be elected under the conditions clearly set forth in the following article.

If the president and vice-president are both prevented from acting, the senior judge shall preside (Article 38).

ARTICLE 19[1]

The Court elects its president and vice-president, every three years, by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are equal, by lot.

How are the judges of the Court to be paid?

Their title would not in itself confer on them a right to remuneration. They must actually discharge the duties which belong to them. They ought, then, to receive travelling expenses and in addition the sum of one hundred Dutch florins a day during the session. Travelling expenses apply to the journeys necessary in the service of the Court, that is to say, not only to the trip between the residence of the judge and the seat of the Court, but also to the journeys necessary for special missions. See, for instance, Article 36.

The foregoing observations apply to those who actually discharge the duties of judge, whether regular or alternate judges.

The allowances just spoken of shall be paid through the medium of the International Bureau of the Permanent Court established by the Convention of July 29, 1899. This Bureau, as will be seen, will be called upon to play an important part in the working of the Court.

[1] *See ante*, p. 225.

Judges may not receive from their own or any other Government any remunerat
as members of the Court, but this shall not exclude the possibility of their receiving remune
tion in some other capacity. The Powers may, by the terms of Article 10, paragraph
designate as judges: magistrates, officials, or professors, who naturally receive remunerat
for their services in these capacities.

ARTICLE 20

The judges on the International Prize Court are entitled to travelling allowan
in accordance with the regulations in force in their own country, and in addit
receive, while the Court is sitting or while they are carrying out duties confer
upon them by the Court, a sum of 100 Netherland florins *per diem*.

These payments are included in the general expenses of the Court dealt with
Article 47, and are paid through the International Bureau established by the C
vention of July 29, 1899.

The judges may not receive from their own Government or from that of any oth
Power any remuneration in their capacity of members of the Court.

There could be no difficulty regarding the seat of the Court. Compare Article 30 of t
Convention of July 29, 1899.

ARTICLE 21

The seat of the International Prize Court is at The Hague and it cannot, except
the case of *force majeure*, be transferred elsewhere without the consent of the belligerent

The Convention of July 29, 1899 (Article 28), organized a Permanent Administrati
Council composed of the diplomatic representatives of the signatory Powers accredit
to The Hague, and the Minister of Foreign Affairs of the Netherlands, who was to
president. This Council was given a certain number of duties of a purely administrati
nature. We propose to utilize this machinery already created and to charge the Coun
with the same duties with respect to the Prize Court. It should be noted—a thing th
goes without saying—that the Administrative Council shall not necessarily be co
posed of the same members in both cases, because the Powers signatory to the tw
diplomatic acts, by virtue of which the Council will operate, may not be identical.

ARTICLE 22

The Administrative Council fulfils, with regard to the International Prize Cou
the same functions as to the Permanent Court of Arbitration, but only representativ
of contracting Powers will be members of it.

The project likewise utilizes the International Bureau, which has been in operatio
since 1900 to the satisfaction of all.

The secretary general of the Bureau must act as registrar.

The Court will need secretaries and assistants, whom it will appoint itself in the manne
that best suits its needs, to be determined by its own regulations.

ARTICLE 23

The International Bureau acts as registry to the International Prize Court an
must place its offices and staff at the disposal of the Court. It has charge of th
archives and carries out the administrative work.

The secretary general of the International Bureau acts as registrar.

The necessary secretaries to assist the registrar, translators and shorthand writer
are appointed and sworn in by the Court.

According to Article 38 of the Convention of July 29, 1899, the arbitral tribunal decides what language it will itself use and what languages may be used before it. The project adopts this rule, but improves the wording. The Court must use only one language in its decisions as well as in its *procès-verbaux*. Experience has proved that the existence of two decisions side by side in two different languages and of equal authority has many disadvantages. Nevertheless the Court may permit the use of more than one language before it, either in the cases or in the proceedings. It shall determine this matter according to the circumstances.

There is a limit to this discretionary power. The official language of the national tribunals that took cognizance of the case may be used.

ARTICLE 24

The Court determines which language it will itself use and what languages may be used before it.

In every case the official language of the national courts which have had cognizance of the case may be used before the Court.

The project regulates the manner in which the parties may be represented before the Court, following the lines of Article 37 of the Convention of July 29, 1899.

A difference will be noted between cases where Powers are involved and those where individuals are involved.

An interested Power appoints a special agent to act for it before the Court. It may also entrust the defence of its rights to counsel or attorneys. The selection of these representatives may be made in any way the Power desires, and no restriction may be imposed upon it.

An individual shall have an attorney, who must be chosen from certain categories of persons who can give the Court the guarantees it requires.

ARTICLE 25

Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

ARTICLE 26

A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a court of appeal or a high court of one of the signatory States, or a lawyer practising before a similar court, or lastly, a professor of law at one of the higher teaching centres of those countries.

The Court may have notices to serve and evidence to collect. It may choose between two methods. It may apply directly to the Government of the Power in whose territory the notice is to be served, or the evidence collected. Requests to this effect may not be refused except in exceptional cases, as indicated by the provisions of prior conventions contemplating analogous cases. The Court also has the right to make its request through the Power in whose territory it sits.

The project further provides for cases where the Court may wish to collect the necessary information itself (Article 36).

ARTICLE 27[1]

For all notices to be served, in particular on the parties, witnesses, or exp
the Court may apply direct to the Government of the State on whose territor
service is to be carried out. The same rule applies in the case of steps being t
to procure evidence.

The requests for this purpose cannot be rejected unless the Power in que
considers them calculated to impair its sovereign rights or its safety. If the re
is complied with, the fees charged must only comprise the expenses actually inc

The Court is equally entitled to act through the Power on whose territory it

Notices to be given to parties in the place where the Court sits may be se
through the International Bureau.

PART III

PROCEDURE BEFORE THE INTERNATIONAL PRIZE COURT

The object of this part is to determine the manner of appeal to the International C
and the procedure to be followed before it.

As to the appeal, it may be taken in two ways: (1) by means of a declaration in wri
presented to the national tribunal which has passed upon the case, in accordance with
form that is customary in the country: ordinarily it will be received by the registra
the secretary; (2) by means of a declaration addressed to the International Bureau,
latter acting as registry to the Court has naturally been recognized as competent to re
a declaration to be laid before the Court. In order to facilitate appeal, it is even permiss
to advise the International Bureau by telegraph.

The period in which appeal shall be taken is 120 days from the date on which the deci
is considered as known to the parties, whether it has been rendered in their presence
whether it has been notified to them (Article 2, paragraph 2).

ARTICLE 28

An appeal to the International Prize Court is entered by means of a writ
declaration made in the national court which has already dealt with the case
addressed to the International Bureau; in the latter case the appeal can be ente
by telegram.

The period within which the appeal must be entered is fixed at 120 days, count
from the day the decision is delivered or notified (Article 2, paragraph 2).

What procedure will then follow?

The record in the case must be placed at the disposal of the International Bure
which acts as an office of registry.

If the notice has been given to the national tribunal, it forwards the record to
International Bureau without delay. It can have no control over the declaration
appeal and must forward the record, even if it believes that the period for appeal
expired or that appeal is not admissible. The Court alone is competent to decide, as
been explained above.

If the notice of appeal has been given to the International Bureau, the natio
tribunal is advised by the Bureau and forwards the record.

It has already been seen that the project, while recognizing the right of individuals
address the International Court, reserves to the neutral Power under whose jurisdict

[1] See *ante*, p. 220.

they are, a controlling right, under which this Power may take the place of its national to defend his rights, or, on the other hand, may forbid his appealing (Article 4, section 2). The neutral Power is advised by the International Bureau that appeal has been taken, in order that it may exercise the right which has just been recalled. It was not thought possible to fix the period in which the Power should make known the course it would follow. It is evident that in the nature of things it must act promptly. It would not be proper to allow proceedings to begin, which would be brought abruptly to an end.

ARTICLE 29

If the notice of appeal is entered in the national court, this Court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International Bureau.

If the notice of appeal is sent to the International Bureau, the Bureau will inform the national court directly, when possible by telegraph. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual the International Bureau at once informs by telegraph the individual's Government, in order to enable it to enforce the rights it enjoys under Article 4, paragraph 2.

The preceding provisions assume that the national courts have rendered a decision, from which an appeal is taken. But it is possible that there may have been no final decision within two years of the capture. The case may then be laid before the Court directly, in conformity with Article 6, paragraph 2. The appeal in this case may be addressed only to the International Bureau, which proceeds as stated in Article 29, paragraphs 2 and 3. This must be done within thirty days of the expiration of the two years period.

ARTICLE 30

In the case provided for in Article 6, paragraph 2, the notice of appeal can be addressed to the International Bureau only. It must be entered within thirty days of the expiration of the period of two years.

With a view to equity, the project reserves to the party whose appeal appears to be too late the right to prove that it has been prevented by *force majeure* from appealing within the 120 days or the 30 days, as the case may be. The Court has full power to judge as to the nature of the impediment, and, if it believes that this impediment has prevented the exercise of the right, it can relieve the party of the forfeiture of its right, which it has incurred. As there must not be uncertainty for an indefinite period, appeal must be made within sixty days from the removal of the impediment. It is evident that the party may not be relieved of the forfeiture of his right until after the opposing party, whose position is changed, has been heard. It may frequently happen that this party can give the Court information as to the accuracy of the allegations made before it.

ARTICLE 31

If the appellant does not enter his appeal within the period laid down in Articles 28 and 30, it shall be rejected without discussion.

Provided that he can show that he was prevented from so doing by *force majeure*, and that the appeal was entered within sixty days after the circumstances which prevented him entering it before had ceased to operate, the Court can, after hearing the respondent, grant relief from the effect of the above provision.

There is no difficulty when recourse is had within the proper time. The adverse p should be immediately notified.

ARTICLE 32

If the appeal is entered in time, a certified copy of the notice of appeal is forth officially transmitted by the Court to the respondent.

Several parties may be interested in a prize case, for example the owner of the v and the various owners of the cargo. Supposing a judgement has been rendered and of the parties appeals at the beginning of the period of one hundred and twenty day Court should not take jurisdiction of the case at once, but should await the expiratio the period, so that, if other parties exercise their right of appeal, the matter may be t up at the same time with regard to all. We have just considered the most usual that of a decision of a national court from which an appeal is taken; the same provi is applicable where no final decision has been given within two years, and direct re is taken.

Finally, every time that recourse is had by a neutral individual, the Court sh suspend proceedings until the Power whose subject this individual is, shall have notic whether it intends to avail itself of its right to intervene and conduct or oppose the ap If the Power, after due notice, remains silent the Court shall determine whether it is pr to continue. The party's right cannot be indefinitely delayed by the mere fact that Power whose subject he is abstains from action.

ARTICLE 33

If, in addition to the parties who are before the Court, there are other parties cerned who are entitled to appeal, or if, in the case referred to in Article 29, paragr 3, the Government who has received notice of an appeal has not announced its deci the Court will await before dealing with the case the expiration of the period laid d in Articles 28 or 30.

We now come to procedure, and the rules in regard to this matter are based upon Convention of July 29, 1899 (Articles 39 *et seq.*).

As is the case in arbitral procedure, the procedure before the International C comprises two distinct phases: the written pleadings and oral discussions.

ARTICLE 34

The procedure before the International Court includes two distinct parts: written pleadings and oral discussions.

The written pleadings consist of the deposit and exchange of cases, counter-ca and, if necessary, of replies, of which the order is fixed by the Court, as also the peri within which they must be delivered. The parties annex thereto all papers a documents of which they intend to make use.

A certified copy of every document produced by one party must be communica to the other party through the medium of the Court.

The Court is allowed the greatest latitude as to sources of information.

ARTICLE 35

After the close of the pleadings, a public sitting is held on a day fixed by the Cou

At this sitting the parties state their view of the case both as to the law and to the facts.

The Court may, at any stage of the proceedings, suspend speeches of counsel, either at the request of one of the parties, or on its own initiative, in order that supplementary evidence may be obtained.

ARTICLE 36

The International Court may order the supplementary evidence to be taken either in the manner provided by Article 27, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or the use of threats.

If steps are to be taken for the purpose of obtaining evidence by members of the Court outside the territory where it is sitting, the consent of the foreign Government must be obtained.

It is a fundamental requirement that all steps taken to secure information should be participated in by both parties, or at least that both parties should be notified to take part therein.

ARTICLE 37

The parties are summoned to take part in all stages of the proceedings and receive certified copies of the minutes.

The draft proposes very simple rules as to the discussions.

The judge appointed by a belligerent party cannot preside. The rule is absolute and applies to all affairs regarding war, even when the Power which named the judge is not a party to the action.

It seems necessary to provide that a litigant Power may require that the proceedings should be secret. It may consider that to have them public would embarrass it in furnishing certain information.

The minutes referred to set forth the facts which occurred at the hearing; they do not reproduce or summarize the argument. If the Court finds it convenient to have them taken down stenographically for its personal information, the arguments do not, because of that fact, become official documents.

ARTICLE 38

The discussions are under the control of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by a belligerent party cannot preside.

ARTICLE 39

The discussions take place in public, subject to the right of a Government who is a party to the case to demand that they be held in private.

Minutes are taken of these discussions and signed by the president and registrar, and these minutes alone have an authentic character.

If a party does not appear, although duly summoned, or if it takes no action within the period set for it, the proceedings shall not be stopped. The Court decides in accordance with such material as it may have. The delinquent party may naturally be in an embarrassing position because of its inaction, but it does not necessarily lose because of its inaction.

ARTICLE 40

If a party does not appear, despite the fact that he has been duly cited, or if a pa
fails to comply with some step within the period fixed by the Court, the case proce
without that party, and the Court gives judgement in accordance with tne mate
at its disposal.

Every precaution should be taken to inform the parties regularly of what may
decided in their absence.

ARTICLE 41

The Court officially notifies to the parties decrees or decisions made in their absen

The Court is left entirely free to determine the value of the various matters of eviden
furnished to enable it to reach a decision. There is no legal system of evidence in t
regard.

ARTICLE 42

The International Prize Court determines without restraint the value to be giv
to all the facts, evidence, and oral statements.

It goes without saying that the deliberations of the Court are held in secret. It shou
be remembered that the assessors may be present.

It was thought necessary to add that the deliberations should *remain secret*. Althou
it may be that there are different rules prevailing in the countries represented at t
Conference as regards the secrecy of deliberations of the judiciary, this secrecy seem
indispensable here because of the nature of the cases. Here are judges of many nationalit
who should decide according to their beliefs and consciences ; it should not be possible
fasten the opinions delivered upon the nationalities of their authors. The authority
the decision would suffer and the personal situation of the judges might be embarrassin

ARTICLE 43

The Court considers its decision in private and the proceedings remain secret.

All questions are decided by a majority of the judges present. If the number
judges is even and equally divided, the vote of the junior judge in the order of pr
cedence laid down in Article 12, paragraph 1, is not counted.

If the question as to whether the arbitral decision should set forth the grounds theref
were open to discussion no doubt could arise in the case of the decisions of the Internation
Court, because it is essential that every judicial decision should contain within itself i
own justification.

The provision of Article 52 of the Convention of July 29, 1899, states that the arbitr
decision ' is drawn up in writing and signed by each member of the tribunal '. It seem
a simple matter to introduce this rule into the subject we are considering. Neverthele
difficulties arose. It was urged that judges might object to signing a decision to whi
they were opposed. That did not seem to be decisive since the judges would be asked on
to affirm by their signatures the existence of the decision in the preparation of which th
had participated and that professional duty should be superior to the expression
individual opinions. However, it was deemed preferable to content ourselves with sayi
that the decision should mention the names of the judges who participated in its prepar
tion. It is signed by the president who has the authority, with the registrar, to atte

what has taken place, and who, by signing, does not in the least indicate that the decision is in accord with his personal opinion.

If a judge is not asked to attest in some way by signing that the decision is in accord with his opinion, neither is he permitted to express his dissent. The provision of Article 52, paragraph 2, of the Convention of 1899 has been omitted.

ARTICLE 44

The judgement of the Court must give the reasons on which it is based. It contains the names of the judges taking part in it, and also of the assessors, if any; it is signed by the president and registrar.

The rendering and notification of the decision take place as in the case of an arbitral decision. Cf. Articles 53 and 54 of the Convention of 1899.

The Court sends to the national prize court the docket which it received from it, with a copy of the decisions reached, and of the minutes of the proceedings, so that the tribunal may understand the grounds which led the International Court to affirm or change the decision.

ARTICLE 45

The sentence is pronounced in public sitting, the parties concerned being present or duly summoned to attend; the sentence is officially communicated to the parties.

When this communication has been made, the Court transmits to the national prize court the record the case, together with copies of the various decisions arrived at and of the minutes the proceedings.

As to the expenses, it was not thought possible to accept in its entirety the rule contained in Article 57 of the Convention of 1899 providing: 'each party pays its own expenses and an equal share of those of the tribunal.' Of course, no question arose as to the first part of the rule; but it seemed just that the losing party should bear especially those expenses caused by the proceeding, such as fees paid to experts and witnesses, the expense of reimbursing Governments which have recognized letters rogatory. Furthermore, it ought to contribute to the general expenses of the International Court a sum up to one one-hundredth of the value of the matter in dispute. The Court shall determine in its decision either the amount of the expenses or the amount of the contribution.

The expression 'matter in dispute' is to be taken in a broad sense. It covers an interest in the suit relative to the boat or the cargo seized, or even to the difference between the amount of damages allowed by the national tribunal and the sum claimed by the appellant.

If an individual brought the appeal, it would be difficult in case he lost to execute the judgement against him as to expenses and contribution; obstacles, both of law and fact, might arise. Some security should be provided to prevent this. The amount thereof is fixed by the Court. The time when the security should be deposited is not stated; generally this will be as soon as the appeal has been perfected. The Court may make the performance of this obligation a condition precedent to the opening of the case. Circumstances may justify an extension of time.

No requirement of this character is made of a State which is party to a suit. Its agreement to carry out the decision within the shortest possible time is sufficient (Article 9)

ARTICLE 46

Each party pays its own costs.

The party against whom the Court decides bears, in addition, the costs of t trial, and also pays one per cent. of the value of the subject-matter of the case a contribution to the general expenses of the International Court. The amou of these payments is fixed in the judgement of the Court.

If the appeal is brought by an individual, he will furnish the International Bur with security to an amount fixed by the Court, for the purpose of guaranteeing eve fulfilment of the two obligations mentioned in the preceding paragraph. The Court entitled to postpone the opening of the proceedings until the security has been furnish

The general expenses of the International Prize Court are naturally borne by t signatory Powers. They comprise, aside from the expenses of administration, the su allowed to the judges as well as those given to the secretaries, stenographers, and tra lators. How shall these expenses be divided among the Powers? At first we thought adopting here the division accepted by the Universal Postal Union, as has been done the case of various unions. After consideration, a more equitable system was adopt Each Power should contribute to the expenses in proportion to the extent in which participates in naming judges. Therefore a Power which has a judge who may be call upon to sit every year, shall bear one-fifteenth of the expenses; the Power whose jud is obliged to sit but two years shall bear one-third of the amount charged against t preceding Power. The designation of deputy judges does not involve any contributio

It should be noted that the expenses of the Powers will be noticeably decreased the contribution of one one-hundredth exacted from each defeated party (Article paragraph 2).

The International Bureau, under the control of the Administrative Council, shall ta charge of the sums paid by the Governments as well as those paid by the parties. It w of course be necessary for the Governments to advance the necessary sums to pay t salaries due to the judges, as well as other general expenses of the Court. The Administrati Council shall perform the duty of addressing the Powers and fixing the amount wh seems to it reasonable to demand. We cannot properly speak of a budget, since we ho that the Court will rarely be in session. However, upon the establishment of the n institution some funds will be necessary, since the Court should meet for the purpose drawing up a set of rules for its own Government (Article 49, paragraph 2). The Admin trative Council, when notified of the meeting, shall determine the probable expense which will involve, and shall notify the Powers. The same method will be followed as is follow at present with regard to the Permanent Court of Arbitration. Later, the same meth will be used in the case of a maritime war.

ARTICLE 47

The general expenses of the International Prize Court are borne by the signat Powers in proportion to their share in the composition of the Court as laid do in Article 15 and in the annexed table. The appointment of deputy judges d not involve any contribution.

The Administrative Council applies to the Powers for the funds requisite for t working of the Court.

At the institution of a suit there are certain measures to be taken which do not requ that the entire Court should be called together. At first the order and the time for t presentation of the cases by each party, as well as for communicating evidence presen

by one party to the other, should be fixed. The amount of the bond to be furnished by an individual appellant should also be determined. It would be unreasonable to require that the entire Court, if it be not in session, should be obliged to meet to pass upon these preliminary points, when weeks might elapse before it would be in a position to take charge of the matter through the exchange of cases and counter-cases. A delegation of three judges designated by the Court shall be authorized to decide these points.

ARTICLE 48

When the Court is not sitting, the duties conferred upon it by Article 32, Article 34, paragraphs 2 and 3, Article 35, paragraph 1, and Article 40, paragraph 3, are discharged by a delegation of three judges appointed by the Court. This delegation decides by a majority of votes.

It will be necessary to have a set of rules regarding the operation of the Court, and this is left to the Court itself to prepare.

This is not the place to set forth the various matters which these rules may cover, but it is possible to indicate some of them. The Court shall determine the method of communication between its members and the president, and the International Bureau. Elections should be held for the offices of president and vice-president and to designate the members of the delegation. When the Court is not in session, it should not be obliged to meet simply to hold these elections, which may be done by correspondence. Some slight regulation will be necessary to ensure the desired protection for this method of holding elections. The Court may also apportion its work among its members. Some learned gentlemen desired that after the close of the written proceedings, and at the beginning of the oral statements, a report made by a judge should precede the explanations of the parties. This was not inserted in the Convention, because this formality, if obligatory, might not be in accord with the judicial system of some of the countries represented, but, if the Court itself believes that this procedure would be of any real advantage, nothing will prevent it from adopting it in its rules. It will be the better judge of what is suitable for the proper administration of justice. In the same way, it will be able to regulate the designation of members to form the delegation provided for in Article 48, and the term during which they shall serve.

ARTICLE 49

The Court itself draws up its own rules of procedure, which must be communicated to the signatory Powers.

It will meet to elaborate these rules within a year of the ratification of the present Convention.

Experience will show perhaps that the provisions of the draft are, on some points, insufficient or defective. The Court shall especially note any defects in procedure. The draft permits it to propose modifications on this point; its propositions shall be communicated to the Powers through the Netherland Government, and they shall consider the matter. They cannot take any steps in regard thereto; but they may agree to grant the requests of the Court by a supplemental convention.

ARTICLE 50

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Netherland Government, to the signatory Powers, which will consider together as to the measures to be taken.

PART IV

FINAL PROVISIONS

The first question to be decided is as to when the Convention shall apply. Must belligerents both be contracting Powers or will it be sufficient for one of them to b contracting Power?

Applying the rule already adopte ' in several Conventions, especially in the Convent of July 29, 1899, concerning the laws and customs of war on land (Article 2) and in Geneva Convention of July 6, 1906 (Article 24), it is natural to say that a Convention dr up with a view to the existence of war presupposes, in order that it may be applic that both belligerents have accepted it. We might, however, call attention to a mar difference between the Convention here proposed and the two Conventions above mentio The latter two deal with the relations between belligerents; and from that very fact necessary that the belligerents both be bound by the Convention which governs t action. This draft is intended especially to determine the relations of each belliger with neutrals; it is the latter who are principally safeguarded against the decisions of courts of the captor. Is it not sufficient then that one belligerent and the neutral Pow be signatories of the Convention in order that the latter Powers and their nationals s have the right to avail themselves thereof? After consideration, we thought it would unjust, in this case, to require the belligerent captor to conform to the provisions of Convention. We should not blind ourselves to the fact that the uncertainty of internati law allows to belligerents powers which may be restricted by the establishment o International Court. Could a belligerent properly be so fettered when his adversary w not be bound to the same extent? We do not think it is possible to do this; that is reason for proposing that the Convention shall not apply as a matter of *law* unless belligerents are both contracting Powers. It will be the office of neutral Powers to the belligerent which has not adhered to give them the protection of the internati tribunal by its adhesion.

But we believe, at the same time, that if a contracting belligerent wishes to accept jurisdiction of the International Prize Court, although its adversary has not adhered to Convention, nothing should prevent it from so doing. It might be good policy on its p

We had no difficulty in accepting the provision that a contracting Power, or the *ressortissant* of a contracting Power, should alone have recourse to the International Court refer only to neutral Powers; as to individuals the provision applies to the *ressortiss* of neutral Powers and even to the *ressortissants* of the opposing Power, in cases wh subjects of the enemy may appeal to the International Court, and supposing th Convention applies, although signed by only one belligerent.

Finally, we must say a few words of the rather complicated cases where the ri successors in interest are under consideration (Article 5). This is the rule whic principle seems to be required: the successor in interest (pledgee or bailee, unde or insurer) can have no greater rights than the owner from whom he derives his ti or than he would have if he himself were the owner. A twofold result follows:

(1) The owner of captured goods being the *ressortissant* of a non-contracting recourse is not open to his successor in interest, even though the latter be the *ressor* of a contracting State;

(2) The owner being the *ressortissant* of a contracting State, the successor in interest cannot act if he himself is the *ressortissant* of a non-contracting State. The principle may therefore be stated as follows: The owner and the successor in interest must both be *ressortissants* of a contracting State in order that the International Court may have jurisdiction.

ARTICLE 51[1]

The present Convention does not apply as of right except when war exists between two or more of the contracting Powers. It ceases to apply when a non-contracting Power joins one of the belligerents.

It is further fully understood that an appeal to the International Prize Court can only be brought by a contracting Power or the subject or citizen of a contracting Power.

In the cases mentioned in Article 5, the appeal is only admitted when both the owner and the person entitled to represent him are equally contracting Powers or the subjects or citizens of contracting Powers.

The following provisions are of a formal character. However, some explanation is necessary because of the peculiar character of the Convention, which has required some special temporary provisions.

The Convention should of course be ratified, and each country is to ratify it according to the provisions of its constitution. That is the common law, and restrictions in this regard are useless.

If all the Powers named in Article 15 and the appendix thereto sign the Convention and are ready to ratify it, matters will be very simple; it will remain only to declare the fact of the deposit of these ratifications and the Convention can become effective as to all Powers.

It is necessary to provide for the possibility that all of the Powers may not within a comparatively short time be ready to ratify. The fate of the Convention cannot be left to a few tardy ones. A period may properly be fixed within which the situation should be clarified. This period should be sufficient for the most distant Powers to arrive at a decision and to comply with the necessary formalities. The date of June 30, 1909, seemed to allow for this exigency. We shall see, therefore, at that time which Powers are ready to ratify. Shall we say too that ratifications shall be deposited at that time? We cannot so state absolutely. It will depend upon the number of Powers disposed to ratify. It is necessary, of course, that this number be sufficient for the operation of the Court. We have thought that it would be necessary for that purpose to have at least nine judges and five deputy judges actually in office.

A sufficient number of Powers should have ratified the Convention, therefore, to furnish nine judges and nine deputy judges under the provisions of the distribution contained in Article 15 and the table annexed thereto. If this number is not reached, the deposit of ratifications shall be postponed until that condition is fulfilled.

The deposit of ratifications shall be set forth in a *procès-verbal*, a certified copy of which shall be sent, through the diplomatic channel, to each of the contracting Powers.

ARTICLE 52

The present Convention shall be ratified and the ratifications shall be deposited at The Hague as soon as all the Powers mentioned in Article 15 and in the table annexed are in a position to [illegible]

[1] See p. 21.

The deposit of the ratifications shall take place, in any case, on June 30, 19
if the Powers which are ready to ratify furnish nine judges and nine deputy jud
to the Court, qualified to validly constitute a Court. If not, the deposit shall
postponed until this condition is fulfilled.

A *procès-verbal* of the deposit of ratifications shall be drawn up, of which a certi
copy shall be forwarded, through the diplomatic channel, to each of the Powers refer
to in the first paragraph.

So long as ratifications have not been deposited, as provided in paragraph 2 of
preceding article, Powers may sign the Convention, and as to them it shall date from
time of the first signature.

When the deposit of ratifications necessary to make the Convention applicable
taken place, the situation becomes fixed in the sense that the Powers which have
participated in this deposit can only become adhering Powers. In the case of a Pow
which has signed before the deposit but has not ratified until subsequent thereto, it will
considered only as an adhering Power. For this reason the last part of paragraph 2
Article 53 speaks of documents authorizing adhesion. These documents may be
powers for ordinary adhesions and ratifications for the States which signed before
deposit of ratifications.

Adhesion is always permissible also by means of a notice addressed to the Netherla
Government. Upon receiving the first adhesion the Minister of Foreign Affairs sh
begin a *procès-verbal* of adhesions in which adhesions shall be entered as they appe
Adhesion is equivalent to a Convention concluded by the adhering Power with all t
Powers which have already become contracting Powers. It presupposes therefore
conditions necessary for the validity of an international convention—that is, full powe
We are not dealing with the question of the ratification of an adhesion; the adher
country, by adhering, must be definitively bound.

The adhesion should be communicated to all Powers. It is required as to contracti
Powers; as to others, it will be of value in that the adhesion of one Power may lead oth
to follow its example.

ARTICLE 53

The Powers referred to in the first paragraph of the preceding article are entitl
to sign the present Convention up to the deposit of the ratifications contemplat
in paragraph 2 of the same article.

After this deposit, they can at any time adhere to it, purely and simply, by maki
known their intention in a notice addressed to the Netherland Government.

When the first adhesion is made, the Minister of Foreign Affairs of the Netherlan
shall begin a *procès-verbal* in which he shall enter the adhesions as they appear
documents authorizing adhesions shall be attached to the said *procès-verbal*.

After each adhesion, the above-named Minister shall transmit a certified copy
the *procès-verbal* to all the Powers referred to in paragraph 1 of the preceding artic

When shall the Convention become effective?

Six months after the deposit of ratifications referred to in Article 52, paragraphs 1 and

We have remarked above with regard to Article 10 that during this same period th
appointment of the judges should be made, which is carrying out the Convention befo
it goes into effect.

Some decisions of prize courts may be rendered within six months of the ratifica tio

May appeals be taken therefrom to the International Court? If we follow a strictly logical line of reasoning, we might reply in the negative, because at the time when the decisions are rendered the International Court, properly speaking, does not exist, since the Convention creating it is not in force. An affirmative reply, however, seemed to be preferable; it is equitable that the interested parties should profit by the new method of appeal, but, by the force of circumstances, the period in which appeal may be taken only runs from the effective date of the Convention, not from the decision itself.

As to adhering Powers, the period for the Convention to become effective should, in principle, run from the time of adhesion itself; it need not be very long; it should only be sufficient to notify all of the Powers. A period of sixty days has been adopted. This can be applied without difficulty in the case of adhesions, notice of which is given subsequently to the date the Convention goes into effect; as to those of which notice may be received during the period between the deposit of ratifications and this effective date, it is evident that the adhesion may have no effect except, at the earliest, from the time the Convention goes into effect. If we suppose that the deposit of ratifications has been accomplished on June 30, 1909, the Convention will go into effect on January 1, 1910. Adhesions of which notice is received in September 1910 will not become effective until after January 1st.

ARTICLE 54

The present Convention shall go into force six months from the deposit of the ratifications contemplated in Article 52, paragraphs 1 and 2.

The adhesions shall take effect sixty days after notification thereof shall have been given to the Netherland Government, and, at the earliest, on the expiration of the period contemplated in the preceding paragraph.

The International Court shall, however, have jurisdiction to deal with prize cases decided by the national courts at any time after the deposit of the ratifications or of the receipt of the notification of the adhesions. In such cases, the period fixed in Article 28, paragraph 2, shall only be reckoned from the date when the Convention comes into force as regards Powers which have ratified or adhered.

Once the Convention has become effective, it will remain in force for twelve years as to all contracting Powers, unless there is some distinction to be made between signatory and adhering Powers. It shall be renewed by implication for six-year periods, unless renounced.

Notice of denunciation shall be given to the Netherland Government at least one year before the expiration of each period, and that Government shall transmit the information to all other contracting Powers.

According to principle and the common law, the denunciation will have no effect except as regards the Power making it, and the Convention shall continue in full force as to the other contracting parties. But we should note the special character of the present Convention. Since a certain number of Powers, at least, is necessary before the Convention becomes effective, as has been explained above in connexion with Article 52, likewise this number is indispensable for its continued existence. The Convention would therefore be no longer applicable under the circumstances aforesaid, if the contracting parties were reduced by reason of denunciations, so that they could not furnish the nine judges and the nine deputy judges considered necessary for the operation of the Court. These Powers would have to consider the situation.

ARTICLE 55

The present Convention shall remain in force for twelve years from the time comes into force, as determined by Article 54, paragraph 1, even in the case of Pow which adhere subsequently.

It shall be renewed tacitly from six years to six years unless denounced.

Denunciation must be notified at least one year before the expiration of each the periods mentioned in the two preceding paragraphs, to the Netherland Gove ment, which will inform all the other contracting Powers.

Denunciation shall only take effect in regard to the Power which has notified The Convention shall remain in force in the case of the other contracting Pow provided that their participation in the appointment of judges is sufficient to al of the composition of the Court with nine judges and nine deputy judges.

We have already considered the case where the Convention becomes effective, or ex only for part of the Powers contemplated by the distribution of judges provided for Article 15 and the list thereto attached. We must adapt the provisions governin unanimous participation herein to the situation which will then exist.

The list of judges and deputy judges is drawn up to correspond with the contract parties. If this list gives for each year of the six-year period almost the same numb we need only to apply it as it stands. For example, there may be eleven or twelve judg eleven or twelve deputy judges, each year. But a different situation may arise. Th the first year, there may be thirteen judges, the second ten, the third nine, and the fou twelve. Strictly speaking, the Court could operate in this way, since in each year ther the minimum number. It is better, however, to have the Court composed each year judges in obviously the same number; thus, in the example which we have just giv there might be eleven judges each year.

It is sufficient to give to the year having the lesser number of judges one or two of judges for the year with the highest number. In the case of judges who sit in turn, th selection for one year rather than for another, would not be a serious matter. The Admi trative Council, to whom notice of the appointment of judges and deputy judges (Article is sent, has the power to prepare the list and make the allotment of which we have j spoken. If there is some doubt as to who, of two judges, shall be assigned from one y to the other, selection by lot will furnish a natural means of avoiding embarrassment

It might happen that, as a result of the ratifications or adhesions, the number of dep judges would be greater than that of judges. In such a case, one or more of the dep judges named by Powers which do not appoint judges, would sit as judges, so that number of magistrates called upon to act each year would be approximately the sa Selection by lot will determine which of the deputy judges shall be called upon to temporarily as judge.

The list thus decided upon by the Administrative Council shall be communicated to of the contracting Powers. It shall be subject to revision when any change occurs in number of the latter on account of adhesions or denunciations.

A change resulting from adhesions shall not be effective until after the 1st of Janu next succeeding the date the adhesion becomes effective. The adhering Power can require that a judge be given to it sooner, unless it should be a belligerent. Then general principle applies, as stated above and applied to the contracting Powers wh according to their standing on the list, have no judge sitting upon the Court (Article 1

Finally, in consideration of the fact that a certain number of Powers might not

in the Convention, it was necessary to determine upon a quorum. When the total number of judges is less than eleven it was thought that a quorum of seven judges instead of nine, the normal figure, would be sufficient (Article 14, paragraph 1).

ARTICLE 56

In case the present Convention is not in operation as regards all the Powers referred to in Article 15 and the annexed table, the Administrative Council shall draw up a list on the lines of that article and table of the judges and deputy judges through whom the contracting Powers will share in the composition of the Court. The times allotted by the said table to judges who are summoned to sit in rota will be redistributed between the different years of the six-year period in such a way that, as far as possible, the number of the judges of the Court in each year shall be the same. If the number of deputy judges is greater than that of the judges, the number of the latter can be completed by deputy judges chosen by lot among those Powers which do not nominate a judge.

The list drawn up in this way by the Administrative Council shall be notified to the contracting Powers. It shall be revised when the number of these Powers is modified as the result of adhesions or denunciations.

The change resulting from an adhesion is not made until the 1st January after the date on which the adhesion takes effect, unless the adhering Power is a belligerent Power, in which case it can ask to be at once represented in the Court, the provision of Article 16 being, moreover, applicable if necessary.

When the total number of judges is less than eleven, seven judges form a quorum.

In the subcommission a request was made not to consider the allotment of the places of judges and deputy judges as fixed; but, if circumstances occur which change the maritime and commercial standing of a country, a revision might be demanded. In order to provide for this the following provision was prepared. Explanation is necessary only with regard to the periods fixed therein. Revision may be demanded at least two years before the expiration of each period of the existence of the International Court, and the reply thereto should be given at least one year and thirty days before the expiration of the two years, so that the State may have the opportunity to denounce the Convention if it is not satisfied with the action taken upon its request.

ARTICLE 57

Two years before the expiration of each period referred to in paragraph 2 of Article 55, each contracting Power can demand a modification of the provisions of Article 15 and of the annexed table, relative to its participation in the operation of the Court; its demand shall be addressed to the Administrative Council, which will examine it and submit to all the Powers proposals as to the measures to be adopted. The Powers shall inform the Administrative Council of their decision with the least possible delay. The result shall be at once, and at least one year and thirty days before the expiration of the said period of two years, communicated to the Power which made the demand.

When necessary, the modifications adopted by the Powers shall come into force from the commencement of the fresh period.

With the above we close our commentary upon the various articles of the draft which we submit for your approval. We desire, in closing, to try to call attention to the vital features to the new institution by treating them apart from the matters of detail.

The fundamental idea is that the national prize courts shall continue to operate according to their own rules (Articles 1 and 2). Often the parties in interest will not

go any further. They will also have the safeguard of the new tribunal, and thus a jud mode of redress is substituted for a more or less pressing demand through the diplon channel, which has been, up to the present, the only method of remedying the inju sometimes excessive, of the prize courts.

The draft carefully defines decisions which should be subject to appeal and the pe who may make such appeals (Articles 3 to 5).

The Court applies the contractual or customary laws of nations, and when there no such rules, the general principles of justice and equity (Article 7). We have tried t forth above the high character thus given to the new Court and the beneficial results w are to be expected from it.

The Court is *permanent* in a sense which it is important to understand. The expre cannot of course be taken literally. The judges who may have the honour to be appoi will not be required to live permanently at The Hague, even during a war, but, when app have been taken from the decisions of national prize courts, the new institution will a its own volition. The judges will meet, and will have but to follow the rules outlined them by the draft Convention. Nothing is left to the will of the interested parties. H a vital difference from the so-called Permanent Court of the Convention of 1899. Court in fact cannot organize itself as an arbitral tribunal except at the will of the litig parties, which must agree upon their judges, as well as upon the drawing up of a *compr* —a twofold source of delay, if not of difficulties. The draft provides every facility for rapid conduct of the case. The Court has the power to authorize a delegation to take of the preliminary matters, so that the Court need not meet until the written pleadi have been concluded (cf. Articles 34, 35 and 48).

The procedure is regulated in such a way that the parties have every facility presenting their claims and the Court every means of enlightenment.

We think we have created a beneficial instrument of justice. May you also so consi it! It only remains for us to hope that it may exist as a visible proof of the sentime which have inspired the Peace Conference of 1907, and that no occasion will arise it to act.

The First Commission consequently proposes to the Conference the adoption of t following draft:

Here follows the text[1] submitted to the Conference.

ANNEX 1[2]

PROPOSITION OF THE GERMAN DELEGATION REGARDING THE PRIZE COURT

PART I

Competence in Prize Cases

ARTICLE 1

The validity of the capture of a merchant ship or its cargo shall be decided by a pr court.

Such jurisdiction is exercised in the first instance by the national prize court of belligerent captor; in the second instance by a High International Prize Court.

[1] Quoted article by article in the report. This text was adopted without change by the Confe September 21 (*Actes et documents*, vol. i, p. 168). For its subsequent history in the General Committee, see *ante*, pp. 218, 219, 220, 225.

[2] *Actes et documents*, vol. ii, p. 1071, *annexe* 88.

ARTICLE 2

When the prize court pronounces the capture of the vessel or of the goods to be valid, it shall be disposed of in accordance with the laws of the captor State.

When it pronounces the capture to be invalid, the court shall order the restitution of the vessel or goods, fixing the amount of the damages, and, in case the vessel or goods shall have been destroyed, it shall determine the compensation to be paid to the owner.

The judgements of the prize court shall be officially notified to the parties. They shall not be executory until they have obtained the force of *res judicata*.

ARTICLE 3

The judgements of a prize court may be brought on appeal before a High International Court, which shall be organized upon the outbreak of a naval war and shall pass upon all prize cases arising out of the war. In case several States are engaged in the naval war, there shall be formed as many different High Courts as the number of belligerents divided by two.

The judgements of the High Court shall be executed immediately.

PART II

Constitution of the High International Prize Court

ARTICLE 4

The High International Prize Court shall be composed of five members, two admirals and three members of the Permanent Court of Arbitration of The Hague. Within the two weeks following the outbreak of hostilities, each of the belligerent parties shall designate an admiral and shall also address itself to a neutral Power, which in turn shall choose another member, within the two weeks following, from among the members of the Court of Arbitration appointed by it. Within a further period of two weeks the two neutral Powers shall address themselves conjointly to a third neutral Power, which shall be selected by lot, if necessary, and this Power shall, within the two ensuing weeks, choose the fifth member from among the members of the Court of Arbitration appointed by it.

ARTICLE 5

The High Prize Court meets upon the first appeal from the judgement of a prize court.

Upon the conclusion of peace, it dissolves as soon as all the prize cases arising out of the war shall have been definitively settled.

ARTICLE 6[1]

The High Prize Court shall sit at The Hague.

Except in case of *force majeure*, it cannot be transferred elsewhere without the consent of the two belligerent parties.

ARTICLE 7

The High Prize Court shall select its president by an absolute majority of votes from among those of its members who belong to the Permanent Court of Arbitration of The Hague. If need be, there shall be a second ballot.

ARTICLE 8[2]

Should one of the members of the High Prize Court die, resign, or be prevented from sitting from any cause whatever, the same procedure shall be followed in filling the vacancy as was followed in the original appointment.

[1] See Article 30 of the Arbitration Convention of 1899 *ante*, p. 30.
[2] See Article 35 of the Arbitration Convention.

ARTICLE 9

The members of the High Prize Court shall receive the travelling allowances to w they are entitled under the laws of their country. They shall be allowed, in addi a monthly salary of 1,500 Dutch florins, which shall be paid to them through the I national Bureau of the Court of Arbitration of The Hague.

ARTICLE 10 [1]

The International Bureau of the Court of Arbitration of The Hague acts as reg to the High Prize Court.

This Bureau transmits communications relative to the meeting of the latter.

It has charge of the archives and carries out the administrative work.

ARTICLE 11 [2]

The High Court determines what language it will itself use and what languages be used before it. In every case the language of the interested belligerent party be used before it.

ARTICLE 12 [3]

In all prize cases in which they are interested as captor States, belligerent pa may appoint delegates or agents before the High Court to act as intermediaries betw themselves and the High Court.

They may also engage counsel or advocates appointed by themselves for that purp to defend their rights and interests before the High Court.

ARTICLE 13

A private party must be represented before the High Prize Court by an atto or proxy, who may be either an advocate in a court of appeal or a supreme court of territory of one of the contracting parties, or a professor of law in an advanced sc of one of these territories.

ARTICLE 14

For all notices and the securing of evidence the High Prize Court may apply to Government of the State on whose territory the notice is to be served or the evid secured.

Execution of the request may not be refused unless the State requested consi it calculated to impair its sovereign rights or its safety. If the request is complied w the State requested shall take into account only the cash expenses actually incurred.

The High Court is free to have recourse in these cases to the intermediary of the S on whose territory it sits.

PART III

Procedure in the High Prize Court

ARTICLE 15

The belligerent party and the private party have a right to appeal.

ARTICLE 16

Appeal may be entered in the prize court or in the International Bureau,[4] eithe writing or by telegraph.

The period within which appeal must be entered is fixed at two months, coun from the day the party appellant is notified of the judgement of the prize court.

[1] See Article 22 of the Arbitration Convention.
[2] See Article 38 of the Arbitration Convention.
[3] See Article 37 of the Arbitration Convention.
[4] See Article 10, *supra*.

ARTICLE 17

If appeal is entered in the prize court, this court, without considering the question whether the appeal was entered in due time as above, shall forward within seven days all the records of the case to the International Bureau, which shall transmit them to the High Prize Court.

If appeal is entered in the International Bureau, this Bureau shall notify the prize court directly, by telegraph, if possible. The prize court shall then act in conformity with paragraph 1 of the present article.

ARTICLE 18

The High Prize Court shall officially notify to the parties, decrees and decisions made by it in their absence.

Notices to be served at the seat of the High Court [illegible] by its order, be served by the International Bureau.

ARTICLE [illegible]

All appeals, which shall not have been taken [illegible] before fixed, must be rejected by the High Court, without [illegible] possible.

Nevertheless, the High Court may, upon [illegible] in favour of a party who, as a result of *force majeure*, has [illegible] appeal within the period fixed, and shall restore to this party [illegible] request must be made by the party within two months [illegible] *force majeure*, and, in any event, before the dissolution of the High Court.

ARTICLE [illegible]

If appeal has been entered within the period fixed, the High Prize Court must officially notify the respondent with a certified true copy of [illegible], either in writing or by telegraph.

ARTICLE 21

The High Prize Court shall fix the periods within which the parties must produce their written declarations and counter-declarations, and the instruments, papers, and documents relating thereto.

A certified true copy of every paper produced by either party shall be officially transmitted by the High Prize Court to the other party.

ARTICLE 22

Upon the expiration of the periods mentioned in Article 21, paragraph 1, there shall be an oral argument before the High Court, to which the parties must be officially summoned.

If a party does not appear, despite the fact that he has been duly cited, the High Court may, upon the request of the other party, open the argument on appeal.

ARTICLE 23[2]

The discussions are under the control of the president.

They do not take place in public, unless the High Court, with the consent of the belligerent party, so decides.

Minutes are taken of these discussions by secretaries appointed by the president. These minutes alone have an authentic character.

ARTICLE 24

After the oral argument, the High Court may, either on its own initiative or upon the request of either of the parties, and in conformity with Article 14, secure supplementary evidence respecting the taking of testimony before the prize court. The High

[1] See Article 5, paragraph 2, *supra*.
[2] See Article 11 of the Arbitration Convention.

Court may order this supplementary evidence to be taken either before itself or be such of its members as it shall have commissioned for this purpose, provided this ca done without resort to compulsion or the use of threats.

The parties are entitled to be present at the taking of testimony. A certified copy of the proceedings shall be officially transmitted to them by the High Court.

ARTICLE 25

After the evidence has been secured, the High Court shall officially summon the parties and order the oral argument to be resumed.

ARTICLE 26

The High Prize Court shall take into account, in reaching its decisions, the en record of the case and the oral statements of the parties, and shall render its decis in the full and entire independence of its conviction.

ARTICLE 27 [1]

The Court shall consider its decisions in private.

All questions are decided by a majority of the members.

ARTICLE 28 [2]

The judgement of the High Prize Court must give the reasons on which it is ba It shall be drawn up in writing and signed by every member of the High Court.

The minority members of the High Court may state their dissent on signing.

ARTICLE 29 [3]

The judgement shall be read at a public sitting of the High Prize Court and offici communicated to the parties.

When it has been so communicated, the High Court must transmit to the cap State the record of the prize court, together with a copy of the judgement of the H Court. The judgement shall be executed through the intermediary of this State.

ARTICLE 30

Each party shall pay its own costs.

The party against whom the Court decides shall bear, in addition, the cost of t trial, and shall pay a contribution to the general expenses of the High Prize Court. T contribution shall be determined proportionally to the value of the subject-matter the case, and shall not exceed 1 per cent. thereof. The amount of the expenses to paid by the losing party shall be fixed in the judgement of the Court.

If the appeal is taken by a private party, this party shall be required to deposit, w the International Bureau, security in the amount fixed by the High Court on acco of the eventual expenses provided for in paragraph 2 above. The Court shall be entitl to postpone the opening of the appeal proceedings until the amount of this security h been deposited.

ARTICLE 31

To provide for the eventual expenses of the High Prize Court, each belligerent par shall be required to make a preliminary deposit of 25,000 Dutch florins with the Inte national Bureau, and this within the two months following the declaration of war. Furth deposits of like amount shall be made by the belligerent parties whenever the depos made and the receipts provided for in Article 30, paragraph 2, shall have been exhaus

Upon the dissolution of the High Prize Court, the International Bureau shall rend an account to the belligerent parties and reimburse them their shares of the balance

[1] See Article 51 of the Arbitration Convention.
[2] See Article 52 of the Arbitration Convention.
[3] See Article 53 of the Arbitration Convention.

ANNEX 21

PROPOSITION OF THE BRITISH DELEGATION

Draft Convention relative to a Permanent International Court of Appeal

ARTICLE 1

A Permanent International Court of Appeal shall be organized, having for its object the application of international laws in naval prize cases between the signatory Powers.

ARTICLE 2

The Permanent Court shall be competent to pass upon all cases in which a prize court has rendered a decision directly affecting the interests of a neutral Power or of its subjects, and when that Power contends that the decision is in error, either in the matter of law or in the matter of fact.

It is understood that, in any country, it is only a decision of the court of last instance, to which the neutral Power or its subject has access, that may be appealed to the Permanent Court.

ARTICLE 3

A neutral Power brought into a case by the fact that the rights of its subject have been impaired by a decision of a court of last instance, as mentioned in the foregoing article, is entitled to apply to the Permanent Court in order to secure a new decision either by annulment or by appeal.

ARTICLE 4

Each of the signatory Powers, whose merchant marine, at the time of the signing of the present Convention, exceeds a total of 800,000 tons, shall designate within three months from the ratification of the present instrument a jurist of recognized competence in questions of international naval law, whose moral character is of the highest, and who is disposed to accept the office of judge of this Court. Each Power shall likewise designate a deputy judge having the same qualifications.

ARTICLE 5

The president of the Court shall be named by the Powers, in alphabetical order, who have designated judges in the Court, and shall hold office for one year, beginning on the first of January. The International Bureau of The Hague shall be charged with the execution of this provision.

If there is a tie vote, the president shall decide.

The president who presides at the beginning of a litigation shall continue to act until its close.

ARTICLE 6

If the legal question to be decided has already been settled by a convention to which the Powers in dispute are signatories, the decision of the Court shall be in conformity with the stipulations of the convention.

In the absence of a convention, if all civilized nations are in agreement upon a legal point, the Court must likewise render a decision in conformity with this general opinion.

Where these conditions do not exist, the Court shall render its decision by applying the principles of international law.

ARTICLE 7

The signatory Powers engage to comply in good faith with the judgement of this Court and to execute its orders against its own subjects, and also to make the necessary changes in their laws to render the orders of the Court valid and effective.

[1] *Actes et documents*, vol. ii, p. 1076, *annexe* 89.

ARTICLE 8

In the absence of a convention between the parties, the procedure is as follows

ARTICLE 9

The plaintiff forwards to the Bureau a document informing the latter of the n of his request and the reasons therefor.

ARTICLE 10

The Bureau transmits the plaintiff's document without delay to the defendant, within two months from the receipt of this document the defendant forwards his to the Bureau.

ARTICLE 11

The Bureau transmits the defendant's reply without delay to the plaintiff.

ARTICLE 12

The Court shall include all the judges, and all shall sit, with the exception of the ju appointed by the Powers in litigation.

In case of the absence of any one of the members called upon to act, the deputy j shall sit in his stead.

ARTICLE 13

The Court meets on the date appointed by the judges.

ARTICLE 14

The Court may exercise its functions, if occasion demands, in the absence o defendant.

ARTICLE 15

The judges of the Court enjoy diplomatic privileges and immunities in the perform of their duties outside their country.

ARTICLE 16

With the necessary changes, Articles 22, 23, 25, 26, 37–54, and 57 of the Conven for the pacific settlement of international disputes, concluded at The Hague on July 1899, govern the Permanent Court, its judges, and its procedure.

ANNEX 3[1]

PROPOSITIONS RELATIVE TO THE CREATION OF AN INTERNATIONAL PRIZE COURT

Questionnaire drawn up by his Excellency Sir Edward Fry, and Messrs. Kriege and Louis Renault by direction of the subcommission

1. Is there occasion to create an International Court of Appeal for prize cases

2. Shall the Court to be created decide between the belligerent State to which captor belongs and the State making claim for its subjects who have suffered loss t the capture, or may the matter be laid before it directly by the private persons clai to have suffered loss?

3. Must this Court take cognizance of all prize cases, or only of cases in which interests of neutral Governments or private citizens are involved?

4. When shall the International Court begin to act?

May the case be laid before it as soon as the national courts of first instance have rendered their decision as to the validity of the capture, or is it necessary to w until final judgement has been rendered in the State of the captor?

[1] *Actes et documents*, vol. II, p. 1078, *annexe 90*.

5. Shall the International Court be a permanent organization, or shall it be constituted only when a war breaks out?

6. Whether the Court be permanent or temporary, who may be members of it? Only jurists designated by nations having a navy of a size to be determined, or admirals and jurists, who are members of the Permanent Court of Arbitration, designated by the belligerents and by neutral States?

Will it be necessary, in a given litigation, to exclude the judges of the nationality of the interested parties?

7. What principles of law shall be applied in the High International Court?

8. Is it necessary to regulate the order and the method of taking testimony before the High Court?

ANNEX 41

PROPOSITION OF THE DELEGATIONS OF GERMANY, UNITED STATES, FRANCE, AND GREAT BRITAIN

PART I.—*General Provisions*

ARTICLE 1

The validity of the capture of a merchant ship or its cargo shall be decided before a prize court, in accordance with the present Convention, when neutral or enemy property is involved.

ARTICLE 2

Jurisdiction in matters of prize is exercised in the first instance by the national prize courts of the belligerent captor.

The judgements of these courts shall be pronounced in public or officially notified to the neutral or enemy owners.

ARTICLE 3

The judgements of national prize courts may be brought before the International Prize Court—

1. When the judgement of the national prize courts affects the property of a neutral Power or individual;

2. When the judgement affects enemy property and relates to:

a. Cargo on board a neutral ship;

b. Or an enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim;

c. Or finally a claim based upon the fact that the seizure has been effected in violation either of provisions of a convention in force between the belligerent Powers or of an enactment issued by the belligerent captor.

The appeal against the judgement of the national court can be based on the ground that the judgement was wrong either in fact or in law.

ARTICLE 4

An appeal may be brought:

1. By a neutral Power, if the judgement of the national tribunals injuriously affects the property or the property of its subjects (Article 3, No. 1), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that Power (Article 3, No. 2b).

2. By a neutral individual if the judgement of the national court injuriously affects his property (Article 3, No. 1), subject however to the reservation that the Power to which he belongs may forbid him to bring the case before the Court, or may itself undertake the proceedings in his place.

[illegible] Vol. II, p. [illegible]

3. By an individual subject or citizen of an enemy Power, if the judgement of the national court injuriously affects his property in the cases referred to in Article 3, No. 2, except that mentioned in paragraph *b*.

Article 5

When, in accordance with the above Article 3, the International Court has jurisdiction, the national courts cannot deal with a case in more than two instances.

If the national courts fail to give final judgement within two years of the date of capture, the case may be carried direct to the International Court.

Article 6

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a Power which is itself or whose *ressortissant* is a party to the proceedings, the Court is governed by the provisions of the said treaty.

In the absence of such provisions, the Court shall apply the rules of international law. If no generally recognized rule exists, the Court shall give judgement in accordance with the general principles of justice and equity.

The above provisions apply to questions relating to the order and mode of proof.

If, in accordance with Article 3, No. 2 *c*, the ground of appeal is the violation of an enactment issued by the belligerent captor, the Court will enforce the enactment.

The Court may disregard failure to comply with the procedure laid down in the enactment of the belligerent captor when it is of opinion that the consequences of complying therewith are unjust and inequitable.

Article 7

If the Court pronounces the capture of the vessel or cargo to be valid, it shall be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the Court shall order restitution of the vessel or cargo, and shall fix, if there is occasion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the Court shall determine the compensation to be given to the owner on this account.

Article 8

The signatory Powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay.

PART II.—*Constitution of the International Prize Court*

Article 9

The International Prize Court is composed of judges and deputy judges who will be appointed by the signatory Powers and must all be jurists of known proficiency in questions of international maritime law and of the highest moral reputation.

The appointment of these judges and deputy judges shall be made within six months after the ratification of the present Convention.

Article 10

The judges and deputy judges are appointed for a period of six years reckoned from the date on which the appointments shall have been notified to the Administrative Council of the Permanent Court of Arbitration. Their appointments can be renewed.

Should one of the judges or deputy judges die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case, the appointment is made for a fresh period of six years.

ARTICLE 11

The judges of the International Prize Court are all equal in rank and have precedence according to the date of the notification of their appointments (Article 10, paragraph 1), and if they sit by rota (Article 12, paragraph 3), according to the date on which they entered upon their duties. When the date is the same the senior in age takes precedence.

They enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country.

Before taking their seat the judges must swear, or make a solemn promise before the Administrative Council, to discharge their duties impartially and upon their conscience.

ARTICLE 12

The Court is composed of fifteen judges; nine judges constitute a quorum.

The judges appointed by the following contracting parties: Germany, Austria-Hungary, the United States of America, France, Great Britain, Italy, Japan, and Russia, shall always be summoned to sit.

The judges and deputy judges appointed by the other Powers shall sit by rota as shown in the table hereto annexed.

A judge who is absent or prevented from sitting is replaced by the deputy judge.

ARTICLE 13

No judge can sit who has been a party, in any way whatever, to the sentence pronounced by the national courts, or has taken part in the case as counsel or advocate for one of the parties.

No judge can, during his tenure of office, appear as agent or advocate before the International Prize Court or act in any capacity whatever.

ARTICLE 14

The belligerent captor is entitled to appoint a naval officer of high rank to sit as assessor but with no voice in the decision. A neutral Power which is a party to the proceedings, or whose *ressortissant* is a party, has the same right of appointment; if as the result of this last provision more than one Power is concerned, they must agree among themselves, if necessary by lot, on the officer to be appointed.

ARTICLE 15

The Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots the election is made by a bare majority, and, in case the votes are equal, by lot.

ARTICLE 16

The judges of the International Prize Court are entitled to travelling allowances in accordance with the regulations in force in their own country and, in addition, while the Court is sitting, or while they are carrying out duties conferred upon them by the Court, a monthly sum of . . . Netherland florins.

These payments are included in the general expenses of the Permanent Court of Arbitration and are paid through the International Bureau.

The judges may not receive from their own Government or from that of any other Power any remuneration in their capacity of members of the Court.

ARTICLE 17

The seat of the International Prize Court is at The Hague and it cannot, except in the case of *force majeure*, be transferred elsewhere without the consent of the belligerents.

ARTICLE 18

The Administrative Council is charged, with regard to the International Prize Court, with the same functions that it fulfils, under the Convention of July 29, 1899, as to the Permanent Court of Arbitration.

ARTICLE 19

The International Bureau of the Permanent Court of Arbitration acts as registry to the International Prize Court. It takes charge of the archives and carries out the administrative work.

ARTICLE 20

The Court determines what languages it will use and may be used before it.

In every case the official language of the national courts which have had cognizance of the case may be used before the Court.

ARTICLE 21

Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

ARTICLE 22

A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a court of appeal or a high court of one of the signatory States or a lawyer practising before a similar court, or lastly, a professor of law at one of the higher teaching centres of those countries.

ARTICLE 23

For all notices to be served, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on whose territory the services shall be carried out. The same rule applies in the case of steps being taken to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the Power on whose territory it sits.

PART III.—*Procedure in the International Prize Court*

ARTICLE 24

An appeal to the International Prize Court is entered by means of a written declaration made in the national court which has already dealt with the case or addressed to the International Bureau; in the latter case the appeal can be entered by telegram.

The time within which the appeal must be entered is fixed at four months, counting from the day when the decision is delivered or notified (Article 2, paragraph 2).

ARTICLE 25

If the notice of appeal is entered in the national court, this court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International Bureau.

If the notice of appeal is sent to the International Bureau, the Bureau will inform the national court directly, when possible by telegraph. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual, the International Bureau at once informs by telegraph the individual's Government, in order to enable it to enforce the rights it enjoys under Article 4, paragraph 2.

ARTICLE 26

In the case provided for in Article 5, paragraph 2, the notice of appeal can be addressed to the International Bureau only. It must be entered within a month of the expiration of the period of two years.

ARTICLE 27

The Court officially notifies to the parties decrees or decisions made in their absence.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

ARTICLE 28

If the appellant does not enter his appeal within the period laid down in Articles 24 or 26, it shall be rejected without further process.

Provided that he can show that he was prevented from so doing by *force majeure*, and that the appeal was entered within two months after the circumstances which prevented him entering it before had ceased to operate, the Court can, after hearing the respondent, grant relief from the effect of the above provision.

ARTICLE 29

If the appeal is entered in time, a true copy of the notice of appeal is forthwith officially transmitted by the Court to the respondent.

ARTICLE 30

If the litigation involves a prize in which there are other parties interested than the parties who are before the Court, the latter will await before dealing with the case the expiration of the period laid down in Articles 24 or 26.

ARTICLE 31

The procedure before the International Court includes two distinct parts—the written pleadings and oral discussions.

The written pleadings consist of the deposit and exchange of cases, counter-cases, and, if necessary, of replies, of which the order is fixed by the Court, as also the periods within which they must be delivered. The parties annex thereto all papers and documents of which they intend to make use.

A certified copy of every document produced by one party must be communicated to the other party through the medium of the Court.

ARTICLE 32

After the close of the pleadings, a public sitting is held in which the parties state their view of the case both as to the law and as to the facts.

The Court may, at any stage of the proceedings, suspend speeches of counsel, either at the request of one of the parties, or on their own initiative, in order that supplementary evidence may be obtained.

ARTICLE 33

The International Court may order the supplementary evidence to be taken either in the manner provided by Article 23, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or the use of threats.

If steps are to be taken for the purpose of obtaining evidence by members of the Court outside the territory where it is sitting, the consent of the foreign Government must be obtained.

ARTICLE 34

The parties must be summoned to take part in all stages of the proceedings and receive certified copies of the minutes.

ARTICLE 35

The discussions are under the control of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by a belligerent party cannot preside.

ARTICLE 36

The discussions take place in public, subject to the right of a Government which is a party to the case to demand that they be held in private.

Minutes are taken of these discussions which are written up by secretaries appointed by the president. These minutes alone have an authentic character.

ARTICLE 37

If a party does not appear, despite the fact that he has been duly cited, or if a party fails to proceed within the period fixed by the Court, the case proceeds without that party and the Court gives judgement in accordance with the material at its disposal.

ARTICLE 38

The Court takes into consideration in arriving at its decision all the facts, evidence, and oral statements. It makes decision in accordance with its free and fully independent conviction.

ARTICLE 39

The deliberations of the Court take place in private.

All questions shall be decided by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge in the order of precedence laid down in Article 4, paragraph 1, shall not be counted.

ARTICLE 40

The judgement of the Court must give the reasons on which it is based. It is signed by each of the judges that have taken part in it.

ARTICLE 41

The sentence is pronounced in public sitting, the parties being present or duly summoned to attend; the sentence is officially communicated to the parties.

When this notification has been made, the Court transmits to the national prize court the record of the case, together with copies of the various decisions arrived at and of the minutes of the proceedings.

ARTICLE 42

Each party pays its own costs.

The party against whom the Court decides bears, in addition, the costs of the trial, and also pays one per cent. of the value of the subject-matter of the case as a contribution to the general expenses of the International Court. The amount of these payments is fixed in the judgement of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to the amount fixed by the Court, for the purpose of guaranteeing eventual fulfilment of the two obligations mentioned in the preceding paragraph. The Court is entitled to postpone the opening of the proceedings until the security has been furnished.

ARTICLE 43

The general expenses of the International Prize Court are supported by the signatory Powers in the proportion established for the International Bureau of the Universal Postal Union. Deduction shall be made of the payments made by the parties in accordance with Article 42, paragraph 2.

ARTICLE 44

When the Court is not sitting, the duties conferred upon it by Article 31 and Article 32, paragraph 3, are discharged by a committee of three judges whom the Court appoints

ARTICLE 45

The Court itself draws up its own rules of procedure, which must be communicated to the signatory Powers.

It will meet to draw up these rules within a year of the ratification of the present Convention.

ARTICLE 46

The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Netherland Government, to the signatory Powers, which will confer together as to the measures to be adopted.

PART IV.—*Final Provisions*

ARTICLE 47

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A minute of the deposit of each ratification shall be drawn up of which a certified copy shall be forwarded through the diplomatic channel to all the signatory Powers.

ARTICLE 48

The Convention shall come into force six months after its ratification. The International Court shall, however, have jurisdiction to deal with prize cases decided by the national courts within six months following the ratification.

The Convention shall remain in force for twelve years and shall be renewed tacitly six years at a time unless denounced.

Denunciation must be notified, at least two years before the expiry of each period, to the Netherland Government, which will inform the other Powers.

The denunciation shall only operate in respect of the notifying Power. The Convention shall remain in effect in the relations between other Powers.

ADDITIONAL PROTOCOL TO THE CONVENTION RELATIVE TO THE CREATION OF AN INTERNATIONAL PRIZE COURT[1]

Germany, the United States of America, the Argentine Republic, Austria-Hungary, Belgium, Bolivia, Bulgaria, Chile, Colombia, the Republic of Cuba, Denmark, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Japan, Mexico, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Salvador, Siam, Sweden, Switzerland, Turkey, Uruguay,

Powers signatory to the Hague Convention dated October 18, 1907, for the creation of an International Prize Court,

Considering that for some of these Powers difficulties of a constitutional nature prevent the acceptance of the said Convention in its present form,

Have deemed it expedient to agree upon an additional protocol taking into account these difficulties without jeopardizing any legitimate interest, and have, to that end, appointed as their plenipotentiaries, to wit :

Germany : His Excellency Felix von Müller, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

[1] Martens, *Nouveau recueil général de traités*, 3rd series, vol. VII, p. 73.

The United States of America : James Brown Scott.

The Argentine Republic : His Excellency Alejandro Guesalaga, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Austria-Hungary : Baron E. Gudenus, Chargé d'Affaires *ad interim* at The Hague.

Belgium : His Excellency Baron Fallon, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Bolivia : His Excellency General Ismael Montes, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Bulgaria : His Excellency Dimitri Stancioff, Envoy Extraordinary and Minister Plenipotentiary in France and Belgium.

Chile : His Excellency Federico Puga Borne, Envoy Extraordinary and Minister Plenipotentiary at Paris.

Colombia : His Excellency Ignacio Gutiérrez Ponce, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

The Republic of Cuba : Miguel Angel Campa, Chargé d'Affaires *ad interim* at The Hague.

Denmark : J. W. Grevenkop Castenskjold, Minister Resident at The Hague.

Ecuador : His Excellency Victor Manuel Rendón, Envoy Extraordinary and Minister Plenipotentiary at Paris.

Spain : His Excellency José de la Rica y Calvo, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

France : His Excellency Marcellin Pellet, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Great Britain : His Excellency Sir George William Buchanan, G.C.V.O., K.C.M.G., C.B., Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Guatemala : Francisco de Arce, Chargé d'Affaires *ad interim* at The Hague.

Haiti : His Excellency Georges Sylvain, Envoy Extraordinary and Minister Plenipotentiary at Paris.

Italy : His Excellency Count Giuseppe Sallier de la Tour, Duke of Calvello, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Japan : His Excellency Aimaro Sato, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Mexico : His Excellency Enrique Olarte, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Norway : His Excellency Georg Francis Hagerup, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Panama : Juan Antonio Jiménez, Chargé d'Affaires at The Hague.

Paraguay : Count Georges du Monceau de Bergendal, Consul of Paraguay at Brussels.

The Netherlands : His Excellency Jonkheer R. de Marees van Swinderen, Minister of Foreign Affairs.

Peru : His Excellency Manuel Alvarez Calderón, Envoy Extraordinary and Minister Plenipotentiary in Belgium and Switzerland.

Persia : His Excellency Mirza Ahmed Khan, Sadigh ul Mulk, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Portugal : Carlos Rangel de Sampaio, Chargé d'Affaires *ad interim* at The Hague.

Salvador : John Helsmoortel, Consul General of Salvador in Belgium.

Siam : His Excellency Phya Visutr Kosa, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Sweden : His Excellency Count Johan Jacob Albert Ehrensvärd, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Switzerland : Gaston Carlin, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Turkey : His Excellency Aristarchi Bey, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

Uruguay : Virgilio Sampognaro, Chargé d'Affaires at The Hague.

Who, after depositing their full powers, found to be in good and due form, have agreed upon the following :

ARTICLE 1

The Powers signatory or adhering to the Hague Convention of October 18, 1907, relative to the creation of an International Prize Court, which are prevented by difficulties of a constitutional nature from accepting the said Convention in its present form, have the right to declare in the instrument of ratification or adherence that in prize cases, whereof their national courts have jurisdiction, recourse to the International Prize Court can only be exercised against them in the form of an action in damages for the injury caused by the capture.

ARTICLE 2

In the case of recourse to the International Prize Court, in the form of an action for damages, Article 8[1] of the Convention is not applicable ; it is not for the Court to pass upon the validity or the nullity of the capture, nor to reverse or affirm the decision of the national tribunals.

If the capture is considered illegal, the Court determines the amount of damages to be allowed, if any, to the claimants.

ARTICLE 3

The conditions to which recourse to the International Prize Court is subject by the Convention are applicable to the action in damages.

ARTICLE 4

Under reserve of the provisions hereinafter stated the rules of procedure established by the Convention for recourse to the International Prize Court shall be observed in the action in damages.

[1] *Ante*, p. 748.

ARTICLE 5

In derogation of Article 28, paragraph 1,[1] of the Convention, the suit for damages can only be brought before the International Prize Court by means of a written declaration addressed to the International Bureau of the Permanent Court of Arbitration; the case may even be brought before the Bureau by telegram.

ARTICLE 6

In derogation of Article 29[2] of the Convention the International Bureau shall notify directly, and if possible by telegram, the Government of the belligerent captor of the declaration of action brought before it.

The Government of the belligerent captor, without considering whether the prescribed periods of time have been observed, shall, within seven days of the receipt of the notification, transmit to the International Bureau the case, appending thereto a certified copy of the decision, if any, rendered by the national tribunal.

ARTICLE 7

In derogation of Article 45, paragraph 2,[3] of the Convention the Court rendering its decision and notifying it to the parties to the suit shall send directly to the Government of the belligerent captor the record of the case submitted to it, appending thereto a copy of the various intervening decisions as well as a copy of the minutes of the preliminary proceedings.

ARTICLE 8

The present Additional Protocol shall be considered as forming an integral part of and shall be ratified at the same time as the Convention.

If the declaration provided for in Article 1 herein above is made in the instrument of ratification, a certified copy thereof shall be inserted in the *procès-verbal* of the deposit of ratifications referred to in Article 52, paragraph 3,[4] of the Convention.

ARTICLE 9

Adherence to the Convention is subordinated to adherence to the present Additional Protocol.

In faith of which the plenipotentiaries have affixed their signatures to the present Additional Protocol.

Done at The Hague, September 19, 1910, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be forwarded through diplomatic channels to the Powers designated in Article 15 of the Convention relative to the creation of an International Prize Court of October 18, 1907, and in its annex.

[Here follow signatures.]

[1] *Ante*, p. 751. [2] *Ante*, p. 752. [3] *Ante*, p. 754. [4] *Ante*, p. 755.

Report to the Secretary of State of the United States on the Additional Protocol to the Convention relative to the Creation of the International Prize Court, by Mr. James Brown Scott, Delegate Plenipotentiary of the United States to negotiate and sign the Additional Protocol

The Additional Protocol, modifying the Convention relative to the creation of an International Prize Court, signed at The Hague, October 18, 1907, was itself signed at The Hague, September 19, 1910, by duly authorized representatives of the following Powers, all of which had already signed the original Prize Court Convention: Germany, United States of America, Argentine Republic, Austria-Hungary, Chile, Denmark, Spain, France, Great Britain, Japan, Norway, the Netherlands, and Sweden.

The Protocol states in its eighth article that 'the present Additional Protocol shall be considered as forming an integral part of and shall be ratified at the same time as the Convention'. It is therefore necessary to consider the provisions of the Additional Protocol and their effect upon the original Convention, because it has been modified by the Additional Protocol in so far as the terms of this instrument are inconsistent with the provisions of the Convention. But before entering upon an analysis of the terms of the Additional Protocol and considering their effect upon the Convention, it is advisable to state the reasons which caused the signatories of the original Convention to modify its terms, and to trace the steps which resulted in its modification.

The Convention contemplated the creation of an International Prize Court to which an appeal could be taken, in certain specified cases, from the judgements of national prize courts 'on the ground that the judgement [appealed against] was wrong either in fact or in law' (Article 3). The Convention provided that the national court was to take jurisdiction of the case and allowed an appeal from the court of first to one of higher instance; that the law of the belligerent captor should decide whether the case should be brought before the International Court after judgement in first instance or after judgement upon appeal, and that in any event, whether final judgement had or had not been rendered by the national court, the case should be carried direct to the International Court within two years from the date of capture (Article 6); that upon notice of appeal, made in accordance with Article 28, the record of the case was to be transmitted to the International Court (Article 29), and the International Court, thus having the record of the national court before it, was to render final judgement (Article 8), either upon the evidence submitted to the national court or supplementary evidence presented to the International Court and authorized by it to be taken (Articles 36, 42); and finally, that the judgement and record of the case on appeal were to be sent to the national prize court for execution (Article 45), as the contracting Powers had undertaken 'to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay' (Article 9).

It is clear from this brief and summary statement that the International Prize Court was to be in law as well as in fact a court of appeal, and that it was apparently clothed with power to reverse the judgement of the national court if, in the opinion of a majority of the international judges, the judgement appealed against 'was wrong either in fact or in law'.

While approving the creation of such a tribunal, and believing it calculated stated in the preamble of the Convention, 'to settle in an equitable manner the di ences which sometimes arise in the course of a naval war in connexion with the decis of national prize courts', not a few American authorities on constitutional law fe that the provisions of the Convention authorizing and requiring an appeal from the ju ment of the Supreme Court of the United States were in conflict with the Constitu of the United States, which provides in Article 3 that 'the judicial power of the Un States shall be vested in one Supreme Court' and that 'the judicial power shall ex to all cases, in law and equity, arising under this Constitution, the laws of the Un States, and treaties made, or which shall be made, under their authority'.

It cannot be denied that, by virtue of the Constitution, the Supreme Court was clot with authority to pass upon treaties of the United States, and since the Prize Court C vention was a treaty, it was pointed out that the Supreme Court could not be held t supreme in the sense of the Constitution if its decisions were subordinated to an In national Prize Court, to be created in accordance with the Convention of the Sec Hague Peace Conference. It was stated that, even if the provisions of the Conven were not in conflict with the Constitution, it would nevertheless be both embarras and objectionable to transfer the record of a prize case from the files of the Supr Court at Washington to the International Prize Court at The Hague, and that such a requ ment should not be insisted upon unless indispensable to the just determination of case by the International Court.

Fortunately, a slight modification in the procedure before the International C would overcome objections and remove any doubts as to the constitutionality of Convention, while retaining all the benefits which it was hoped the Prize Court w render to litigants in prize cases. It was only necessary to secure the consent of signatory Powers to alternative procedure for countries having constitutional difficul of the kind suggested, by which the question involved in the prize case would be s mitted to the International Court, which would assume jurisdiction thereof and dec it without reversing the national judgement, against which an appeal would not be lod

On February 27, 1908, President Roosevelt, acting upon the advice of Mr. Elihu R then Secretary of State, transmitted the Prize Court Convention, together with other Hague Conventions, to the Senate for its advice and consent (Senate Docum No. 444, 60th Cong., 1st sess.), where in the course of discussion it appeared t some members of the Committee on Foreign Relations expressed doubt as to the c stitutionality of the provisions of the Prize Court Convention permitting an appeal fr judgements of the Supreme Court of the United States.

At the same time Article 7 of the Convention was much criticized by British publici in and out of Parliament, who appeared to regard it as vesting the judges of the Int national Court with the power of making the law which they were to apply to prize ca on appeal. British publicists were unwilling to trust to the general principles of just and equity according to which the International Court was to give judgement, if t question to be decided was not covered by a treaty in force between the parties to the c or by an existing rule of international law. The British Government considered that would be difficult to carry the legislation necessary to give effect to the Convention unl a more definite understanding could be reached as to the rules by which the new tribun should be governed, and accordingly the London Naval Conference was called

February 27, 1908, and in December 1908, representatives of Germany, the United States, Austria-Hungary, Spain, France, Italy, Russia, and Holland met in an endeavour to reach such an agreement.

Secretary Root was anxious to see the Prize Court established and to have the United States a party to it, and he felt that it would be both possible and desirable to propose to the London Naval Conference an alternative procedure which would enable the United States to ratify the Convention, just as an agreement upon the law to be observed would enable Great Britain to ratify it. Secretary Root therefore instructed the American delegates to the Conference to propose that:

> Any signatory of the Convention for the establishment of an International Court of Prize, signed at The Hague on October 18, 1907, may provide in the act of ratification thereof, that, in lieu of subjecting the judgements of the courts of such signatory Powers to review upon appeal by the International Court of Prize, any prize case to which such signatory is a party shall be subject to examination *de novo* upon the question of the captor's liability for an alleged illegal capture, and, in the event that the International Court of Prize finds liability upon such examination *de novo*, it shall determine and assess the damages to be paid by the country of the captor to the injured party by reason of the illegal capture.[1]

The Conference considered the proposed modification, but regarded it as beyond its scope. It, however, approved in principle the alternative procedure proposed by the United States, but recommended that the question be submitted to the signatories of the Convention, and that an agreement be reached upon it through diplomatic channels, as appears from the following *vœu*, embodied in the final protocol of the Conference:

> The delegates of the Powers represented at the Naval Conference which have signed or expressed the intention of signing the Convention of The Hague of October 18, 1907, for the creation of an International Prize Court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of that Convention in its present form, agree to call the attention of their respective Governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the International Prize Court in respect of decisions of their national tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said Convention, either to individuals or to their Governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the Powers signatory of that Convention.

Mr. Robert Bacon, who had succeeded Mr. Root as Secretary of State, accepted this form of adjustment, and on March 5, 1909, instructed the American Ambassador to London to inform the signatories of the Prize Court Convention taking part in the London Naval Conference that 'this Government will, upon receipt of the texts of the Conference, send an identic circular note to each of the participating Powers, setting forth at length the reasons which influence the United States to request a rehearing *de novo* of a question involved in a national prize decision, and the means whereby this change of procedure may be effected without interfering with the rights of Governments or individuals under the Prize Court Convention'.

On October 18, 1909, Mr. Philander C. Knox, Secretary of State, accordingly sent an

[1] Annex 1, *post*, p. 825.

identic circular note[1] to the diplomatic representatives of the United States accredited to the signatories of the Prize Court Convention represented at the London Conference, setting forth in detail the reasons for and proposing a draft of alternative procedure which would meet the objections of the United States. The material portion of the note, in as far as the form of the alternative procedure is concerned, is as follows:

> Whereas objections of a constitutional nature in certain signatory States render the ratification of the Convention for the establishment of an International Prize Court, signed at The Hague, October 18, 1907, difficult or impossible; and
>
> Whereas it is highly desirable that all the Powers represented at the Second Hague Peace Conference may be enabled to ratify the Convention and co-operate in the labours of the International Prize Court;
>
> Therefore, the Government of . . . . . , for itself and as far as the signatories of the International Prize Court are concerned, agrees that any signatory of the aforesaid Convention may insert in the act of ratification thereof a reservation to the effect that resort to the International Prize Court in questions affecting judgements of its national tribunals may take the form of a direct claim for compensation, as provided in Article 8, second paragraph, last sentence, of the said Convention; that the proceedings thereupon to be had shall be in the nature of a trial *de novo* of the question of liability involved in the alleged illegal act of the captor; that the judgements of the International Prize Court shall thereupon, in accordance with Article 8 of the aforesaid Convention, decree compensation for the illegal capture, irrespective of the decision of the national court involved, although a certified copy of the national judgement and the records of the case shall be submitted upon request to the International Prize Court for its consideration and information; and that each signatory consenting to the exercise of this optional and alternative procedure, under Article 8 of the aforesaid Convention, for States with the constitutional difficulties aforementioned, shall specify its consent to such optional and alternative procedure in the instrument of ratification of the International Prize Court Convention;
>
> *Provided, however,* That the effect of this reservation shall not impair the other rights secured under the aforesaid Convention either to Governments, their subjects or citizens, or the periods within which resort to the International Prize Court shall be made.

The proposed alternative procedure was favourably received by the Powers to which the note was addressed. It was suggested, however, by Germany, France, and Great Britain, which countries were with the United States, joint proposers of the Prize Court Convention at the Second Hague Conference, that a confidential and informal conference of representatives of these Powers should be held to discuss the modifications which it would be necessary to make in the original Convention in order to render it acceptable to the United States, and to agree upon a draft, containing such modifications, to be submitted to the signatories of the Convention. The suggestion of a conference was accepted, with Paris as the place of meeting, and the four Governments selected as representatives their delegates to the Hague Conference who had drafted the terms of the Prize Court Convention: Dr. Kriege on behalf of Germany, James Brown Scott on behalf of the United States of America, Louis Renault on behalf of France, and Eyre Crowe on behalf of Great Britain. These representatives met at Paris in the Ministry of Foreign Affairs on March 18, 1910, and three days later (March 21) agreed upon the changes to be made in the original Convention in order to enable countries with constitutional objections of the kind obtaining in the United States to avail themselves of the benefits of the Convention. It was further agreed that the Netherlands, at the request of the United

[1] Annex 2, *post*, p. 820.

States (in which request Germany, France, and Great Britain were to join), should be asked to transmit the agreement, technically to be known as the Additional Protocol relative to the creation of an International Prize Court, to the signatories of the original Convention, to request their acceptance of the Protocol and to fix a date for the signature of the Protocol at The Hague. The Government of the Netherlands complied with the request of the joint proposers of the Prize Court, and on May 24, 1910, addressed a circular note to the signatory Powers, transmitting the Additional Protocol, requesting its approval, and asking that it be signed by the diplomatic representatives of the signatory Powers at The Hague, September 15, 1910.

In reply to the circular note of the Netherland Government the signatory Powers accepted the Additional Protocol and expressed their willingness to sign it. Therefore, on September 19, 1910, it having been found necessary to postpone the date from the 15th to the 19th, the Additional Protocol was signed at The Hague by the representatives of thirteen Powers, and since that date by the signatories of the Prize Court Convention—in all by thirty-three Powers, so that this instrument, modifying the procedure to be followed by the judges of the Prize Court in the trial and disposition of a prize case, is of equal rank and dignity with the original Convention and must be considered in connexion therewith, if the Prize Court to be created by it is to be correctly understood.

As a result of the acceptance of the Additional Protocol, the Prize Court Convention has been modified in form but not in substance, and has enabled the United States and any other country having constitutional objections of the same kind to accept the Convention relative to the creation of an International Prize Court, signed at The Hague, October 18, 1907.

The Additional Protocol will now be examined, article by article, to determine its effect upon the Prize Court Convention.

ARTICLE I

> The Powers signatory or adhering to the Hague Convention of October 18, 1907, relative to the creation of an International Prize Court, which are prevented by difficulties of a constitutional nature from accepting the said Convention in its present form, have the right to declare in the instrument of ratification or adherence that in prize cases, whereof their national courts have jurisdiction, recourse to the International Prize Court can only be exercised against them in the form of an action in damages for the injury caused by the capture.

Article I specifically provides the means by which the constitutional difficulties are to be met and overcome, and the expedient devised for this purpose—which has proved acceptable to the one Power in which such difficulties appear to exist—is the very simple and happy one of granting a country in which such difficulties exist "the right to declare in the instrument of ratification or adherence that in prize cases, whereof their national courts have jurisdiction, recourse to the International Prize Court can only be exercised against them in the form of an action in damages for the injury caused by the capture".

The appellate jurisdiction of the International Prize Court has been previously summarized on the first page of this report, but it is necessary to consider in more detail the provisions of Articles 1 and 8 of the Convention, which read as follows:

> ARTICLE 1. The validity of the capture of a merchant ship or its cargo is decided before a prize court in accordance with the present Convention when neutral or enemy property is involved.
>
> ARTICLE 8. If the Court pronounces the capture of the vessel or cargo to be valid, it shall be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the Court shall order restitution of th vessel or cargo, and shall fix, if there is occasion, the amount of the damages. the vessel or cargo have been sold or destroyed, the Court shall determine the com pensation to be given to the owner on this account.

If the national court pronounces the capture to be null, the Court can only b asked to decide as to the damages.

It will be observed that in each case the validity of the capture of a merchant ship or of its cargo, is involved, and if the capture should be held to be illegal it is an easy matte to determine the amount of loss suffered by the claimants, and to award damages cove ing the loss. The essence of the procedure is that the validity of the capture shall be dete mined, and that the wrong, if wrong has been committed, shall be righted and the loss mad good. The International Prize Court could determine both these matters by having pre sented to it the facts and the law involved in the original capture, and the decision of th Court upon these questions would determine whether the law upon the facts as found justi fied capture, and, if not, the damages to be assessed for the illegal act. It is not essenti that the judgement of the national court should be examined, affirmed, or reversed. is, however, essential that the question involved in the capture, and the law by whic such capture was sought to be justified, should be examined and a decision had upon th case as presented to the International Prize Court. The result would be practicall the same, whether the International Court considered solely the question involved i the capture, or if it overhauled the national judgement. In the first case it would prac tically sit as a court of first instance; in the second case it would practically sit as a cou of appeal. In either event, the rightfulness or the wrongfulness of the capture woul be determined and the amount of damages, if any were to be awarded, would be assesse

It would seem, therefore, to be a question of form or of preference, rather than o substance, as to the method to be employed. Should a nation accepting the obligation of the Convention prefer for constitutional reasons the action in damages for the injur caused by the capture, there seems to be no reason why it should not be allowed i preference, just as the nation which preferred the appeal from its national to the Inte national Court, resulting in an affirmation or a reversal of the national judgement, shou be allowed its preference.

ARTICLE 2

In the case of recourse to the International Prize Court, in the form of an actio for damages, Article 8 of the Convention is not applicable; it is not for the Cou to pass upon the validity or the nullity of the capture, nor to reverse or affirm th decision of the national tribunals.

If the capture is considered illegal, the Court determines the amount of damag to be allowed, if any, to the claimants.

It was to be expected that the alternative form would be inconsistent with som of the provisions of the Convention, otherwise there would have been no reason for t Additional Protocol to permit alternative procedure. Article 2 finds the direct actio in the form of damages to be inconsistent with Article 8 of the original Convention which allows the International Court to affirm or reverse decisions of national tribunal and, in order that there may be no doubt or uncertainty as to this important matter t Court is, by Article 2 of the Additional Protocol, deprived of the right which it would othe wise possess to reverse or affirm the national judgement or to affect it in any way, becau of the specific provision that it is not for the Court (meaning thereby the Internation

Prize Court) to pass upon the validity or the nullity of the capture, nor to reverse or affirm the decision of the national tribunals.

The inhibition to pass upon the validity or the nullity of the capture is not, it is believed, to be understood in the sense that the International Prize Court shall not hold the capture to be improperly made, because it is difficult to see how damages could be awarded the claimant unless the capture was illegal or improper in the premises. This clause of the article, therefore, is to be construed not as a general but as a particular inhibition against drawing into consideration and examination the judgement of the national court. And even this statement requires modification, because, as will appear later when considering Article 6, the judgement or judgements of the national court are necessarily to be considered and may be presented as evidence, and because it is the alleged failure of the national courts to do justice which gives rise to the action before the International Prize Court.

It will be observed that the language of Article 2, modifying the procedure of the original Convention, differs from the recommendation of the London Naval Conference and from the draft originally presented by Secretary Root to the London Naval Conference and the draft contained in Secretary Knox's identic circular note, but the difference is one of form, not of substance.

ARTICLE 3

The conditions to which recourse to the International Prize Court is subject by the Convention are applicable to the action in damages.

In the proposed alternative procedure laid before the Naval Conference the prize case was to be subject to examination *de novo* upon the question of the captor's liability for the alleged illegal capture, and damages to be paid to the injured party were to be determined and assessed by the Court if the capture were found to be unlawful. It was understood rather than stated that the United States would be subject to all the provisions of the original Convention, except such as were inconsistent with the direct action for damages. This question appears to have arisen in the discussion of the American proposal at the London Conference, and any doubts which may have existed were cleared up. For example, the American delegation was asked whether the inquiry *de novo* reserves to private suitors the right to resort to the Court reserved to them by Articles 4 and 5 of the Convention. In accordance with the instructions of Secretary Bacon, whose opinion was taken on this point, the delegation replied that, under the proposed Protocol, the United States accepts the responsibilities of the Prize Court Convention consistent with the substitution of liability in damages for the examination of judgements on appeal and possible reversal thereof, and that, inasmuch as Articles 4 and 5 of the Convention grant private persons the right to resort to the Court, the alternative procedure would necessarily permit this right; but that private persons could, in any event, only recover damages as the judgements of the national court were to remain unaffected.

Again, the American delegation was asked whether the national jurisdiction would be suspended if the case were brought to the International Prize Court in accordance with Article 6, paragraph 2, two years from the date of capture and before a conclusion was reached by national courts, and whether the decision of the International Court would be put into force by American authorities. The Department of State was again consulted by the delegation, and Secretary Bacon instructed the American delegates that, inasmuch as under the proposed Protocol the international proceedings are to be merely an inquest

of damages, the suspension or continuance of proceedings in the national court is unaffecte and is immaterial, except as giving the right to institute proceedings in accordance wit Article 6, paragraph 2, of the Convention; that the period within which proceedin may be begun in the Prize Court is accepted by the United States; that the decis of the International Court on questions submitted *de novo* would be accepted and comple with as in any other case of international arbitration; and that the decision of the Inte national Court would not be executed by the American court, as required by the Co vention, but by the American Government, as in the case of questions involved in pri cases decided by the Supreme Court of the United States during the Civil War, especiall the case of the *Circassian*, submitted and decided by the American and British Clai Commission in 1872, under Article 12 of the Treaty of May 8, 1871, between Great Brita and the United States.

Finally, it was asked whether the records of prize cases in the possession of nation courts would be sent without delay to the International Prize Court, in accordance wit the requirements of Article 29 of the original Convention, to which the Americ delegation, acting under direct instructions from Secretary Bacon, replied that certifie copies of records of American courts would be transmitted without delay, and that th judgements of American courts would, under the Protocol, be introduced as evidence.

It has been thought necessary to set forth the above doubts and queries in order t show the care with which the Naval Conference considered the question of alternativ procedure, and to make it clear that the alternative procedure authorized by th Additional Protocol did not in any way relieve the United States from the obligation imposed upon it by the original Convention, in so far as these obligations were n necessarily modified by the action of direct damages.

With this explanation the concluding clause of the *vœu* adopted by the London Co ference is clear, that the reservation in the act of ratification permitting a direct cla for damages 'shall not be such as to impair the rights secured under the said Conventio either to individuals or to their Governments'. This also was the sense in which th duty of the United States was conceived by Secretary Knox, speaking for the Unite States, who said on this point in the identic circular note of October 18, 1909:

> Lest the alternative method contained in the proposal be considered to milita against the speedy determination of the controversy, and that the signatory Powe their subjects and citizens, may seem to be deprived of their right of presenti the controversy to an International Court within the time and in the manner pr scribed by the Convention, the Department states specifically that the rights secur under the Convention, both as to parties and to the periods within which the pr ceedings shall begin, are expressly recognized by the United States.

It is fair to presume, therefore, that Article 3, which subordinates direct action damages to the requirements of the original Convention, is to be understood accordi to the specific explanations made by the American delegates to the Naval Confere acting under the instructions of Secretary Bacon, and by the formal assurance Mr. Knox, speaking as Secretary of State of the United States.

ARTICLE 4

> Under reserve of the provisions hereinafter stated the rules of procedure establish by the Convention for recourse to the International Prize Court shall be observed the action in damages.

It was foreseen that the acceptance of the alternative procedure advocated by the United States, and which submitted to examination the question at issue between the Governments and not the decision of the national court, would necessarily require the modification of the original procedure, inasmuch as the Government substituted itself for the national court in the direct action for damages, and it was deemed the part of wisdom to state clearly, precisely, and unmistakably the modifications which the alternative procedure would necessarily entail in the provisions of the Convention.

Article 4 of the Additional Protocol contents itself, however, with the general statement that the rules of procedure formulated in the original Convention shall be observed in the action in damages, and leaves it to subsequent articles to point out the modifications of the Convention required in a direct action for damages.

ARTICLE 5

In derogation of Article 28, paragraph 1, of the Convention, the suit for damages can only be brought before the International Prize Court by means of a written declaration addressed to the International Bureau of the Permanent Court of Arbitration; the case may even be brought before the Bureau by telegram.

To understand this article of the Additional Protocol it is necessary to consider the exact wording of Article 28 of the original Convention, which states that 'an appeal to the International Prize Court is entered by means of a written declaration made in the national court which has already dealt with the case or addressed to the International Bureau; in the latter case the appeal can be entered by telegram'.

It will be noted that this article contemplates an appeal from the national to the International Court, and as the purpose of the Additional Protocol was to eliminate an appeal, the Additional Protocol omits the clause concerning the national court, which is in no way to be involved, but retains the balance of the clause dealing with the International Bureau. Thus a suit for damages, as distinguished from the appeal to the International Court is to be brought before this latter body by means of a written declaration addressed to the International Bureau of the Permanent Court of Arbitration, and as such an appeal could be by telegram as well as by an ordinary written notice, the Additional Protocol retains the clause permitting the case to be brought before the Bureau by telegram. It therefore appears that, in accordance with Article 2, which excludes appeal from the national judgement to the International Prize Court, that part of the procedure of the original Convention providing for an appeal is omitted or modified; otherwise the requirement is the same.

ARTICLE 6

In derogation of Article 29 of the Convention the International Bureau shall notify directly, and if possible by telegram, the Government of the belligerent captor of the declaration of action brought before it.

The Government of the belligerent captor, without considering whether the prescribed periods of time have been observed, shall, within days of the receipt of the notification, transmit to the International Bureau the case, appending thereto a certified copy of the decision, if any, rendered by the national tribunal.

It is necessary to quote Article 29 of the original Convention in order to see wherein Article 6 of the Additional Protocol modifies the Convention. The latter reads as follows:

If the notice of appeal is entered in the national court, without considering the question whether the appeal was entered in time, the court shall within seven days the record of the case to the International Bu-

If the notice of appeal is sent to the International Bureau, the Bureau will inform the national court directly, when possible by telegraph. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual the International Bureau at once informs by telegraph the individual's Government, in order to enable it to enforce the rights it enjoys under Article 4, paragraph 2.

It will be observed that the chief difference between Article 29 of the Convention and Article 6 of the Additional Protocol consists in the elimination of the procedure proper in an appeal from the national to the International Court, but improper where the Government itself is substituted for the national court. In order to reach the desired result the Additional Protocol first eliminates the question of appeal and then deals in first instance with the notice to be given by the International Bureau, which shall notify directly and, if possible, by telegram the Government of the belligerent captor of the declaration of the action for damages which has been addressed to it in accordance with Article 5 of the Additional Protocol. The duty of the belligerent captor to appear and to litigate the case, or to furnish the International Bureau with the record of the case is necessarily the same, whether the action be considered as an appeal or as an original action in damages, and in one procedure as in the other the record of the case is to be sent to the International Bureau within seven days after the receipt of notice by the Government of the belligerent captor that the declaration of action has been brought before the International Bureau.

The final clause of Article 6 of the Protocol, which requires that a certified copy of the decision of the national court shall be transmitted to the International Bureau, may appear at first sight to be inconsistent with the express statement that the action for damages is not an appeal from a national judgement; but if a decision has been rendered by a national court in a case before the International Court, it is obvious that the latter Court could not properly pass upon the action for damages without having officially before it as material evidence in the case the text of the national decision. The American delegation to the London Naval Conference was specifically asked whether the national judgment would be sent without delay to the International Court, and was authorized by Secretary Bacon to answer this inquiry in the affirmative, and in the draft of alternative procedure contained in Secretary Knox's identic circular note of October 18, 1909, was specifically stated that 'a certified copy of the national judgement and the record of the case shall be submitted upon request to the International Prize Court for its consideration and information'. It was therefore understood, both by the Naval Conference and by the representatives of the Powers meeting in conference at Paris, that the judgment of the national court should be submitted to the International Court as material evidence.

ARTICLE 7

In derogation of Article 45, paragraph 2, of the Convention the Court rendering its decision and notifying it to the parties to the suit shall send directly to the Government of the belligerent captor the record of the case submitted to it, appending thereto a copy of the various intervening decisions as well as a copy of the minutes of the preliminary proceedings.

Paragraph 2 of Article 45 of the original Convention needed modification for the same reasons which required Articles 28 and 29 thereof to be modified, because

it presupposes an appeal to have been taken from the national court, and naturally and logically directs the international tribunal to transmit its judgement to the national court from which the appeal has been taken. Thus, after stating that the sentence of the International Court is delivered in open court and in the presence of the parties or in their absence, if they have been summoned to attend, and that the sentence is officially communicated to the parties, the article goes on to say, in its second paragraph, that 'when this communication has been made, the Court transmits to the national prize court the record of the case, together with copies of the various decisions arrived at and of the minutes of the proceedings'.

As the alternative procedure substitutes the belligerent captor for the national court, it is necessary that the reference to the national court should be omitted and that the Government should stand in its place. Thus, Article 7 of the Additional Protocol, while requiring the International Court to render its decision and to notify it to the parties in litigation, thereupon provides that it shall transmit directly to the Government of the belligerent captor 'the record of the case submitted to it, appending thereto a copy of the various intervening decisions as well as a copy of the minutes of the preliminary proceedings'. Under the alternative, as under the original procedure, it is essential that the judgement of the International Court and of the proceedings had in the case be transmitted to the Government of the belligerent captor, because by Article 9 of the original Convention, which was neither modified in letter nor in spirit by the Additional Protocol, it is provided that 'the contracting Powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay'.

ARTICLE 8

> The present Additional Protocol shall be considered as forming an integral part of and shall be ratified at the same time as the Convention.
>
> If the declaration provided for in Article 1 herein above is made in the instrument of ratification, a certified copy thereof shall be inserted in the *procès-verbal* of the deposit of ratifications referred to in Article 52, paragraph 3, of the Convention.

Brief reference has been made previously in this report to the provision of the first paragraph of this article providing that the Additional Protocol is to be considered as forming an integral part of the Prize Court Convention and that the two instruments, considered as one, should be ratified at one and the same time. This subject will not be considered further in this place, as it will be necessary to recur to it under Article 9.

The second paragraph of Article 8 of the Additional Protocol needs to be carefully examined in order to form a clear and correct conception of the relation of the Additional Protocol to the original Convention and the extent to which the Convention was modified by the Protocol. Article 52 of the original Convention requires that the ratifications thereof shall be deposited at The Hague, and the third paragraph thereof provides that 'A minute of the deposit of ratifications shall be drawn up, of which a certified copy shall be forwarded, through the diplomatic channel, to each of the [ratifying] Powers'. This procedure was complete in itself, as the mere fact of the deposit of ratifications was a sufficient notice to each of the ratifying Powers of its duties and obligations to the co-contracting parties, inasmuch as the original Convention was the measure of these duties and obligations as well as of their rights. The Additional Protocol, however, modified, at least in form, the rights and duties of the parties under the original Convention.

It was therefore of prime importance that the signatories of the original Convention and of the Additional Protocol should be informed at the earliest possible moment, that is to say, at the deposit of ratifications, what countries intended to claim the benefit of the Additional Protocol, because in such an event the action in damages could only be allowed against such country or countries. This was especially necessary because the Additional Protocol does not of itself modify the original Convention, and a ratification of both instruments would leave the original Convention untouched. It permits, however, a country alleging the existence of constitutional difficulties in the matter of an appeal from national judgements to the International Court, to declare at the time of the ratification of the original Prize Court Convention and of the Additional Protocol, that such difficulties exist, and that the country alleging such difficulties will make use of the alternative procedure permitted by the Additional Protocol. It is therefore the essence of things that the country intending to avail itself of the alternative procedure provided by the Additional Protocol should state its intention at the time of the deposit of ratifications, and that the contracting countries should be notified of this intention by the declaration filed at the time of the deposit of ratifications, because nations are only bound by the act of ratification, not by the signature of an international agreement, and the filing of the declaration at the time of the ratification of the two instruments requires the parties to the original Convention to permit the alternative procedure because of their signature and ratification of the original Convention and of the Additional Protocol, even if they do not care to avail themselves of the alternative procedure.

ARTICLE 9

Adherence to the Convention is subordinated to adherence to the present Additional Protocol.

In view of what has been said as to the nature of the Additional Protocol, it will not be necessary to comment at length upon the requirements contained in Article 9, which appear to be self-evident. It is familiar doctrine that a contract can only be varied by the parties to it, and a treaty is a contract. The original Prize Court Convention could only be modified by the signatories thereto, a fact which Mr. Renault was careful to point out in his exposition of the American proposal for alternative procedure made at the London Naval Conference. 'Only the thirty-one signatory Powers', he said, 'can decide upon these modifications, and they must be in accord.' And in another passage he says, 'This [the American] proposition must be accepted by all the signatory States'.

All the signatory States have accepted the Additional Protocol, so that there is no doubt that its terms are binding upon them, just as they are bound by the terms of the original Convention. This matter, however simple and elementary it may seem, was regarded as of such importance as to be stated in clear and unmistakable terms, for if the Convention was to be modified by the Additional Protocol it was essential that the Additional Protocol should be accepted by all the signatories, because otherwise the Convention would not be modified.

Article 9 would seem to be a repetition or a re-statement in other language of the requirement of Article 8, but a comparison of the two articles shows that, while they both require the acceptance of the original Convention and of the Additional Protocol, they nevertheless refer to different actions on the part of the contracting nations. Article 8 contemplates the acceptance and ratification of both instruments at one and the same

time, that is to say that both instruments shall be signed by the contracting nations, although they could not be signed at one and the same time, and that they should be ratified and the ratifications deposited at one and the same time. It presupposes that the Power signing the Additional Protocol is a signatory of the Prize Court Convention. Article 9, on the contrary, contemplates the case of a Power which has not signed the Prize Court Convention, and which may, however, decide to adhere to it. In such case the adherence to the Convention is subordinated to adherence to the Additional Protocol, so that the adherence to each may be deposited at one and the same time, and the nation so adhering bound, as in the case of signatory Powers, upon the deposit of its adherence.

It is not specifically stated in Article 9 that, in adhering to the original Convention and the Additional Protocol, a declaration shall be made by the adhering Power that it intends to avail itself of the alternative procedure permitted by the Additional Protocol. This requirement, however, is to be found in Article 1, which applies to signatory as well as to adhering Powers.

The importance of the Additional Protocol does not consist solely in the fact that it enabled one of the signatories of the original Convention to overcome objections of a constitutional nature to its definitive acceptance, and that it enables any nation to become a party to the Convention which may have scruples of a similar kind. It is believed that the Additional Protocol correctly defines the relations which an international judgement or award should bear to the decision of a national court.

The relation between these two has been much discussed, and there is great divergence of opinion. It may well be admitted that in a unitary or federated State the court of last resort may overhaul, affirm, or reverse judgements of courts, inasmuch as it stands at the head of the judicial hierarchy, and can thus impose its law or decision upon the judicially inferior; but the society of nations is a very loose and flexible union, in which there are many States but no one State unitary, composite, or federated. The law of the society binds each member thereof, but it operates upon the State, not upon the individual; whereas, in a unitary, composite, or federated State the law operates upon the individual subjects or citizens thereof.

It would seem, therefore, in view of the difference between the loose and indefinite union which we call the society of nations, and the definite and regulated union of subjects and citizens which forms a State, and in view also of the fact that international law stops, as it were, at the frontier and only binds the conscience of the State, whereas the municipal law of the State not merely binds the conscience but controls the actions of the subjects and citizens thereof, that a decision or award of an International Court should, like the law which it applies, stop at the frontier and bind the conscience of the State instead of crossing the frontier and acting directly upon institution, subject, or citizen, as would be the case of a municipal decision interpreting and applying municipal law. From this point of view, the international judgement should be directed against the State and oblige it to take action in accordance therewith, as the State has already pledged its good faith to execute the judgement or award. But the international judgement or award should not affirm or reverse the national judgement, as each court moves within a different orbit and neither does or should come into contact with the other. The State stands between the two and sees that justice is done.

It would seem that, in the absence of a closely knit union between the States, the

holdings of International Courts, whether they be called decisions or judgements, are in the nature of arbitral awards, which compel the State, if it acts in good faith, to carry them into effect, but which do not reverse or affirm the decisions of national courts. This distinction is neither subtle nor fanciful, and it is of great practical importance to nations which may be willing to submit their justiciable disputes to an international tribunal and to accept and comply with its judgement; whereas, these very nations may be unwilling to submit their justiciable disputes to an international tribunal, and allow the judges composing it to set aside their national decisions. In the first case we would have international order; in the second case we would have domestic confusion.

A single example may be cited which, although drawn from a particular jurisdiction, is believed to illustrate what is or should be the general rule.

During the American Civil War the steamship *Circassian*, a British merchant steamer under British colours, was captured with a valuable cargo by the United States steamer *Somerset* for an attempted violation of the blockade established in pursuance of the Proclamation of President Lincoln dated April 19, 1861. Both vessel and cargo were condemned as lawful prize by the district court, and the Supreme Court of the United States, in 1864, upheld the conviction (*The Circassian*, 2 Wallace 135).

The case of the *Circassian* was submitted to the American and British Claims Commission, formed under Article 12 of the Treaty of May 8, 1871, and, notwithstanding the judgement of the Supreme Court, the Commission made awards in favour of all the claimants, and the United States paid the awards (*Papers relating to the Treaty of Washington*, vol. 6 (Hale's report), p. 147; *Foreign Relations of the United States*, 1874 pp. 570–2; ibid., 1875, pt. i, p. 655).

The award of the Commission was clearly inconsistent with the judgement of the Supreme Court. Did it reverse this judgement, or did it obligate the United States to pay the award without affecting the judgement? The judgement of the Supreme Court in 1899 in the case of *The Adula* (176 U.S. 361) answers the question.

During the war of 1898 between Spain and the United States *The Adula*, a British steamship under charter to a Spanish subject, was captured for and while attempting to run the blockade established at Guantánamo Bay in the island of Cuba, although American troops occupied at the time the mouth of the Bay, thus bringing the case within the rule laid down by the Supreme Court in the case of the *Circassian*, and the judgement of the district court condemning the vessel was affirmed upon the authority of the judgement of the Supreme Court in the case of the *Circassian*, although the award of the American and British Claims Commission was inconsistent with its decision.

Secretary Knox in the identic circular note of October 18, 1909, after proposing the modification of the Prize Court Convention in accordance with the desires of the United States, and giving the reasons of a constitutional nature which impelled the United States to make the request, thus summarized the effect which the alternative procedure would have upon the respective national and international jurisdictions involved in the case:

> It is therefore evident that the demands of justice would be satisfied by submitting the question involved to impartial international determination, for although the controversy is based upon the decision of a national court of justice, the judgement of the international tribunal, while satisfying the claimant and settling the principle of international law involved, would not affect the validity of the national judgement within its jurisdiction. The national decision would remain in full force

so far as the nation is concerned, in that it is not reversed by an international tribunal; but the international law properly applicable to the case would have been determined by an international tribunal, thus establishing for the community of nations the correct principle of international law.

It is believed, therefore, that the alternative procedure, which leaves unquestioned national decisions, has an advantage wholly above and beyond the Prize Court Convention in which it is merged, and that it states the procedure which should be followed in an international court, recognizing the distinction between the national judgement on the one hand and the international award on the other, without disturbing the judicial system of any country, and enabling at the same time the International Court to deliver a judgement or an award which the good faith of the litigating country is obliged to execute. It may well be that this modest Protocol will be considered as not only deciding a question of great importance to the signatories of the Prize Court Convention, but as contributing to judicial organization by stating and defining the distinction which does and should exist between the decisions of international and of national courts.

The Prize Court Convention, drafted with such tender care and solicitude, and adopted by the Second Hague Conference, has not been ratified by the nations, and the Prize Court which was to be established at The Hague and to administer justice between the nations in cases of prize law, has not been created. The Declaration of London, drafted by a conference called by Great Britain to reach an agreement upon the law to be administered by the International Court in accordance with Article 7 of the Convention and to permit its ratification, was not accepted by Great Britain, although its delegates had signed the Declaration, owing to the failure of the House of Lords to pass the legislation required to put the Declaration into effect. No date has therefore been fixed by the Netherland Government for the deposit of ratifications of the Prize Court Convention, and no ratifications have been deposited.

In so far as the United States is concerned, it may be said, in conclusion, that it has confessed its faith in the administration of justice between nations by an International Prize Court to be established at The Hague, because the Senate advised and consented to the Prize Court Convention and the Additional Protocol on February 15, 1911, so that the President of the United States has been ready, since February 15, 1911, to deposit the ratifications of the Prize Court Convention and the Additional Protocol at The Hague.

ANNEX 1

THE SECRETARY OF STATE OF THE UNITED STATES TO MESSRS. CHARLES H STOCKTON AND GEORGE G. WILSON[1]

DEPARTMENT OF STATE,
WASHINGTON, *November* 21, 1908.

GENTLEMEN: You have been appointed delegates plenipotentiaries to represent the United States at the conference to be held at London on December 1, 1908, to formulate rules to be observed by the International Prize Court.

. . . . . .

As the United States has not yet ratified the Convention for the establishment of the International Prize Court, signed at The Hague on October 18, 1907, and as the ratification

[1] *Foreign Relations of the United States*, 1909, pp. 300–304.

of the instrument is rendered difficult by reason of objections of a constitutional and internal nature not obtaining in other countries, you will be careful not to assume an attitude or position in the discussions of the conference which may seem to commit the United States to the ratification of the Convention for the establishment of the Court, or to commit this Government, by an acceptance of the general rules of maritime warfare to be formulated by the conference, to create the International Court of Prize provided for in the Convention signed at The Hague on October 18, 1907.

While taking an active part in the deliberations of the conference and co-operating with the various Powers represented in order to render it a success by securing the adoption of a satisfactory code of maritime warfare, you will discuss the questions presented in the light of general theory and practice, without specific reference or application to the proposed International Prize Court.

The department is, however, desirous that the International Court of Prize may be established in general accord with the provisions of the Convention concluded at The Hague on October 18, 1907, and in order to facilitate its establishment you will propose to the conference an additional article or protocol for the consideration of and eventual acceptance by the conference, by which each signatory of the Convention of October 18, 1907, shall possess the option, in accordance with local legislation, either to submit the general question of the rightfulness of any capture to the determination of the International Prize Court or to permit an appeal from the judgement of a national court in a specific case direct to the International Court of Prize, as contemplated by the Convention of October 18, 1907.

In the view of the department the following draft would be not merely satisfactory, but calculated to remove the objections made to the establishment of the International Court of Prize :

> Any signatory of the Convention for the establishment of an International Court of Prize, signed at The Hague on October 18, 1907, may provide in the act of ratification thereof, that, in lieu of subjecting the judgements of the courts of such signatory Powers to review upon appeal by the International Court of Prize, any prize case to which such signatory is a party shall be subject to examination *de novo* upon the question of the captor's liability for an alleged illegal capture, and, in the event that the International Court of Prize finds liability upon such examination *de novo*, it shall determine and assess the damages to be paid by the country of the captor to the injured party by reason of the illegal capture.
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> . . . . . .

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ANNEX 2

IDENTIC CIRCULAR NOTE DATED OCTOBER 18, 1909, OF THE SECRETARY OF STATE OF THE UNITED STATES, MR. PHILANDER C. KNOX, PROPOSING ALTERNATIVE PROCEDURE FOR THE INTERNATIONAL PRIZE COURT, AND THE INVESTMENT OF THE INTERNATIONAL PRIZE COURT WITH THE FUNCTIONS OF A COURT OF ARBITRAL JUSTICE[1]

The Convention of October 18, 1907, for the establishment of an International Court of Prize, was signed *ad referendum* by the delegates of the United States to the Second Hague Peace Conference, as by the law of this country treaties and conventions require the approval of the Senate before binding the Government and before ratifications can be exchanged with the contracting parties.

The Convention appeals strongly to the sense of justice by which this Government is animated, as the establishment of the Prize Court would substitute, for a national

[1] *Foreign Relations of the United States*, 1910, p. 597.

decision, a judgement of an international and disinterested tribunal, composed of a majority of judges selected from neutral countries and thus able and desirous to safeguard neutral rights and protect neutral property. The interest this Government takes in the establishment of the International Prize Court and the benefits to be derived from its successful operation are evidenced by the following passage from President Roosevelt's annual message to Congress, dated December 3, 1907:

> A further agreement of the first importance was that for the creation of an International Prize Court. The constitution, organization, and procedure of such a tribunal were provided for in detail. Any one who recalls the injustices under which this country suifered as a neutral Power during the early part of the last century cannot fail to see in this provision for an International Prize Court the great advance which the world is making toward the substitution of the rule of reason and justice in place of simple force. Not only will the International Prize Court be the means of protecting the interests of neutrals, but it is in itself a step toward the creation of the more general court for the hearing of international controversies to which reference has just been made. The organization and action of such a Prize Court cannot fail to accustom the different countries to the submission of international questions to the decision of an international tribunal, and we may confidently expect the results of such submission to bring about a general agreement upon the enlargement of the practice.

Action upon the Prize [Court] Convention has been postponed owing to the dissatisfaction expressed by several Powers concerning the status of the law to be administered by the Court by virtue of Article 7 of the Convention, which dissatisfaction culminated in a formal invitation by Great Britain to Germany, the United States, Austria-Hungary, Spain, France, Italy, Japan, the Netherlands, and Russia, to meet in December, 1908, in order to reach an agreement upon the law to be administered by the Court in the absence of special conventions or universally recognized principles of international law. Pursuant to this invitation, the representatives of the Powers assembled at London and remained in session until February 26, 1909, when a comprehensive, progressive, and satisfactory declaration on maritime law was unanimously approved by the conference and recommended for adoption by the non-participating Powers.

The objection to the Prize Court Convention made by several Powers at the Second Hague Peace Conference has, therefore, ceased to exist, and it is gratifying to the United States to learn that these Powers are prepared to ratify the Convention and to participate in the labours of the Court when established. The delegation of the United States signed the Declaration of London, formulated at the Conference of London, and its action has been approved by the Department of State, although the Senate of the United States has not as yet had opportunity to take formal action, as it seems desirable to this Government to consider at one and the same time the Convention for the establishment of the International Prize Court and the Declaration of London.

Although the London Conference has removed the international objection to the approval of the Convention for the establishment of the Prize Court, there is, on the part of this Government, shared, it is believed, by various signatories of the Convention, a constitutional and, therefore, a national and internal difficulty which requires patience and no little good-will to overcome. There is a deep-rooted objection, based upon constitutional reasons, which it is therefore unnecessary to set forth in detail, to the allowance of an appeal from a national judgement, as contemplated by the Convention, which may result in the reversal of a national judgement by an international tribunal. Therefore, the United States instructed its delegates to the London Conference to propose—

> An additional article or protocol for the consideration of and eventual acceptance by the Conference, by which each signatory of the Convention of October 18, 1907 shall possess the option, in accordance with local legislation, either to submit the general question of the rightfulness of any capture to the determination of the Inter-

national Prize Court, or to permit an appeal from the judgement of a national co
in a specific case direct to the International Prize Court, as contemplated by t
Convention of October 18, 1907.

The American delegation acted as directed, and after a careful and conscientio
discussion of the proposal and the difficulties it was meant to obviate, the Confer
adopted unanimously the following *vœu*:

> The delegates of the Powers represented at the Naval Conference which h
> signed or expressed the intention of signing the Convention of The Hague
> October 18, 1907, for the establishment of an International Prize Court, hav
> regard to the difficulties of a constitutional nature which, in some States, stand
> the way of the ratification of that Convention in its present form, agree to call t
> attention of their respective Governments to the advantage of concluding an arran
> ment under which such States would have the power, at the time of depositing th
> ratifications, to add thereto a reservation to the effect that resort to the Internatio
> Prize Court in respect of decisions of their national tribunals shall take the fo
> of a direct claim for compensation, provided always that the effect of this reser
> tion shall not be such as to impair the rights secured under the said Conventio
> either to individuals or to their Governments, and that the terms of the reservati
> shall form the subject of a subsequent understanding between the Powers signato
> of that Convention.

Upon receipt of the text of the *vœu* this Government, on March 5, 1909, cabled to
diplomatic agents accredited to the Powers represented at the Conference its intention to

> Send an identic circular note to each of the participating Powers, setting fo
> at length the reasons which influence the United States to request a rehearing *de n*
> of a question involved in a national prize decision, and the means whereby this char
> of procedure may be effected without interfering with the rights of Governments
> individuals under the Prize Court Convention.

In pursuance, therefore, of this express notice and of the deep and abiding inter
the United States takes in the establishment of the International Prize Court, the Depa
ment of State has the honour to submit to your considerate examination the follow
observations:

The Court contemplated by the Prize [Court] Convention of October 18, 1907, is p
eminently a court of appeal, with full power to review the decision of a national court
justice, both as to facts and as to the law applied, and, in the exercise of its judicial disc
tion, not only to affirm or reverse, in whole or in part, the national decision from which
appeal is lodged, but also to certify its judgement to the national court for proceedi
in accordance therewith. The International Prize Court, therefore, is an ultimate co
of appeal of which, by the Convention, national courts are intermediate instances. T
purpose of the Convention and of the Conference which adopted it undoubtedly was a
is to secure determination by an international tribunal of a controversy affecting neut
rights and property arising from capture and confiscation in war and by a series of w
considered judgements to establish by international decisions the principles of int
national prize law. The Government of the United States is in hearty accord with t
purpose and desires to co-operate in its realization, but is, however, of the opinion th
the end in view may be effectuated without violating the spirit of the Convention a
indeed, without amending it, so that, for those countries unable or unwilling to subm
the judgements of their national courts to international review, a simple expedient m
be devised by virtue of which the question in controversy, instead of the actual judgem
of the national court, may be submitted to the International Court at The Hague
final determination without sacrificing substance to form, and without interfering w
the practice of the United States in such matters. To illustrate this position by concr
examples taken from controversies with Great Britain arising out of the Civil War:

Questions involved in the following cases upon which decisions had been rendered by the Supreme Court of the United States were afterwards submitted to arbitration by the United States under the British-American Claims Convention, sitting under Article 12 of the Treaty of Washington, dated May 8, 1871, for decision 'according to justice and equity':

1. Questions which the international tribunal decided adversely to the decision of the Supreme Court of the United States, which international decisions were obeyed by the United States: *The Hiawatha*, 2 Black 635, 4 *Moore's International Arbitrations* 3902; *The Circassian*, 2 Wallace 135, 4 Moore 3911; *The Springbok*, 5 Wallace 1, 4 Moore 3928; *The Sir William Peel*, 5 Wallace 517, 4 Moore 3935; *The Volant*, 5 Wallace 179, 4 Moore 3950; *The Science*, 5 Wallace 178, 4 Moore 3950.

2. Questions in which the decision of the international tribunal upheld the decision of the Supreme Court of the United States: *The Peterhoff*, 5 Wallace 28, 4 *Moore's International Arbitrations* 3838; *The Dashing Wave*, 5 Wallace 170, 4 Moore 3948; *The Georgia*, 7 Wallace 32, 4 Moore 3957; *The Isabella Thompson*, 3 Wallace 155, 3 Moore 3159; *The Pearl*, 5 Wallace 574, 3 Moore 3159; *The Adela*, 6 Wallace 266, 3 Moore 3159.

It is therefore evident that the demands of justice would be satisfied by submitting the question involved to impartial international determination, for although the controversy is based upon the decision of a national court of justice, the judgement of the international tribunal, while satisfying the claimant and settling the principle of international law involved, would not affect the validity of the national judgement within its jurisdiction. The national decision would remain in full force as far as the nation is concerned, in that it is not reversed by an international tribunal; but the international law properly applicable to the case would have been determined by an international tribunal, thus establishing for the community of nations the correct principle of international law.

The proposal of the United States leaves untouched and unquestioned the composition of the Court, its jurisdiction and procedure, and only affects the question of appeal in its technical rather than its equitable sense, because dissatisfaction with the decision of a national court is the cause of the proceeding before the international tribunal, and the judgement of this august tribunal is binding upon the signatory Powers by virtue of Article 9. The advantage of the proposal lies in the fact that it does not bring national and international decisions into conflict, with a reversal of the former by the latter, and without wounding national susceptibility, leaves unaffected the constitutional law of the signatories.

The proposition of the United States is based upon the alternative remedy contained in the second sentence of the second paragraph of Article 8 of the International Prize Court Convention, combined with the statements contained in the final paragraph of Article 3 and Article 42. For the sake of clearness, these provisions of the Convention follow:

> If the vessel or cargo have been sold or destroyed, the Court shall determine the compensation to be given to the owner on this account. (Article 8, second sentence of second paragraph.)
>
> The appeal against the judgement of the national court can be based on the ground that the judgement was wrong either in fact or in law. (Article 3, final paragraph.)
>
> The Court takes into consideration in arriving at its decision all the facts, evidence, and oral statements. (Article 42.)

Analysing these articles, it is apparent that the Convention assumes that the captured vessel or cargo may have been sold, destroyed, or otherwise be beyond the power of the captor, in which case only the question of liability with compensation in damages can be considered. In like manner the Convention contemplates, in appropriate cases, the retrial of the controversy *de novo*, because the Court is made competent not merely to

consider the law, but also the facts involved in the case and to take evidence, by vir of Articles 27 and 35, either at the request of one of the parties or upon the Court's initiati and such evidence may be produced before the Court itself or before one or more of members (Article 36). It is thus seen that the Convention not only permits evide to be taken in order to ascertain the facts in controversy, but provides adequate machin for its presentation, thus permitting a trial of the case *de novo* both as to the facts invol and the law to be applied.

Lest the alternative method contained in the proposal be considered to militate agai the speedy determination of the controversy, and that the signatory Powers, their subje and citizens, may seem to be deprived of their right of presenting the controversy to International Court within the time and in the manner prescribed by the Convent the Department states specifically that the rights secured under the Convention, both to parties and to the periods within which the proceedings shall begin, are expre recognized by the United States.

This Government therefore proposes that in the instrument of ratification of International Prize Court Convention each of its signatories specify, on account of difficulties of a constitutional nature which, in some States, stand in the way of the ratif tion of the Convention for the establishment of the International Prize Court, sig October 18, 1907, that any signatory may insert a reservation to the effect that re to the International Prize Court in respect of decisions of its national tribunals shall t the form of a direct claim for compensation; that the proceedings thereupon to be ta shall be in the nature of a trial *de novo* of the question at issue; that the judgement the Court shall consist of compensation for the illegal capture, irrespective of the deci of the national court whose judgement is thus called in question, although a certi copy of the national judgement may be submitted to the International Prize Court its consideration and information; provided, however, that the effect of this reser tion shall not be such as to impair the other rights secured under the said Convent either to individuals or to their Governments, including the periods within which re to the International Prize Court shall be made.

The acceptance of this proposal might be expressed in the following manner:

> Whereas objections of a constitutional nature in certain signatory States ren the ratification of the Convention for the establishment of an International P Court, signed at The Hague, October 18, 1907, difficult or impossible; and
>
> Whereas it is highly desirable that all the Powers represented at the Sec Hague Peace Conference may be enabled to ratify the convention and co-oper in the labours of the International Prize Court;
>
> Therefore, the Government of . . . . . , for itself and as fa the signatories of the International Prize Court are concerned, agrees that signatory of the aforesaid Convention may insert in the act of ratification the a reservation to the effect that resort to the International Prize Court in questi affecting judgements of its national tribunals may take the form of a direct cl for compensation, as provided in Article 8, second paragraph, last sentence, of said Convention; that the proceedings thereupon to be had shall be in the nat of a trial *de novo* of the question of liability involved in the alleged illegal act of captor; that the judgements of the International Prize Court shall thereupon accordance with Article 8 of the aforesaid Convention, decree compensation the illegal capture, irrespective of the decision of the national court involved, altho a certified copy of the national judgement and the records of the case shall be s mitted upon request to the International Prize Court for its consideration and infor tion; and that each signatory consenting to the exercise of this optional and al native procedure, under Article 8 of the aforesaid Convention, for States with constitutional difficulties aforementioned, shall specify its consent to such optio and alternative procedure in the instrument of ratification of the Internati Prize Court Convention;

Provided, however, That the effect of this reservation shall not impair the other rights secured under the aforesaid Convention either to Governments, their subjects or citizens, or the periods within which resort to the International Prize Court shall be made.

The Department of State assures the signatories of the Convention of October 18, 1907, for the establishment of an International Prize Court, that the acceptance of this or a substantially similar protocol and its incorporation in the instrument of ratification will remove the constitutional objection to the establishment of the proposed Court and will enable the United States to participate in its highly beneficent labours.[1]

[1] The remainder of this note, dealing with the composition of the projected Court of Arbitral Justice, is omitted.

CONVENTION (XIII) CONCERNING THE RIGHTS AND DUTIE OF NEUTRAL POWERS IN NAVAL WAR [1]

(For the heading see the Convention for the pacific settlement of international disputes.[2])

With a view to harmonizing the divergent views which, in the event of nava war, are still held on the relations between neutral Powers and belligerent Power and to anticipating the difficulties to which such divergence of views might give rise

Seeing that, even if it is not possible at present to concert measures applicabl to all circumstances which may in practice occur, it is nevertheless undeniabl advantageous to frame, as far as possible, rules of general application to meet th case where war has unfortunately broken out ;

Seeing that, in cases not covered by the present Convention, it is expedient to tak into consideration the general principles of the law of nations ;

Seeing that it is desirable that the Powers should issue detailed enactments t regulate the results of the attitude of neutrality when adopted by them ;

Seeing that it is, for neutral Powers, an admitted duty to apply these rule impartially to the several belligerents ;

Seeing that, in this category of ideas, these rules should not, in principle, be altered in the course of the war, by a neutral Power, except in a case where experience ha shown the necessity for such change for the protection of the rights of that Power ;

Have agreed to observe the following common rules, which cannot, however modify provisions laid down in existing general treaties, and have appointed a their plenipotentiaries, to wit :

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, hav agreed upon the following provisions :

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral Powers and t abstain, in neutral territory or neutral waters, from any act which would, if knowingl permitted by any Power, constitute a violation of neutrality.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search committed by belligerent war-ships in the territorial waters of a neutral Powe constitutes a violation of neutrality and is strictly forbidden.

[1] *Actes et documents*, vol. i, p. 1050.

[2] *Ante*, p. 292.

ARTICLE 3

When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.

ARTICLE 4

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

ARTICLE 5

Belligerents are forbidden to use neutral ports and waters as a base [illegible] operations against their adversaries, and in particular to erect wireless tel[illegible] stations or any apparatus for the purpose of communicating with belligeren[illegible] on land or sea.

ARTICLE 6

The supply, in any manner, directly or indirectly, by a neutral Power to a [illegible] gerent Power, of war-ships, ammunition, or war material of any kind what[illegible], is forbidden.

ARTICLE 7

A [illegible]ral Power is not bound to prevent the export or transit, for the use of either belliger[illegible]t, of arms, ammunition, or, in g[illegible]ral, of anything which could be of use to an army or fleet.

ARTICLE 8

A neu[illegible]l Government is bound to employ the means at its disposal [illegible] prevent the fitting out or arming within its jurisdiction of any vessel which [illegible] as reason to believe is intended to cruise, or engage in hostile operations, aga[illegible]t a Po[illegible]r with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, [illegible] engage in hostile operations, which had been adapted entirely or partly within [illegible] said jurisdiction for use in war.

ARTICLE 9

A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

ARTICLE 10

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

ARTICLE 11

A neutral Power may allow belligerent war-ships to employ its licensed pilots.

ARTICLE 12

In the absence of special provisions to the contrary in the legislation of a neut Power, belligerent war-ships are not permitted to remain in the ports, roadstea or territorial waters of the said Power for more than twenty-four hours, except the cases covered by the present Convention.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns th a belligerent war-ship is in one of its ports or roadsteads, or in its territorial wate it must notify the said ship to depart within twenty-four hours or within the ti prescribed by local regulations.

ARTICLE 14

A belligerent war-ship may not prolong its stay in a neutral port beyond permissible time except on account of damage or stress of weather. It must dep as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels m remain in neutral ports, roadsteads, or waters, do not apply to war-ships devo exclusively to religious, scientific, or philanthropic purposes.

ARTICLE 15

In the absence of special provisions to the contrary in the legislation of a neut Power, the maximum number of war-ships belonging to a belligerent which may in one of the ports or roadsteads of that Power simultaneously shall be three.

ARTICLE 16

When war-ships belonging to both belligerents are present simultaneously a neutral port or roadstead, a period of not less than twenty-four hours must ela between the departure of the ship belonging to one belligerent and the depart of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the s which arrived first is so circumstanced that an extension of its stay is permissible

A belligerent war-ship may not leave a neutral port or roadstead until twen four hours after the departure of a merchant ship flying the flag of its adversary

ARTICLE 17

In neutral ports and roadsteads belligerent war-ships may only carry out s repairs as are absolutely necessary to render them seaworthy, and may not in any manner whatsoever to their fighting force. The local authorities of neutral Power shall decide what repairs are necessary, and these must be carried with the least possible delay.

ARTICLE 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

ARTICLE 19

Belligerent war-ships may only re..ctual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four h.urs of their arrival, the permissible duration of their stay is extended by twenty-four hours.

ARTICLE 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

ARTICLE 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

ARTICLE 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

ARTICLE 23

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

ARTICLE 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking

the sea during the war, and the commanding officer of the ship must facilitate th execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew ar likewise detained.

The officers and crew thus detained may be left in the ship or kept either on anothe vessel or on land, and may be subjected to the measures of restriction which it ma appear necessary to impose upon them. A sufficient number of men for lookin after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutra territory without permission.

ARTICLE 25

A neutral Power is bound to exercise such surveillance as the means at its disposa allow to prevent any violation of the provisions of the above articles occurring in i ports or roadsteads or in its waters.

ARTICLE 26

The exercise by a neutral Power of the rights laid down in the present Conventio can under no circumstances be considered as an unfriendly act by one or oth belligerent who has accepted the articles relating thereto.

ARTICLE 27

The contracting Powers shall communicate to each other in due course all law proclamations, and other enactments regulating in their respective countries th status of belligerent war-ships in their ports and waters, by means of a communicatio addressed to the Netherland Government, and forwarded immediately by that Gover ment to the other contracting Powers.

ARTICLE 28

The provisions of the present Convention do not apply except between contracti Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 29

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by th representatives of the Powers which take part therein and by the Netherland Minist for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a writt notification addressed to the Netherland Government and accompanied by t instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratificatio of the ratifications mentioned in the preceding paragraph, as well as of the instr ments of ratification, shall be at once sent by the Netherland Government, throu the diplomatic channel, to the Powers invited to the Second Peace Conference.

well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

ARTICLE 30

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

That Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 31

The present Convention shall come into force in the case of the Powers which were a party to the first deposit of the ratifications, sixty days after the date of the *procès-verbal* of that deposit, and, in the case of the Powers who ratify subsequently or who adhere, sixty days after the notification of their ratification or of their decision has been received by the Netherland Government.

ARTICLE 32

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, who shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has been made to the Netherland Government.

ARTICLE 33

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made by Article 29, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 30, paragraph 2) or of denunciation (Article 32, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith of which the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

Here follow signatures.

Report to the Conference from the Third Commission on the Rights and Duties of Neutral Powers in Naval War [1]

(REPORTER, MR. LOUIS RENAULT)

Among the topics for the consideration of the Conference the Russian programm mentioned 'The rights and duties of neutrals at sea', and, hereunder, the 'question contraband; *the rules applicable to belligerent vessels in neutral ports*; destruction, cases of *force majeure*, of neutral merchant ships captured as prizes'. The first and thi questions have been assigned to the Fourth Commission [3]; the second was reserved f the Third Commission.

The Commission had before it four different projects:

1. A draft from the d' 'gation of Japan defining the position of belligerent -hi in neutral waters.[4]
2. A draft from the delegation of Spain on the same subject.[5]
3. A proposal from the British delegation in the form of a draft convention c cerning the rights and duties of neutral States in naval war.[5]
4. A proposal from the delegation of Russia containing draft provisions defini the position of belligerent war-ships in neutral ports.[6]

It will be noticed at once that the British proposal has a greater scope than the th other proposals, since, unlike them, it does not confine itself to the status of belligere war-ships in neutra ports and waters, but also deals with the rights and duties of neut States in general in naval war.

The Commission has not considered itself bound by the exact terms in which jurisdiction was defined by the Conference at the time when the several topics were d tributed among the Commissions. It has examined the different articles of the Brit proposition embracing the whole subject of the situation of neutral States in naval w It is believed that at a time when an International Prize Court is being created, it wo be wise to develop to as great a degree as possible a codification of international mariti law in time of war. Thus the work of the Third Commission will be harmonized w that of the Second Commission, which covers the rights and duties of neutral States war on land. This explains the general title given to the project and accepted unhe tatingly by the committee of examina'ion.

In order to facilitate study of the subject, the second subcommission decided th there should be submitted to it a paper indicating the questions involved in the seve proposals. This list of questions [6] facilitated an exchange of views in the meetings

[1] This report was submitted to the Third Commission by a committee of examination compo ed his Excellency Count Tornielli (Italy), chairman; Mr. Louis Renault (France), reporter; Rear-Adm Siegel (Germany), Rear-Admiral Sperry (United States), Captain Burlamaqui de Moura (Brazil), Excellency Lou Tseng-tsiang (China), Mr. Vedel (Denmark), Captain Chacon (Spain), his Excelle Sir Ernest Satow (Great Britain), Captain Castiglia (Italy), his Excellency Mr. Tsudzuki (Jap his Excellency Mr. Hagerup (Norway), Captain Ferraz (Portugal), his Excellency Mr. Tcharyk (Russia), his Excellency Mr. Hammarskjöld (Sweden), his Excellency Turkhan Pasha (Turke report has been completed to include the last session of the Third Commission. *Actes et* vol. I, p. 295.

[3] *Ante*, p. 180.

[4] *Post*, p.

[5] *Ante*, pp. 603, 609.

[6] *Post*, p. 870.

[6] *Post*, p. 874.

July 27 and 30 and August 1. The matter was then referred to a committee of examination, which made a thorough study of it in a series of thirteen meetings from August 6 to September 28. The draft which we are about to analyse was submitted to two readings;[1] the second taking place in the meetings of September 11, 12, and 28, of which the minutes have been distributed. It was finally approved by the Third Commission in its session of October 4.

•

The necessity of precise regulations having for their end the removal of the difficulties and even conflicts in this branch of the law of neutrality has been asserted on all sides. Recent experience has added its weight to theoretical considerations in an emphatic and most startling manner.

Land warfare regularly pursues its course on the territory of the belligerents. In exceptional circumstances alone is there any direct contact between the armed forces of a belligerent and the authorities of neutral countries; when such contact does take place, as when troops flee into neutral territory, the situation is relatively simple; customary or written positive law applies in a well-defined manner. The case is otherwise in naval war. The war-vessels of the belligerents cannot always remain in the theatre of hostilities; they need to enter harbours, and they do not always find harbours of their own countries near by. Here geographical situation exerts a powerful influence upon war, since the ships of the belligerents will not need to resort to neutral ports to the same extent.

Does it result from this that they have a right to unrestricted asylum there, and may neutrals grant it to them? This is contested. The distinction just indicated is the natural consequence of what takes place in time of peace. Armed forces of one country never enter the territory of another State during peace. So when war breaks out there is no change; and they must continue to respect neutral territory as before. It is different with naval forces, which are in general permitted to frequent the ports of other States in time of peace. Should neutral States when war breaks out brusquely interrupt this practice of times of peace? Can they act at their pleasure, or does neutrality restrain their liberty of action? While it is understood that when belligerent troops penetrate neutral territory they are to be disarmed because they are doing something which would not be tolerated in time of peace, the situation is different for the belligerent war-ship that arrives in a port which it has customarily been able to enter in time of peace and from which it might freely depart.

What reception then is this ship to meet with? What shall it be allowed to do? The problem for the neutral State is to reconcile its right to give asylum to foreign ships with its duty of abstaining from all participation in hostilities. This reconciliation, which is for the neutral to make in the full exercise of its sovereignty, is not always easy, as is proved by the diversity of rules and of practice. In some countries, the treatment to be accorded belligerent war-ships in neutral ports is set forth in permanent legislation, e.g. the Italian code on the merchant marine;[2] in others rules are promulgated for the case of each particular war by proclamations of neutrality. And not only do the rules promulgated by the several countries differ, but even the rules prescribed by a single

[1] *Post*, pp. 875, 879.

[2] *Post*, p. 882.

country at different times are not identical; moreover, sometimes rules are modifi during the course of a war.

The essential point is that everybody should know what to expect, so that there w be no surprise. The neutral States urgently demand such precise rules as will, if observe shelter them from accusations on the part of either belligerent. They decline obligatio that would often be disproportionate to their means and their resources or the discha of which would require on their part measures that are veritably inquisitorial.

The starting-point of the regulations ought to be the sovereignty of the neutral Sta which cannot be affected by the mere fact that a war exists in which it does not inte to participate. Its sovereignty should be respected by the belligerents, who can implicate it in the war or molest it with acts of hostility. At the same time neutr cannot exercise their liberty as in times of peace; they ought not to ignore the existe of war. By no act or omission on their part can they legally take a part in the operatio of war; and they must moreover be impartial.

It seems of little use to develop these general considerations, since they might g rise to lengthy discussions, inasmuch as neutrality is not viewed in the same light by eve body. It is better to confine ourselves to the study of propositions dealing with p ticular cases which, while naturally to be regulated in accordance with principles, a presented in concrete and precise shape.

We shall proceed to comment upon the several articles of the project.

The principle which it is proper to affirm at the outset is the obligation incumbe upon belligerents to respect the sovereign rights of neutral States. This obligation not a consequence of the war any more than the right of the State to inviolability of territory is a consequence of its neutrality. The obligation and the right are inhere in the very existence of States, but it is well to affirm them in circumstances where th are most liable to be misunderstood. As was said by Sir Ernest Satow in comment upon an article of the British proposal from which Article 1 of our draft is borrow almost verbatim, we have here 'the expression of the master thought of this divis of international law'.[1]

The principle is applicable alike to land warfare and to naval warfare, and we not surprised that the regulations elaborated by the Second Commission on the subj of the rights and duties of neutral States on land begin with the provision: 'The territ of neutral States is inviolable.'

Generally speaking, it may be said belligerents should abstain in neutral waters fr any act which, if it were tolerated by the neutral State, would constitute failure in duties of neutrality. It is important, however, to say here that a neutral's duty is necessarily measured by a belligerent's duty; and this is in harmony with the f of the circumstances. An absolute obligation can be imposed upon a belligerent refrain from certain acts in the waters of a neutral State; it is easy for it and in all possible to fulfil this obligation whether harbours or territorial waters are concer On the other hand, the neutral State cannot be obliged to prevent or check all the that a belligerent might do or wish to do, because very often the neutral State will be in a position to fulfil such an obligation. It cannot know all that is happening

[1] Meeting of July 27. *Actes et documents*, vol. III, p. 572.

waters and it cannot be in readiness to prevent it. The duty exists only to the degree that it can be known and discharged. This observation finds application in a certain number of cases.

Sometimes it is asked whether a distinction should be made between harbours and territorial waters; such a distinction is recognized with respect to the duties of a neutral, which cannot be held to an equal degree of responsibility for what takes place in harbours subject to the direct action of its authorities and what takes place in its territorial waters over which it has often only feeble control; but the distinction does not exist with respect to the belligerent's duty, which is the same everywhere.

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

As a consequence of the preceding rule, every act of hostility in the territorial waters of a neutral State is forbidden.[1] This comprehends not only hostilities, properly so called, as combats, but also such operations of naval warfare as capture and the exercise of the right of search. The order in which these last two acts was mentioned has caused surprise. This order, however, is explained by the fact that capture is the most serious act. The exercise of the right of search, even if it should not end in seizure of the ship, also constitutes an act of hostility.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

It was thought necessary to provide for the case where a capture has taken place in the territorial waters of a neutral State. We have taken substantially Article 28 of the British proposal.[2]

Two cases are possible: (*a*) where the prize is still within neutral jurisdiction, and (*b*) where it is not.

In the first case it is for the neutral State to take the direct measures necessary to undo the wrongful act contrary to neutrality of which a neutral or hostile ship, it matters little which, has been the victim. The British proposal says that the neutral Power shall release the prize; this expression seemed too positive, because the neutral Power will not always have the necessary means to do so.

If it can, it should do so. The prize being released, its officers and crew are naturally free to dispose of their ship as suits them. The prize crew put on board by the captor is interned because it is found to be illegally within the neutral's waters.

In the case where the prize is beyond the jurisdiction of the neutral State, the latter no longer has direct control over the prize. What can it do? Address the belligerent Government to which the captor ship belongs. It will do so, first to obtain satisfaction for the violation of its sovereignty, and secondly, to forestall a claim on the part of the State to which the captured vessel belongs. The belligerent must liberate the prize with

[1] Russian proposition, Article 2, Italian code on the merchant marine, Article 251. *Post*, pp. 874, 883.
[2] *Post*, p. 873.

its officers and crew; and here we have been able to use a more forceful expression than in the preceding case because we are dealing with an act which the belligerent can at once accomplish.

In both cases the fact of capture within neutral territorial waters is presumed to be proved. Of course, it is possible that a dispute may arise on this point; and the captor may pretend that at the time of the seizure he was beyond the territorial waters. This is a simple question of fact. The neutral Power will proceed prudently and carefully in gathering its information before liberating the prize or even making a diplomatic claim.

At the time of the second reading a difficulty was pointed out with regard to the second case. Admiral Siegel remarked that the provision did not harmonize with a provision in the project for the establishment of an International Prize Court. According to Article 3 of the latter project the judgement of a prize tribunal may be brought before the International Prize Court, even when it relates to an enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim. The report submitted by the First Commission says on this subject:

> In such circumstances the neutral Power may choose between two procedures. It may select the diplomatic channel and address itself directly to the Government of the captor in order to obtain satisfaction; or it may leave the owner of the captured ship, if the legislation of the captor permits, to take his complaint of the irregularity of the seizure before the national tribunals, and then, if in spite of his so doing the irregularity is not admitted, it may take the matter to the International Court.[1]

Was not the alternative that is allowed the neutral State contrary to the absolute rule here proposed? Some thought so and believed that it would be better to omit the paragraph relative to the case where the prize is not in the jurisdiction of the neutral State. Others, in order to avoid a regrettable omission, wished to substitute an option for an obligation and to say that the neutral State *may address* and not *addresses*. The latter view was accepted by 9 votes (Germany, Denmark, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) to 4 (Brazil, Spain, Great Britain, and Japan) and 1 abstention (United States). The present wording was adopted in the meeting of September 28.

At bottom there was really no disagreement. There are cases where the neutral State will have no choice. For example, when the State of the captor is not a party to the Prize Court Convention the neutral State can only make a diplomatic claim; and likewise if the neutral State is not a party thereto. The alternative exists only when both interested States are parties to that Convention. Then the neutral State will do as it likes. Even in cases where it does not wish to proceed with a diplomatic claim in the strict sense, it will notify the fact to the captor's State, which will perhaps liberate the prize of itself to avoid further difficulties, diplomatic or judicial.

ARTICLE 3

> When a ship has been captured in the territorial waters of a neutral Power, the Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew and to intern the prize crew.
>
> If the prize is not in the jurisdiction of the neutral Power, on the demand of the Power, the captor Government must liberate the prize with its officers and crew.

[1] *Ante*, p. 766.

It has long been accepted that a prize court cannot be set up in neutral territory. Article 25 of the British proposal, which is to this effect, has been slightly modified in order to take into account a scruple arising from the institution of the International Prize Court which will sit in neutral territory.

It was observed that the rule is absolute and allows no exception, even in the case of a country where the belligerent exercises a right of jurisdiction. Such a right, which has a special purpose and a limited scope, ought not to extend to the consummation in neutral territory of an act of war like capture.

ARTICLE 4

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

Article 9 of the British proposal,[1] Article 1 of the Japanese proposal,[2] and Article 3 of the Russian proposal,[3] all say that neutral territory cannot serve as a base of operations for a belligerent. This implies a prohibition for the belligerent and a duty for the neutral. While the rule can be enunciated from either point of view, it was preferred to give it the form of an inhibition against belligerents. The Treaty of Washington, on the contrary, had said: 'A neutral Government is bound . . . secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other.'

While the principle is easily stated, its applications require much care. We limit ourselves to giving one example by prohibiting a belligerent to erect on neutral territory a wireless telegraphy station or any apparatus for the purpose of communicating with a belligerent force on land or sea. The same provision occurs in the draft Regulations[4] respecting the rights and duties of neutral States in war on land. The two provisions correspond exactly, for communication may be made from neutral territory either with an army or with a fleet.

We cannot expect to prevent the captain of a belligerent ship from communicating with the inhabitants or the consul of his country, or from using telegraph or telephone cables of the neutral country. There is a formal provision to this effect in Article 8 of the draft regulations on land warfare already referred to. It was suggested that we forbid making a neutral port a *place for concentration* or *rendezvous*. But it is hard to define what this would mean, and it would be almost impossible for neutral States to deal with the intention which brings a belligerent vessel into their waters. The interest in this question will be greatly diminished by the fixing of the maximum number of belligerent ships that may stay in a port at the same time.

ARTICLE 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the perpose of communicating with the belligerent forces on land or sea.

In the meeting of the committee of examination held August 26, the British delegation proposed to insert in Article 5 of the draft, paragraph *b* of Article 10 of the

[1] *Post*, p. 871. [2] *Post*, p. 880. [3] *Post*, p. 874. [4] *Ante*, p. 550, Article 3.

proposition of Great Britain.[1] It had already urged the need of this article, as appears from the minutes of the meeting of the subcommission held July 30: 'Sir Ernest Satow maintains that it seems to him necessary to establish a distinction in the provisioning that can be effected in a neutral port. It is allowable to buy food to sustain the crews for the time being, whilst, on the other hand, revictualling by auxiliary vessels would constitute a real operation of war.' The chairman was of the opinion that this prohibition was contained in those of Article 6 of the British project, and at the same time he adverted to the second point of Article 6 of the Treaty of Washington.[2] The delegation of Russia for its part declared that the second point of Article 6 of the Treaty of Washington fully expressed its intention and that it was ready to accept the sense thereof when the definitive text should be drawn up.

It was decided that the committee of examination should consider the matter, and in its meeting of August 26, already spoken of, the proposal of the delegation of Great Britain was carried by a vote of 10 (United States, Brazil, Denmark, Spain, Great Britain, Japan, Norway, Portugal, Sweden, Turkey) against 4 (Germany, France, Italy, Russia). The question came up again September 11, on the second reading, when the proposal submitted in the following form, 'It is likewise forbidden belligerent ships to revictual in neutral waters by means of auxiliary vessels of their fleet,' and numbered 5 *bis*, was carried by a vote of 5 (United States, Brazil, Spain, Great Britain, Japan) against 4 (Germany, France, Russia), there being 6 abstentions (Denmark, Italy, Norway, Netherlands, Sweden, Turkey).

In the meeting of the committee of examination held September 28, the British delegation waived the insertion in the text of the Convention of the article it had advocated, although still holding the view it had expressed in the meeting of July 30; and the delegation of Russia renewed the reserves it had formulated in the meeting of the committee of examination held August 26 when it voted against the British proposal. It was also understood that the article in question contemplated not only food supplies but also coal. The disappearance of this article from the draft Convention is by no means to be taken as an acceptance of the whole draft by the British or Russian delegations.

It goes without saying that a neutral State cannot furnish war-ships, arms, etc., to a belligerent in any manner. Article 3 of the British proposition spoke only of the *sale*, but we have used the word *supply*, which has a much broader meaning.

ARTICLE 6

> The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

On the other hand, the practice has become established that a neutral State is not bound to prevent the export of arms or ammunition destined for one or other of the belligerents, whether for an army or for a fleet. There is a like provision in the draft regulations already mentioned. A neutral State may, moreover, if it prefers, forbid export of the articles in question. It should then simply put into force a prohibition that applies equally to the two belligerents.

[1] *Post*, p. 871. [2] *Post*, p. 883.

Article 7

A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

The first rule of Washington [1] defined the obligation of a neutral Government with respect to arming or equipping and the departure of ships intended for one of the belligerents. Articles 5, 7, and 8 of the British proposition [2] reproduced this rule with certain additions. The provision adopted by the committee reproduces the rule of Washington with two slight alterations. The expression *due diligence*, which has become celebrated by its obscurity since its solemn interpretation, has been omitted; we have contented ourselves with saying, in the first place, that the neutral is *bound to employ the means at its disposal* . . . and, in the second, to *display the same vigilance*. . . .

In the subcommission's meeting of July 30 the Brazilian delegate made the following declaration: 'Inasmuch as it is not permissible that after the declaration of war belligerents should continue to acquire war vessels in neutral ports, it is necessary to state at least that the reasons against this practice cannot apply to vessels in course of construction that have been begun long before the opening of hostilities at a time when they could not have been foreseen; and inasmuch as under these circumstances it would not be at all equitable to deprive belligerents of a vessel whose acquisition was agreed upon before the imminence of war was known, it is proper that such ships be considered an integral and recognized part of the navy of the country concerned. . . .' Accordingly the delegation of Brazil filed the following amendment: 'War-ships in course of construction in the ship-yards of a neutral country may be delivered with all their armament to the officers and crews appointed to receive them, when they have been ordered more than six months before the declaration of war.' [3]

The discussion on this amendment took place August 1. The Brazilian proposal was opposed by Mr. Drago, speaking for the Argentine delegation, and did not come to a vote as Mr. Burlamaqui de Moura deferred his reply until a later meeting. When the committee of examination took it up in the meeting of August 26, it was rejected by 7 votes (United States, Spain, France, Great Britain, Italy, Japan, Sweden) against 2 (Brazil, Denmark), there being 5 abstentions (Germany, Norway, Portugal, Russia, Turkey). In the Commission's meeting of October 4 his Excellency Mr. Barbosa replied to the objections presented by Mr. Drago against the Brazilian amendment, but no motion was made and no vote taken.

Article 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, this vessel having been adapted entirely or partly within the said jurisdiction for use in war.

[1] Ibid. [2] *Post*, p. 871. [3] *Actes et documents*, vol. iii, p. 714, *annexe* 52.

The committee of examination had some difficulty in deciding upon the wording of t next article, although there were no fundamental differences of opinion.

The first draft stated[1]: 'A neutral State may permit under determined conditio and even forbid, if it deems it necessary, belligerent war-ships or prizes to enter its po or certain of its ports. The conditions, restrictions or prohibitions must be appli impartially to the two belligerents. A neutral State may forbid any belligerent sh which has failed to conform to the orders and regulations made by it, or which h violated neutrality, to enter its ports.'

The substance of these propositions evidently could not be disputed; but the for in which they were expressed was objected to for two very different reasons. On t one hand, his Excellency Mr. Tsudzuki contended that the articles suggested that neut ports would be freely open to belligerent war-ships, whereas the increasing tendency writers was to recognize that it was a duty for neutrals to admit belligerent war-sh to their ports only in cases of distress. On the other hand, Admiral Sperry, speaki for the delegation of the United States, declared that he could not accept Article 8 of t project for the reason that as a State is sovereign within its own jurisdiction what does to safeguard its neutrality is done in virtue of its own rights.

The British delegation had also proposed the following wording:

> A neutral State may forbid, if it deems it necessary, all access to its ports certain of its ports, or passage through its territorial waters, to belligerent war-sh or prizes. The conditions, restrictions, or prohibitions shall apply impartially both belligerents. A State may forbid any belligerent vessel which has failed conform to the orders and regulations made by it, or which has violated neutrali to enter its ports or territorial waters.[2]

After earnest discussion the following essential points were agreed upon. There no question here of recognizing by treaty the rights of a neutral State that are deriv from its sovereignty and pre-exist war. The only element that war introduces is t obligation to treat the two belligerents in the same way and to apply to them impartia the conditions, restrictions, or prohibitions that it has pleased the neutral Governme to make. But a prohibition may be applied to a belligerent ship which has failed conform to the regulations of the neutral or has violated neutrality. There is no intent to limit to such ships alone the right of the neutral to forbid access to its ports, but ne to excuse it in such cases from ensuring equal treatment to the vessels of both belligere We have therefore confined ourselves to these points in the present wording of Articl which, in the end, gained the support of all.

It is to be noted that with ports and roadsteads mention is made of *territorial* as was done in Article 30 of the British proposal. The question has been raised as t extent of the right of a State with respect to its territorial waters. Does this right so far as to forbid passage through it? We shall return to this question under Articl But, in the committee of examination,[3] Sir Ernest Satow, speaking of Article 30 of British proposition, explained that it was necessary to distinguish *access* from *passage*. Here we are dealing with the prohibition by the neutral, if it sees fit, of in its waters and not of a simple passage through them.

[1] *Post*, p. 877, Article 8. [2] *Actes et documents*, vol. iii, p. 720, *annexe* 56. [3] Meeting of Au

ARTICLE 9

A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports, roadsteads, or territorial waters.[1]

Passage through neutral territorial waters has given rise to several difficulties. The thirty-second and last article of the British proposal said: 'None of the provisions contained in the preceding articles shall be interpreted so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent.' This might be understood to mean that a neutral had not a right to forbid war-ships from passing through its waters, and it has been previously explained that according to the British proposal this innocent passage must be distinguished from access or stay in territorial waters.

In the meeting of July 27 the first delegate of Sweden, referring to Article 30 of the British draft, recognizing that a neutral State has the right to forbid in whole or in part access to its ports or territorial waters, had called attention to the special condition of straits which might be situated within the area of territorial waters, and suggested the addition of a provision voted by the *Institut de Droit International* in 1894: 'Straits which serve as a passage from one open sea to another open sea can never be closed.'[2]

In the meeting of July 30, Mr. Vedel, the Danish delegate, read the following declaration:

> The amendment[3] which the Danish delegation proposes to Article 32 of the British project limits to territorial waters uniting two open seas the right of mere passage of the war-ships and auxiliary ships of the belligerent.
>
> The Danish delegation in presenting this amendment is moved specially by the following reasons: the recognition of an unlimited right of mere passage for the war-ships of belligerents can hardly be reconciled with a right in neutrals to prohibit, for the purpose of defending their neutrality, entry into their interior waters, notably those with two entrances which offer special opportunities to a belligerent fleet as a base of operations as well as for certain illegal acts in neutral waters. To accord belligerents the right of mere passage through territorial waters but to authorize neutrals at the same time to prohibit their entry would be to take away with one hand what is given with the other. As the laying of submarine mines by neutrals is being considered by another Commission I cannot enter into the details of this question. I desire merely to draw attention to the connexion between the two subjects and the consequent interest which there is in not limiting by the Convention the exercise of the sovereign rights of the neutral over its territorial waters in such a way as to deprive it of one of the most effective means of maintaining the important regulations of this very Convention.

The question was referred to the committee of examination, where it was discussed without, however, any resolutions being passed on the points mentioned. From the opinions there expressed it seems that a neutral State may forbid even innocent passage

[1] The words 'roadsteads, or territorial waters' do not appear in this paragraph in the draft Convention of *Actes et documents*, Vol. I p. 32[illegible] which was appended to this report and submitted to the Conference. See Mr. Renault's report on the Final Act, *ante*, p. 224, on this article, and also the Convention as signed, *ante*, p. 831.

[2] *Resolutions of the Institute of International Law* (New York, 1916), p. 115. [3] *Post*, p. 883.

through limited parts of its territorial waters so far as that seems to it necessary to maintai its neutrality, but that this prohibition cannot extend to straits uniting two open sea

The formula adopted in Article 10 is based on an amendment of the British delega tion,[1] and does not touch at all upon the preceding questions, which are left under th empire of the general law of nations. It confines itself to saying that the passage throug neutral territorial waters of war-ships or prizes belonging to belligerents does not affe the neutrality of the State, and thus implies at the same time that the belligerents d not contravene neutrality by passing and that the neutral does not fail in his duti by permitting them to pass.

In spite of the innocuous character of the provision, Admiral Sperry declared tha he could not accept this article by reason of the political considerations involved in th question of passage through territorial waters.

At the subcommission's meeting of July 30 his Excellency Turkhan Pasha read th following declaration:

> The Ottoman delegation deems it its duty to declare that, under the exception condition created for the straits of the Dardanelles and the Bosporus by treaties force, these straits, which are an integral part of Turkish territory, can in no case brought within Article 32 of the British proposal. The Imperial Government con undertake no engagement whatever tending to limit its undoubted rights over the straits.

Record was made of this declaration, which had been repeated on several occasion and was on the last occasion made with reference to this Article 10.

His Excellency Mr. Tsudzuki also declared that the Japanese Government undertoo no engagement concerning the straits which separate the numerous islands and isle composing the Japanese Empire and which are simply integral parts of the Empire.

ARTICLE 10

> The neutrality of a Power is not affected by the mere passage through its territori waters of war-ships or prizes belonging to belligerents.

According to the Russian proposal, Article 7, paragraph 3,[2] no pilots can be furnish ships of war of belligerents during their stay in neutral ports and territorial waters witho the authorization of the neutral Government. This rule did not seem very satisfacto because it is not clear what is the meaning of authorization of the neutral Governmen Some provision is necessary because difficulties have sometimes arisen. It is agreed on this point that a neutral State may allow belligerent war-ships to employ its licens pilots. It is not obliged to furnish pilots, but if there are any, the latter may work t the belligerents. Besides, a State may even require that its pilots be employed in certa passages. The word 'licensed' is used, not 'authorized', to indicate that we mea official pilots, not pilots who might be authorized in each particular case.

ARTICLE 11

> A neutral Power may allow belligerent war-ships to employ its licensed pilots.

We now come to one of the greatest difficulties of the subject, the length of stay belligerent war-ships in neutral ports.

[1] *Actes et documents*, vol. iii, p. 721, *annexe* 50.

[2] *Post*, p. 874.

According to Article 4 of the proposal of Russia,[1] 'it belongs to the neutral State to fix the period of stay to be accorded to war-ships of belligerent States in the ports and territorial waters belonging to that neutral State'. According to Article 3 of the proposal of Spain,[2] Articles 11 and 12 of that of Great Britain,[3] and Article 2 of that of Japan,[4] belligerent war-ships may stay in neutral ports for twenty-four hours only, save in exceptional cases. The absolute contradiction between the proposed texts was pointed out in the subcommission's meeting of July 30, and the committee of examination was entrusted with the task of finding some ground for compromise. Its eminent chairman has formulated a proposition which takes into account both plans.

The right of the neutral State to fix the length of stay was affirmed, but in a case where this right is not exercised by it this period would be twenty-four hours. The delegations of Great Britain, Japan, and Portugal accepted this plan, but the delegations of Germany and Russia opposed it.

The latter delegations proposed to make a distinction between different neutral ports according as they are more or less distant from the theatre of war, by allowing a definite period to be fixed for ports situated in its immediate proximity, but no definite limit for ports not so situated.

At the time of the second reading the German delegation presented an amendment by the terms of which 'belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State situated in the immediate proximity of the theatre of war for more than twenty-four hours, except in the cases covered by the present Convention'. A statement of the reasons therefor accompanied the amendment.[5]

The reasons for and against were carefully set forth in the committee of examination, especially at the time of the second reading.[6] It will suffice to make a faithful analysis of them.

The German delegation states the plan presented by it as follows:

In proximity to the 'theatre of war' international regulations would fix the stay of belligerent war-ships in neutral ports and roadsteads.

For waters beyond the theatre of hostilities the German delegation accepts the French rule which prescribes no limit of time determined in advance, provided the belligerent war-ships respect the given rules; the neutral State would therefore itself regulate the stay of the ships. The expression 'theatre of war' is here employed *in a special sense*, and any other expression, as field of action of the belligerents, would suffice, provided there be accepted the dominant idea which considers as the theatre of war the sea area where war operations are taking place or are about to take place or where such an operation can take place by reason of the presence or the approach of the armed forces of *both* belligerents. Thus the presence or the approach of *both* adversaries who are relatively near is necessary to create a 'theatre of war'. The case where an isolated cruiser would exercise the right of capture or search, or the case where a naval force of only one of the belligerents is passing is not here contemplated. The majority of States are not able to control what goes on along all their coasts, which are sometimes of great extent; and international regulations will remain a dead letter unless there is some surveillance.

[1] Ibid.
[2] *Post*, p. 870.
[3] *Post*, p. 871.
[4] *Pos.* 569.
[5] *Post*, p. 885.
[6] Minutes of the meetings of September 11 and 12. *Arte* *ments*, vol. III, p. 627.

Such a surveillance can be effective only in restricted regions. A neutral State ... control its waters near that part of the sea where a naval battle takes place, as that ... is always comparatively small. It is here that the fate of the fleets will be decided ... special vigilance will be here exerted.

To the objection that it is impossible to define ... the limits of the theatre of ... and that this definition cannot be left to neutrals, as two neighbouring neutral Pow... might have a different understanding on the subject which would be a source of comp... cations, it is answered that it does not seem to be very difficult to determine where ... theatre of war is. If, for example, we take the Spanish-American War of 1898, it is ... that the theatres of war were in the Philippines and the West Indies, and not at all in ... Mediterranean nor in the Eastern Atlantic. So there is no reason to fear that difficult... would arise in practice. In our day, with its multiplied means of communication, neutr... will always know the places where the naval forces are stationed. They will be ... position to determine whether these naval forces are preparing to approach their coa... and they will declare such regions 'the theatre of war', and take steps to learn when ... either of the belligerents is visiting their ports. The neutral State can then take ... necessary measures to cause the visitor to leave the port within twenty-four hours. ... the neutral is the sole judge of this question, because it is he and not the belligerent ... determines what is to be considered the theatre of war, there is no danger of dispu... Such is the rule that Germany followed in the war in the Far East, and experience ... shown that it answered the necessities of the situation.

Accordingly, a strict international rule is proposed for the theatre of war; such a ... is not necessary for areas outside that theatre. By accepting this proposal, neutr... are not embarrassed by the responsibility which is incumbent upon them if the ... 24-hour rule is accepted, for they would not be obliged to watch their whole sea co... something which is impossible for most of them to do. When a naval action is al... to take place in the Indian Ocean, it is not necessary for the Powers of the north of Eur... to watch over their ports and roadsteads; if the theatre of war is in the Mediterran... the coasts of the two Americas need not be kept under strict control.

The delegation of Russia supported this compromise measure presented by ... delegation of Germany. It could not agree that the so-called 24-hour rule es... lished in the domestic legislation of Great Britain and some other States should be ... sidered as a universal rule. It believes that the French rule, which does not pro... any limit of time determined upon in advance, and which is accepted by Germany ... Russia, has a better claim to be generally adopted. Nevertheless, in a spirit of c... promise, the Russian delegation accepts the distinction that has just been suggeste...

The British delegation raised several objections to this plan, some of which have ... mentioned above. The principal objection is based on the uncertainty inherent ... determination of the theatre of war.

In contrast with the case in land warfare, the theatre of naval war is unlimited ... includes all the oceans, because hostilities can break out anywhere. From the mo... a war-ship leaves one of its own ports it is liable to encounter an adversary. With st... and the progress made in speed the theatre of hostilities properly so called is consta... shifting.

It would be a very difficult task, and at the same time a great responsib...

for neutral Governments to have to modify, according to these changes, the *régime* applicable in their ports. Besides, is it not inconsistent to admit that the presence of a war-ship of one of the belligerents in certain places is not sufficient to make such places a theatre of war, while at the same time this ship can commit hostilities and capture and search merchant-vessels? The 24-hour rule adopted by England forty-five years ago and accepted by a large number of Powers has been tried out; it has the great advantage of being a precise rule, easy for the neutral to apply, whereas the plan proposed by Germany forces the neutral to make a study of and form an opinion upon what is sometimes a very delicate case. Then complaints may arise on the subject of such opinions, which indeed may perhaps be at variance even in the case of two States in the same geographical situation.

The plan based on the distinction between nearness and remoteness from the theatre of war was also opposed by the delegation of the Netherlands, through Mr. de Beaufort, as being of a nature to beget difficult complications for neutrals.

The article proposed, with the addition of the words 'situated in the immediate proximity of the theatre of war', was rejected by 7 votes (United States, Spain, Great Britain, Italy, Japan, Netherlands, Turkey) to 4 (Germany, Brazil, France, Russia); there were 3 abstentions (Denmark, Norway, Sweden).

The German and Russian delegations then asked for the omission of this provision with reference only to the case where a belligerent war-ship enters a neutral port with no special purpose; other clauses of the project provide for the cases where a ship enters to revictual, repair, etc. Is not that sufficient? The request for omission obtained only 2 favourable votes (Germany, Russia) and was negatived by 10 votes (United States, Brazil, Denmark, Spain, France, Great Britain, Italy, Japan, Sweden, Turkey). Norway and Netherlands abstained from voting.

The rule admitted by the majority of the committee is, then, that in the absence of special provisions in the legislation of a neutral State, belligerent vessels are forbidden to remain in the ports, roadsteads, or territorial waters of such State longer than twenty-four hours. The idea is that a precise rule is indispensable. Each State is left free to establish it; in default of its establishment, the Convention fixes the period at twenty-four hours.

It goes without saying that in every country the legislation thereof will determine the nature of the official act by which the fixing of the period referred to will be made: a law, properly so called, a decree or proclamation, an executive order, etc.

At the close of the deliberations of the committee of ...ration, his Excellency Mr. Tcharykow made the following remarks:

> Thanks to the spirit of conciliation which has never failed to animate us we have been able to come to an agreement upon the greater number of the questions. One alone remains undecided and it is an important one: The question of the period of stay.
>
> In the votes taken on this point, it is seen that two great Powers have maintained the same objections for two months against the proposed wording, and have made it known that they cannot and ought not accept the 24-hour rule. We have already said and we now repeat that in this Conference we must seek not for a mere majority as against a minority, but quite on the contrary unanimity on all questions on some common ground of compromise. It is in this spirit that the delegation of Russia would like to suggest for the case where the question of the theatre of war would not find

a satisfactory solution, a new wording which seems to it to be of such a nature as to satisfy all interests. We have debated upon the quantity of coal; but, whatever this quantity is to be, it is necessary to leave to the interested parties the time necessary to load it, or this permission would be a useless one. Now we have all recognized that a ship has a right to exist on the sea and that it cannot be placed in the position of becoming a derelict. Article 12 therefore might be worded as follows:

'In the absence of contrary provisions of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power beyond the time necessary to complete the supplies indicated in Article 19 of the present Convention.'

It will be noticed that this formula accords with the general idea of the committee's draft, in that it is always for the neutral State to fix the length of stay; but, if the period is not thus fixed, it is proposed to give the time necessary for provisioning instead of an invariable period of twenty-four hours.

In the meeting held September 28 his Excellency Mr. Tcharykow again spoke in support of his amendment to Article 12 and proposed to supplement it with the following paragraph:

> However, the said vessels may always stay twenty-four hours without its being necessary that their stay be based on any special reason.

His Excellency Mr. Tsudzuki said he could not support the proposal. Coal is given only with a humanitarian purpose, and the wording offered by his Excellency Mr. Tcharykow would imply the right to make use of a neutral port as a base for coal, that is to say, as a strategic base, properly so called. He added that Article 12 in the form given it by the project before them had been accepted as a compromise and marked the extreme limit of the concessions that the delegation of Japan could make.

His Excellency Sir Ernest Satow, too, thinks he cannot accept that wording because it appears to do away with the 24-hour rule which Great Britain holds to. Moreover, in most ports supplies of coal and food can be taken on in six hours; and it is therefore useless to stipulate for a period in any way unlimited. This statement of fact was questioned by his Excellency Mr. Hagerup, who said that in most of the ports of Norway it would require twenty-four hours for a large war-ship to be provided with the necessary coal. To this Sir Ernest Satow replied that he had meant ports where it was customary to coal.

His Excellency Mr. Hammarskjöld declared that he would gladly support the Russian proposal if it would facilitate an agreement, and he suggested an amendment as follows:

> In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent vessels are not permitted to remain, except in the cases covered by the present Convention, in the ports, roadsteads, or territorial waters of the said Power more than twenty-four hours or more than such further time as may be necessary to complete the supplies indicated in Article 19 below.

It has been clearly understood that the legislation of the neutral State, if any, must be perfectly obeyed. If it lays down a fixed period, it is necessary to conform to this and no supplementary period applies. It is only in the case where, in the absence of a local rule, the conventional period of twenty-four hours would apply, that the additional period in the sense indicated could take effect.

The committee did not vote on this proposal, reserving for the Commission the business of deciding whether the article as drafted should be kept or whether the amendment should replace it.

In the Commission's meeting of October 4 his Excellency Mr. Hammarskjöld withdrew his amendment.

The German delegation, through Admiral Siegel, again brought forward the amendment[1] referred to above establishing a distinction between neutral ports situated in the immediate proximity of the theatre of hostilities and other ports, and supported it substantially with the arguments above summarized. 'If it is true', said he, 'that a certain number of States have accepted the 24-hour rule, nothing prevents their applying it in the future. But the great majority of Powers must now decide whether they are ready to bind themselves by an international convention or whether they prefer to act according to circumstances and apply their national laws. There exist two opposed principles. Those who think that one is too strict and the other too broad will find in our intermediate compromise proposition both the freedom that should be left to the State and the restrictions dictated by prudence in time of war.' Sir Ernest Satow opposed the amendment with the arguments already given. His Excellency Mr. Tsudzuki spoke to the same effect, and asserted that 'the natural consequence of the proposition would be that a neutral State would from time to time have to change the regulations it enforces in its own territorial waters, so that neither belligerents nor neutrals could ever know with certainty what to rely upon, and neutrals would often be exposed to complaints from one or both adversaries'. The president remarked that there was this difference between the proposal of the committee and the German proposal: that according to the latter the 24-hour rule for the length of stay was rigid and absolute but only applied in waters in the immediate proximity of the theatre of hostilities, while according to the committee the limitation of the stay to twenty-four hours remains the general rule in the absence of special provisions to the contrary which the neutral State is free to adopt, but this rule applies everywhere.

The German proposal was rejected by 11 votes (Belgium, China, Denmark, Spain, Great Britain, Greece, Japan, Mexico, Netherlands, Persia, and Portugal) against 10 (Germany, Argentine Republic, Austria-Hungary, Bolivia, Bulgaria, Guatemala, Montenegro, Roumania, Russia, Serbia); 21 delegations abstained from voting (United States, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, France, Haiti, Italy, Luxemburg, Norway, Panama, Peru, Salvador, Siam, Sweden, Switzerland, Turkey, Uruguay, Venezuela).

The committee's draft was carried by 30 votes (Belgium, Bolivia, Chile, China, Denmark, Spain, France, Great Britain, Greece, Haiti, Italy, Japan, Mexico, Montenegro, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Turkey, Uruguay, Venezuela). Germany reserved its vote and the other States abstained.

ARTICLE 12

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

[1] *Post*, p. 885.

The provision on the length of stay naturally applies to belligerent war-vessels found in a neutral port at the time of the opening of hostilities, as well as to those that ente during the course of the war.

The question of proximity to the theatre of hostilities comes up here in the same way and a German proposal was made to take it into account,[1] but was withdrawn after the rejection of the amendment offered for Article 12. There was an article along the same line worded as follows: 'In the absence of special provisions to the contrary in the law of the neutral State, the stay of belligerent war-ships in the ports and roadsteads beyond the theatre of the war is not limited. Nevertheless, the belligerent is bound to conform to the ordinary conditions of neutrality and to the requirements that the neutral State deems necessary. Moreover, it is bound to depart if the neutral State so orders.'

Article 13

> If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship that it will have to depart within twenty-four hours or within the time prescribed by local regulations.

Even those who think that the length of stay in neutral waters should be fixed for belligerent war-ships admit that this period may be extended in certain exceptional cases. There is not, however, complete agreement as to the number of these exceptions. Article 2 in the Japanese proposition [2] mentions only stress of weather; Article 3 of the Spanish proposal [3] mentions damage, stress of weather, or other *force majeure*; and Article 5 of the Russian proposal [4] says that the stay may be prolonged if stress of weather, lack of provisions, or damage prevents the vessels from putting to sea.

Stress of weather and damage were accepted with no difficulty. The senior delegate of Japan, however, observed that the matter of damage may give rise to abuses and cause evasion of the rule as to length of stay. Would it not be possible to set a maximum period within which repairs must be made? It was answered that this was very difficult because it would depend on the port where the vessel was and on the facilities there found and that, besides, the neutral authorities could settle what time was necessary and exercise control. It was decided not to fix such a period.

As we are dealing with a prohibition addressed to the belligerent, this prohibition can include the waters as well as the ports and roadsteads. But the neutral State cannot be responsible except so far as it knows or can know of the presence of war-ships; this knowledge can more easily be had with regard to ports and roadsteads than with regard to other waters.

The Brazilian delegation had, in the meeting of July 27, referred to the opinion of Professor Verraes, according to which the rules on the length of stay do not apply to vessels in a port solely for the protection of its nationals, as these vessels have a very different function from that of war-ships received under the right of asylum. They are charged with a mission of protection, and consequently might stay in neutral ports in time of war as in times of peace. Although it was asked whether the case could be supposed where in one of the countries represented at the Conference the presence of a war-ship could be deemed necessary for the protection of foreigners, the case has

[1] *Post*, p. 886. [2] *Post*, p. 869. [3] *Post*, p. 870. [4] *Post*, p. 874

occurred and might occur again. But it did not in its nature seem one to be made the subject of a conventional stipulation, and the Brazilian delegation, as it declared in the Commission's meeting of October 4, had no intention to present a proposal on the subject.

On the other hand, it was easily admitted that the limitation of stay has no reference to war-ships devoted exclusively to scientific, religious, or charitable purposes. This especially applies to military hospital-ships, for which the Convention of July 29, 1899, contains a formal provision to this effect (Article 1, paragraph 2), which was retained at the time of its revision by the present Conference.[1]

ARTICLE 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to scientific, religious, or charitable purposes.

Article 3 of the Japanese proposal[2] says: 'More than three belligerent vessels belonging to the same State or its allies cannot anchor at one time in the same neutral port or waters.' This evidently contemplates a restricted area and not all the waters of one neutral State. The British delegation supported the Japanese proposal remarking that the number of three vessels was a common number which is accepted by certain States even for times of peace. In this way there would be a guaranty against concentration of belligerent vessels in a neutral port which would thus serve them as a base of operations.

Admiral Siegel observed that certain States had perhaps not fixed on any number for times of peace; and that for times of war a neutral State should be left free to fix it.

The majority of the committee was of opinion that the same plan might be followed as for the length of stay (Article 12), that is to say, that the Convention should state a number to apply in the absence of any number fixed by the neutral Power, and the following provision was adopted as Article 15: *If the neutral Power has not already fixed the maximum number of war-ships belonging to a belligerent which may be in one of its ports or roadsteads simultaneously, this number shall be three.*

The question was taken up again in the meeting of September 28. Objections were again expressed with regard to the number three, which no longer corresponds to existing naval organization. A large war-ship is always accompanied by other ships, so that frequently it might happen that a group of ships of one belligerent could not all enter a neutral port. Might not the principle be kept while excepting the case of a *special permission* that might be granted by the neutral Power? Such was the suggestion of his Excellency Mr. Tcharykow, who was supported by Admiral Siegel. Sir Ernest Satow observed that this would be a sorry addition for the neutral. The first delegate of Sweden said also that the neutral Power would thus have a dangerous liberty, but that nevertheless the suggestion of the Russian delegation might be met by not defining so strictly the purport of the rules to be issued by the neutral Government. This Government might fix a maximum number and at the same time reserve the possibility of granting

[1] *Ante*, pp. 151–[illegible].

[2] *Post*, p. 860.

the privilege of entering to a greater number of ships in particular circumstances. special authorization would therefore presuppose a general provision issued beforeha The Russian delegation accepted the idea of this amendment, which was opposed the delegations of Japan and Great Britain as they saw no necessity for changing t draft.

The proposal of Mr. Hammarskjöld was carried by 9 votes (Germany, Brazil, Denmar France, Norway, Netherlands, Russia, Sweden, Turkey) against 3 (Great Britain, Jap Portugal); the United States and Italy did not vote.

ARTICLE 15

In the absence of special provisions to the contrary in the legislation of a neut Power, the maximum number of war-ships belonging to a belligerent which may in one of the ports or roadsteads of that Power simultaneously shall be three.

The simultaneous presence of ships of war of the two belligerents in a neutral p must be provided for. A custom of long standing has here introduced the so-called r of twenty-four hours, which it is not proposed to change. The difficulty relates to order of departure at that interval.

Article 13 of the British proposal [1] confined itself to saying that the neutral Governm ought not to permit a war vessel of one belligerent to leave port until twenty-four ho have elapsed since the departure of a war-ship or a merchant ship of the other b ligeren.. In the committee of examination Sir Ernest Satow said that it was for neutral to settle the order of departure. This is the sense of Article 2 *b* of the Japan proposal.[2] Article 6 of the Russian proposal [3] adopts priority of request.

A Portuguese amendment [4] has been proposed to the Japanese rule. It was suppor by Captain Ferraz in the meeting of July 27 in the following words: 'If the two belliger ships which are present simultaneously in neutral waters are a merchantman and a s of war, or a small cruiser or torpedo boat and a large cruiser, the merchantman or feebler war vessel should leave the port first whatever may be the order of their entra into the port. Otherwise the humanitarian end in view, which is to avoid a meet or a combat, would not be attained. The battleship, going out first, would only h to wait near the port for the issue of the merchantman or the smaller war-ship; the capt or destruction of the latter would be certain and the neutral State would have handed th over.' Consequently the Portuguese delegate proposed to word the last phrase of Japanese article as follows: 'It is for the neutral State to decide which of the hos vessels shall leave first, with the view to prevent, so far as possible, a meeting or comb between these vessels.'

There were, then, the following plans before us: (1) the neutral State regulates order of departure; (2) the priority of request is taken into consideration; (3) the weak ship leaves first; (4) the order of arrival determines the order of departure.

The last-named plan was finally accepted, and Article 16 as worded below was carr by 13 votes (Germany, United States, Belgium, Brazil, China, Denmark, Spain, Fra Italy, Norway, Russia, Sweden, Turkey) against 3 (Great Britain, Japan, Portuga Netherlands did not vote.

It was deemed dangerous to have the neutral State settle the order of departure ev

[1] *Post*, p. 872. [2] *Post*, p. 869. [3] *Post*, p. 874. [4] *Post*, p. 88

under guidance. Although the inequality between two vessels of war is very often evident, it may not always be so, and the port authorities might be embarrassed. The rule of order of arrival is very simple, and the neutral will have no difficulty in applying it. It may have to be modified if the ship which enters first is within a case where the legal length of stay is prolonged in its behalf; the ship cannot be deprived of this extension by reason of the obligation to leave first. The 24-hour rule is kept as between a war-ship and a merchantman, so that the former cannot leave a port less than twenty-four hours after the departure of the latter; but the converse is not true. Nothing prevents a merchantman flying the flag of one belligerent from leaving a port, if it suits him, less than twenty-four hours after a war-ship of the other belligerent.

There is moreover no period of twenty-four hours prescribed between the departures of two merchantmen.

It was thought possible to do away with the difficulty resulting from the simultaneous presence in a port of two vessels of unequal strength by means of the following provision: 'If a belligerent war-ship is preparing to enter a neutral port or roadstead where a war vessel of its adversary is, the local authorities should, as far as possible, warn it of the presence of the hostile vessel.'[1] The ship thus warned would decide what to do; if it felt itself weaker than its adversary it could refrain from entering; and if it entered it would know that it could not leave until after the other. This proposal was finally rejected by 8 votes (Germany, United States, China, Spain, Great Britain, Japan, Portugal, Sweden) against 5 (Belgium, Brazil, Denmark, France, Italy) and 4 abstentions (Norway, Netherlands, Russia, Turkey), because it was considered that a provision of this kind would place too much responsibility upon the neutral.

ARTICLE 19

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant-ship flying the flag of its adversary.

Belligerent war-ships may in neutral ports carry out repairs to render the ships seaworthy but not to add to their fighting force. Article 4 of the Japanese proposal[2] speaks of repairs absolutely necessary to render the ships seaworthy, and Article 19 of the British proposal[3] says that a neutral State ought not to permit the making of repairs in excess of what will be necessary for navigating. It is for the neutral authority to decide what repairs are necessary, and these repairs must be carried out with the least possible delay. We have here a control allowing the prevention, to a certain degree, of the abuses which have been referred to above in connexion with Article 15 and which some desired to get rid of by fixing a maximum term for repairs.

According to Article 19 of the British proposal a neutral State should not knowingly permit a war-ship to repair damage suffered in battle. A Portuguese amendment was to the same effect. This view seems to have been abandoned, as there was a feeling that

[1] *Post*, p. 887. [2] *Post*, p. 869. [3] *Post*, p. 872.

it would sometimes be difficult to decide on the cause of damage without taking measure that are inquisitorial.

The article mentions only ports and roadsteads. In reply to the question why n mention was made of territorial waters it was answered that it is probably difficult t ships to carry out repairs in territorial waters, and besides control on the part of neutra over repairs made under such conditions would hardly be possible.[1]

ARTICLE 17

In neutral ports and roadsteads belligerent war-ships may only carry out su repairs as are absolutely necessary to render them seaworthy, and may not add i any manner whatsoever to their fighting force. The local authorities of the neutr Power shall decide what repairs are necessary, and these must be carried out with th least possible delay.

According to the second rule of Washington [2] a neutral Government is bound not t permit or suffer either belligerent to make use of its ports or waters as the base of nav operations against the other, or for the purpose of the renewal or augmentation of milita supplies or arms, or the recruitment of men.

All were agreed that this rule should be retained and several proposals include it a greater or less degree. The only discussion was on the point whether it was necessa to mention territorial waters as well as ports and roadsteads.

The affirmative was adopted by 8 votes (United States, Brazil, Spain, France, Gre Britain, Italy, Japan, Turkey); Germany, Denmark, Norway, Netherlands, Russia, an Sweden did not vote. It has been said that a practice forbidden in ports and roadste could not be permitted in territorial waters. This is particularly true because the poi of view taken is that of what belligerents may not do. The provision is thus justifi more easily than that of the Washington rule which speaks of the obligation of the neutr Government.

ARTICLE 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territori waters for replenishing or increasing their supplies of war material or their armame or for completing their crews.

Article 19 deals with the question which is, with the possible exception of that of th period of stay, the most important in the subject. What quantity of provisions an fuel may be taken on board by belligerent war-ships in neutral ports?

Article 7 of the Russian proposal [3] says that these ships can provide themselves wi the food, provisions, stores, coal and repairs necessary for the subsistence of the crews or the continuation of their voyage. Article 17 of the British proposal [4] says th the quantity of stores, food, or fuel taken on board in neutral jurisdiction must in no ca exceed that which is necessary to enable the ship to reach the nearest port of its own countr According to Article 4 of the Japanese proposal [5] the ships cannot take on any supplie except coal and provisions sufficient with what still remains on board to allow them reach at the most economical rate of speed the nearest port of their own country or som nearer neutral destination. Finally, Article 5 of the Spanish proposal,[6] without men tioning what may be on board, permits belligerent war-ships to provide themselves wi

[1] Session of September 11. *Actes et documents*, vol. iii, p. 631.
[2] *Post*, p. 88..
[3] *Post*, p. 874.
[4] *Post*, p. 872.
[5] *Post*, p. 869.
[6] *Post*, p. 87.

the food and coal necessary to reach the nearest port of their country or some nearer neutral port.

We may at the outset dispose of the matter of revictualling except as to fuel. The first rule in Article 19, according to which belligerent ships may only revictual to bring up their supplies to the peace standard, was accepted without difficulty.

The debate bore on coal alone, or rather on fuel, since coal is no longer the only fuel used.

It is now forty years since this question arose, and its importance is understood when we consider that, according to the forceful expression of his Excellency Mr. Tcharykow, if a man without food is a corpse, a ship without fuel is a derelict. The greatest efforts were put forth in the committee to discover some plan that would be acceptable both to neutrals and belligerents. The latter naturally take into account their geographical situation, which renders it more or less necessary for them to have the opportunity of revictualling in neutral ports; as to neutrals, they can call for a precise rule which they may be in a position to apply without exposing themselves to complaints from the belligerents.

Several proposed solutions were freely discussed and debated with abundant arguments. If the British rule is not accepted, which, as has been observed, is of a nature to beget various difficulties of a practical kind, and if, on the other hand, a system of absolute liberty is not desired, we can frame, and indeed there have been presented, some very different plans for determining the quantity of fuel that may be taken on board by the belligerent vessel; the normal amount, a quantity proportional to displacement or to horse-power, the quantity necessary to travel a certain distance, etc. A technical committee instructed to study this question was not able to arrive at a unanimous answer. The German proposal to grant to belligerents permission to fill all their bunkers was supported by 9 votes (Germany, Brazil, Denmark, France, Italy, Netherlands, Russia, Sweden, Turkey) as against 5 (United States, Spain, Great Britain, Japan, China).

In these circumstances the question was on the second reading submitted to the committee of examination, which had before it the following alternatives:

1. The British proposal,[1] according to which the ships can take on only fuel enough to reach the nearest port of their own country. The meaning of this proposal was clearly defined by Sir Ernest Satow in answer to a question put by Mr. Hagerup. The rule constitutes a simple means of calculation and creates no obligation for the neutral to watch over the destination of the vessel which asks for the fuel. We allow ourselves to add that it does not imply any obligation on the part of the vessel to proceed to any particular destination. Disputes that sometimes arise would thus be avoided.

2. A proposal that these vessels may only ship sufficient fuel to bring their supplies up to the peace standard.

His Excellency Mr. Tcharykow presented as a compromise the following formula: "Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied."

This proposal was adopted by 11 votes (Germany, Brazil, Denmark, Spain, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) with 3 abstentions (United States, Great Britain, Japan), after the proposal made by his Excellency Mr. Tsudzuki to omit

[1] *Ibid.*, p. 872.

the whole article had been rejected by 10 votes (Germany, Brazil, Denmark, F Italy, Norway, Netherlands, Russia, Sweden, Turkey) against 4 (United States, Great Britain, Japan).

According to the committee's draft, 'revictualling and coaling do not give to prolong the lawful length of stay'. In the Commission's meeting held October Excellency Mr. Tcharykow moved the suppression of this clause, supporting his a ment with the following words[1]:

> It has a restricted scope; it contemplates a particular case where a belli ship which has entered neutral port has not had time to take on within the period of stay the quantity of coal allowed it. What should the neutral Pow in this case? The Convention says nothing about it. Some are of opinion t will not force the vessel to depart. That will perhaps be true if the neutral is powerful and does not fear claims from the other belligerent; but otherwi neutral State will be placed in a very delicate position, for through fear of re on the part of the other belligerent it may find itself obliged to make the ship without coal or with an insufficient quantity of fuel, and the ship may conseq become a derelict. It was to remedy these dangers that the delegation of filed its amendment. Moreover, we are in agreement with the delegation of on the point that the neutral port can never serve as a base of operations, a think that the Convention contains in this particular in its Articles 5 to 9 suf rules and sanctions.

The delegation of Japan declared itself against the amendment, which it bel would introduce uncertainties as to whether Article 19 is one of the cases provid by the last clause of Article 12 or whether Article 12 is to be applied in spite stipulations of Article 19. Mr. Tsudzuki said:

> We found ourselves confronted with two theories for the wording of Artic one maintaining that coal ought to be given belligerent ships only as an act of hum and the other assuming that vessels have a right to take on such coal supplies in n ports as they might need; Article 19 is a compromise wording which, however not trench on the question of principle. The omission of the third paragraph have as a consequence a tendency to recognize in these ships the right to pr their stay for supplies, that is to say, the omission would have a tendency to some recognition of the legitimacy of an idea that we have always opposed, a that ships have the right to enter the ports of another Power as into strategic in order to take on fuel there. This omission would introduce into Article element of uncertainty so as completely to change its nature. Article 12, mor was a compromise. Although we should have preferred a single uniform rule f whole world, the spirit of conciliation induces us to accept Article 12 even present reading because we should at least have the consolation that although uniform and not universal the rules would be at least fixed. The omission third paragraph of Article 19 would take away from us even this consolation. consequence would be quite serious. The period of stay would vary accordi the facilities offered by neutral ports for the operations of replenishing the coal s Besides, neutral States would be obliged to resort to inquisitorial measures to tain whether ships were not abusing the operation of taking on supplies in or prolong their stay needlessly and illegally.
>
> These are the reasons why we cannot support this amendment. We ac Article 19 in its present wording because its third paragraph gave the req definiteness to the meaning of Article 12. The omission of this paragraph therefore imperil all the benefits of Article 12.[2]

[1] *Actes et documents*, vol. III, p. 493. [2] Ibid., p. 473.

According to his Excellency Mr. Tcharykow, accepting the amendment is not opening the gate to abuse but only regulating a special case that rarely happens. Besides, are not the abuses sufficiently taken care of by other articles of the Convention, especially by Article 5 and the second paragraph of Article 9.

The German delegation supported the amendment and the explanation thereof.

The British delegation asked that the article proposed by the committee be kept, saying that if it were permitted in any case whatever to prolong the time of stay in neutral ports, a gate would be opened for a crowd of abuses. The amendment was adopted by 27 votes (Germany, Argentine Republic, Austria-Hungary, Bolivia, Brazil, Bulgaria, Chile, Colombia, Ecuador, France, Greece, Haiti, Italy, Mexico, Montenegro, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Roumania, Russia, Salvador, Serbia, Uruguay, and Venezuela) against 5 (China, Spain, Great Britain, Japan, Portugal); there were 10 abstentions (United States, Belgium, Cuba, Denmark, Dominican Republic, Luxemburg, Siam, Sweden, Switzerland, and Turkey).

The circumstance that in certain countries a belligerent war-ship cannot obtain coal until twenty-four hours after its arrival was taken into account (Article 249, paragraph 2 : the Italian shipping code [1]).

ARTICLE 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

A question intimately connected with the preceding one is the question whether a belligerent vessel which has taken on fuel in a neutral port may return within a short time to take on more in the same port or in a neighbouring port of the same country. If this might be done, it is easily seen that the neutral port would really be serving as a base of operations. The case was provided for by Article 5, paragraph 2 of the Spanish proposal [2] and Article 18 of the British proposal,[3] the one viewing it from the neutral, the other from the belligerent standpoint. They do not permit a second revictualling in the same neutral country within three months after the first. This prohibition seemed excessive, and with a view to modifying it the following formula was submitted to the committee of examination: 'Belligerent war-ships which have shipped fuel in a neutral port may not replenish their supply *in the same neutral territory* until three months afterwards.'[4] It was suggested that this expression was too vague and that it would be better to fix upon some distance.

Some would have liked to leave the neutral Government entirely free, but it was objected that this liberty is dangerous for neutrals who have every advantage in seeing their position precisely defined.

[1] *Post*, p. 882. [2] *Post*, p. 870. [3] *Post*, p. 872. [4] *Post*, p. 878, Article 19.

As to the period of three months, which was fixed by Great Britain during the
of Secession and which is arbitrary, it was remarked that as conditions of navigation
changed since that time, when vessels used sails as well as steam, fuel was then
necessary for them as nowadays, so that the period of three months, although a
able forty years ago, has become excessive.

It was proposed to the committee to allow a second revictualling under the foll
conditions of time and distance: 'Belligerent war-ships which have shipped
the port of a neutral State may not within the succeeding . . . months replenish
supply in a port of the same State less than . . . miles distant.' The two number
been left blank, as the earlier discussions of the committee had not brought any po
result; in the technical committee of which we spoke above, the distance of one tho
miles was accepted by 10 votes to 3.

Finally, the British proposal which forms Article 20 was adopted by 5 votes (U
States, Spain, Great Britain, Italy, Japan) against 3 (Germany, Brazil, France). Den
Norway, Netherlands, Russia, Sweden, and Turkey did not vote. In view of thi
it cannot be said that we have found a perfect solution.

In the meeting of September 28 his Excellency Mr. Tcharykow declared th
Russian delegation would accept the British rule if the latter were presented in its en
and he recalled the terms of the instructions given by the Foreign Office in Feb
1904: 'and no coal shall again be supplied to any such ship of war in the same
other port, roadstead, or waters subject to the territorial jurisdiction of Her M
without special permission, until after the expiration of three months from the time
such coal may have been last supplied to her within British waters as aforesaid.'
rule is stated in the same terms in the neutrality proclamation of the United States
October 8, 1870. The delegate of Russia therefore asked that the words *without
permission* be inserted in the article as drafted. This proposal was rejected by
(United States, Great Britain, Japan, Italy, Portugal) against 4 (Germany,
France, Russia). There were 5 abstentions (Denmark, Norway, Netherlands, S
Turkey). The declarations of Russia and Germany then made reserves on the sub
Article 20.

Mr. Louis Renault, as delegate of France, reserved the privilege of submitting
Commission an amendment in the sense of the resolutions of the technical com
If the radius of one thousand miles is considered as too little, two thousand or two
hundred miles might be taken. Would not that be a satisfactory compromise?

No proposal was made to the Commission, and the project of the committee
accepted without discussion.

ARTICLE 20

Belligerent war-ships [illegible] have shipped fuel in a port belonging to a
Power may not within [illegible] succeeding three months replenish their supply in
of the same Power.

[illegible] proposed to insert after Article 20 the provision contained in Ar
of the Brussels [illegible]. A neutral Power must not knowingly permit a war-shi
belligerent [illegible] within its jurisdiction to take on supplies, food, or fuel in order
to meet the enemy [illegible] to enter upon operations of war.' This text may b

[illegible] Post, p. 87[illegible].

pared with Article 5 of the Japanese project[1]: 'Neither belligerent vessels proceeding to the theatre of war or sailing in that direction or towards the zone of existing hostilities, nor those whose destination is doubtful or unknown can make repairs or take on coal or supplies in neutral ports or waters.' These provisions are designed to be very restrictive, and at the same time are of a nature to impose heavy responsibilities upon neutrals.

The British proposal was rejected by 8 votes (Germany, United States, Denmark, France, Norway, Netherlands, Russia, Sweden) against 3 (Spain, Great Britain, Japan); Brazil, Italy, and Turkey did not vote.

There are different practices with regard to the admittance of prizes into neutral ports. In some countries they are excluded, and in others they may enter on certain conditions. In the committee some contended for a prohibition against entry of prizes, while others simply classed them with war-ships[2]. The former view prevailed. The rule therefore is that in principle a prize cannot be brought into a neutral port; this includes both the case of a prize that is escorted and that of a prize manned by a crew placed on board by the captor. The exceptions include unseaworthiness, stress of weather, want of provisions or of fuel.

As soon as the circumstances which justify its entry are at an end, the prize must leave. A notification is addressed to it if it does not leave of itself, and if it fails to obey the neutral Power must take measures.

ARTICLE 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

The preceding article deals with the case of a prize which has entered regularly but which does not leave when it should do so. It is also necessary to provide for the case where a prize has been brought in irregularly, that is to say, outside of the exceptions provided.

ARTICLE 22

A neutral Power must similarly release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

With a view to render rarer if not to prevent the destruction of prizes, a proposal was made to permit neutral Powers to receive in their ports prizes which may be left there to be sequestrated pending the decision of a prize court. The connexion of this subject with the destruction of neutral prizes caused the committees of examination of the Third and Fourth Commissions to hold a joint meeting. In the meeting of September 10 Sir Ernest Satow, speaking for the British delegation, stated some objections to the

[1] *Post*, p. 869.

[2] Compare Article 6 of the Convention of Constantinople of October 29, 1888, relative to the Suez Canal: 'Prizes shall be subjected, in all respects, to the same rules as the vessels of war of belligerents.' Hertslet's *Commercial Treaties*, vol. xviii, p. 371.

proposal. He pointed out that it does not mention the fundamental distinction that ex between enemy prizes and neutral prizes, the former becoming the property of the cap who may dispose of them at his pleasure and sink them, while the latter must be relea as soon as the captor finds himself unable to lead them into one of his ports. It is certain that the acceptance of the proposal would prevent the destruction of neu prizes. It will be inconvenient for a neutral to admit the prizes of belligerents into ports.

The proposal was adopted by 9 votes (Germany, Belgium, Brazil, France, It Netherlands, Russia, Serbia, Sweden) against 2 (Great Britain, Japan), with 5 abs tions (United States, Austria-Hungary, Denmark, Spain, Norway). In the meetin September 28 several delegations which had previously voted for this article spoke aga its retention. And it was foreseen that the omission of the article would be deman in the Commission. Indeed, its suppression was moved by his Excellency Mr. Hamm skjöld on the ground that certain States had only consented to assume the onerous resp sibility it imposed on them as neutrals for the purpose of enabling an agreement t reached to prohibit the destruction of neutral prizes. That agreement not having b obtained, the reason for keeping this article failed in their eyes.

His Excellency Mr. van den Heuvel, on the other hand, urged the retention of provision, which, according to him, was a starting-point wherefrom it might be ho that two great reforms, the prohibition of the destruction of neutral prizes and resp for enemy private property on sea, might some day be gained.

His Excellency Sir Ernest Satow asked for the omission of the article as offering serious guaranty against destruction of neutral prizes.

The article was retained by 29 votes (Germany, Argentine Republic, Austria-Hung Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Dominican Republic, Ecuador, Fra Greece, Italy, Mexico, Montenegro, Panama, Paraguay, Netherlands, Peru, Roum Russia, Salvador, Serbia, Siam, Turkey, Uruguay, Venezuela) against 7 (Denmark, Sp Great Britain, Japan, Norway, Portugal, Sweden); the United States, China, C Luxemburg, Persia, and Switzerland did not vote.

There is no question of imposing an obligation upon neutral States, as they are alw free to admit or exclude prizes. The article has for its single object to enable a neu to receive and guard a prize without compromising its neutrality. The neutral S shall take the necessary measures as regards their preservation: it may, if it thinks have the prize taken to another of its ports, a course which may be necessary by rea of the condition of the port into which it was brought or of the presence of other prizes.

The prize court referred to in Article 23 is the *national* prize court; not the In national Prize Court. Consequently there is nothing to prevent those Powers who not accept the International Court from voting for this article, as has been said in committee by the reporter in answer to a question put by Mr. Burlamaqui.

Article 23

A neutral Power may allow prizes to enter its ports and roadsteads, whet under convoy or not, when they are brought there to be sequestrated pending decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

We may suppose the case of a belligerent war-ship in a neutral port where it is not entitled to remain, either because it has entered in defiance of a prohibition, or, if regularly entered, because it stays longer than permitted. It is incumbent upon the neutral Power to take the necessary measures to disarm the ship; that is, to render it incapable of taking the sea during the war. It is the duty of the commanding officer of the ship to facilitate the execution of such measures.

When a ship is thus detained, what is the position of its officers and crew? We say that they are likewise *detained*, which is a rather vague expression. It has been substituted for *interned*, which seemed to indicate too strictly that the officers and crew should be placed within the neutral country. Their real position is regulated by a special provision to which we shall return. In law their position is analogous to that of troops of a belligerent who seek refuge in neutral territory, and it has been agreed that the two cases should be controlled by one and the same rule. The regulations annexed to the Convention of July 29, 1899, on the laws and customs of war on land provide for the case in its Article 57: after having said that a neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war, it adds (paragraph 3): 'It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.'

Nothing is said with respect to the conditions upon which this permission shall be based. The delegation of Japan had proposed in order to fill this gap to say that the men interned could not be liberated or permitted to re-enter their own country except with the consent of the enemy. The Second Commission thought it best not to modify the text of the regulations, considering the permission given to one interned to re-enter temporarily his own country as too exceptional a case to require regulation in express terms. It added that the Japanese proposal, conformably to recent precedents, contained a useful suggestion for a neutral State that is desirous of remaining entirely free from responsibility. His Excellency Mr. Tsudzuki declared himself satisfied with this declaration.[1] In these circumstances, in order to treat the interned belonging to land forces and those belonging to sea forces alike, we should adopt the foregoing ideas and regulate accordingly the position of officers and crews. Doubtless, in principle, a neutral Government, to be free from responsibility, will not permit officers thus detained to return to their own country without being sure of the consent of the other belligerent. But it was not deemed necessary to lay down a rule for very exceptional cases.

There has been a great deal of discussion as to what should be done with the officers and crew. The opinion that prevailed is that all depends upon the circumstances, and that it is necessary to leave it to the neutral to settle the matter. We have therefore mentioned several possible solutions without indicating any preference, as desired by certain delegations which thought that, as a rule, the crew ought to be left on board their ship. There has been accepted, however, an amendment moved by the Italian delegation, according to which a sufficient number of men for looking after the vessel must be left on board. To the objection that there were no analogous provisions in the regulations for land warfare, it was replied that cannon or other arms are not so valuable as ships, which for want of upkeep may easily deteriorate and even become useless. The amendment was carried by 11 votes (Germany, United States, Brazil, Denmark, Spain,

[1] See the report of Mr. Borel on the rights and duties of neutral States on land, *ante*, p. 549.

France, Italy, Netherlands, Russia, Sweden, Turkey) against 2 (Great Britain, Jap and 1 abstention (Norway).

Apropos of the cases regulated by this Article 24, there was mentioned the cas a war-ship wishing to put to sea too soon, before the expiration of the twenty-four h provided by Article 16; no question then arises of disarming the ship but only preventing its departure, which is easier to do.

ARTICLE 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of does not leave a port where it is not entitled to remain, the neutral Power is enti to take such measures as it considers necessary to render the ship incapable of ta the sea during the war, and the commanding officer of the ship must facilitate execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew likewise detained.

The officers and crew thus detained may be left in the ship or kept eithe another vessel or on land, and may be subjected to the measures of restriction w it may appear necessary to impose upon them. A sufficient number of men looking after the vessel must, however, be always left on board.

The officers may be left at liberty, on giving their word not to quit the ne territory without permission.

According to the third rule of Washington,[1] a neutral Government is bound ..o exe due diligence in its own ports and waters, and, as to all persons within its jurisdic to prevent any violation of the foregoing obligations and duties.

This principle met with no opposition; it was merely sought to find a formula does not impose upon neutrals too heavy a responsibility in proportion to the m they have at their disposal.

This is the more necessary as we are dealing not only with ports, but also with wa

The committee adopted an amendment offered by the delegations of Belgium the Netherlands.

ARTICLE 25

A neutral Power is bound to exercise such surveillance as the means at its dis allow to prevent any violation of the provisions of the above articles occurring ports or roadsteads or in its waters.

The delegation of Japan proposed the following: 'A neutral State, if it deer necessary for the better safeguarding of its neutrality, is free to maintain or esta stricter rules than those provided by the present Convention.'[2]

It was asked what would be the need of this article, as the basis of the Conve is the sovereignty of the neutral State. Several articles reserve to the neutral P the right to lay down more stringent rules, as, for example, Articles 9, 12, 15, an A neutral State has the right to forbid belligerent war-ships access to its ports or to su such access to such conditions as it deems fit; it can exclude prizes altogether. one thing required is that the same treatment is to be accorded to both belliger The proposal was rejected by 10 votes (Germany, United States, Brazil, Denmark, Fr Netherlands, Italy, Russia, Sweden, Turkey) against 3 (China, Great Britain, Ja with two abstentions (Spain, Norway). At the second reading, his Excellency Mr. Tsu

[1] *Post*, p. 883.

[2] *Actes et documents*, vol. iii, p. 721, *annexe* 58.

said that the article proposed by him was necessary in order that the neutral State might remain free to establish more stringent regulations outside the Convention, the conditions stipulated by the Convention being the maximum of what neutrals can concede to belligerents. The first delegate of Japan, nevertheless, consented to accept the omission of this article with the reserve that Japan will always deem itself entitled to maintain the interpretation just given.

In the meeting of July 30, his Excellency Mr. Tcharykow presented the following text as a proper one to be inserted in the draft Convention: 'The exercise by a neutral State of the rights laid down in this Convention, within the limits therein indicated, can under no circumstances be considered by one or other belligerent as an unfriendly act.'

It was doubted whether this article was needed; but the reply was made that the project itself constituted a wholly new regulation of conduct. Those who sign this convention will be very desirous of being removed from any complaint. This article had been carried on the first reading by 11 votes to 4. On the second reading it was retained under the reservation of a new wording which was left to the reporter to prepare. Due note should be made that the benefit of the provision applies only to articles accepted by both the Powers between whom the question may arise.

ARTICLE 26

The exercise by a neutral Power of the rights laid down in this Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

His Excellency Mr. Tcharykow at the termination of the discussion observed that the project contemplated that a number of laws and proclamations or regulations would be issued by the contracting parties, and that it would be advisable that these be brought to the notice of the Powers. This proposal, supported by the president as an important and necessary addition to the Convention, was approved without opposition in the following form:

ARTICLE 27

The high contracting parties shall communicate to each other in due course all laws, proclamations, and other enactments regulating in their respective countries the status of belligerent ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other contracting parties.

After the votes on the several articles of the draft, the president remarked that some final provisions would still be necessary, and that it was the duty of the drafting committee to provide them. He asked the reporter if he could make any statement on this subject. Mr. Louis Renault answered that the most important point concerned the extent of the application of the Convention, and that very likely the drafting committee would propose to decide that, in order that the Convention be applicable, it is necessary that the belligerents be contracting parties, and that otherwise it would not apply even as regards signatory neutral States. This is the solution adopted already for the Convention creating an International Prize Court.

This completes the series of articles that the committee of examination submits for your approval. The committee believes that it contains provisions which conciliate, as

far as was possible, the interests involved, and that they are of a nature to give th interests the security they need. If this project passes into the domain of international l it will complement the Declaration of the Congress of Paris of April 16, 1856, wh preamble contains the following passage, which we may adopt :

> Considering :
>
> That maritime law, in time of war, has long been the subject of deplorable disput
>
> That the uncertainty of the law and of the duties of States in such a matter gi rise to differences of opinion between neutrals and belligerents which may occas serious difficulties and even conflicts ;
>
> That it is consequently advantageous to establish a uniform doctrine on important a point.

The Conference will therefore perform a useful work in diminishing the uncertai of which the plenipotentiaries assembled at Paris in 1856 complained.

The project is preceded by a preamble designed to indicate the subject of the C vention and the purpose in drawing it up.

As in the Convention of July 29, 1899, on the laws and customs of war on land, stated that it has not been possible at present to decide on rules applicable to all circu stances which may in practice occur.

This does not mean that the cases not provided for are left to the arbitrary will of parties ; account must be taken of the general principles of the law of nations. important observation may be made on this point. In several of the provisions use been made of the phrase *territorial waters*. What must be understood by that ? committee of examination believed that it could make no determination of a ques of so very general a kind.

The Powers should adopt detailed rules regulating the results of their attitude neutrality, and we have seen that Article 27 of the Convention imposes upon them duty of communicating the measures thus adopted. We have used the word *enactme* this is the general expression that allows each Government to adopt the form wh best suits its constitutional institutions or its customs ; it may be a law properly so cal an act of the executive, a regulation, etc.

These measures should be applied impartially to both belligerents, and this imp tiality requires that in principle they be not altered in the course of the war, beca even if the change is not dictated by partiality it balks a natural expectation. possible, however, that experience may show to the neutral the necessity of new meas calculated to safeguard its neutrality. The presence of belligerent war-ships in cer ports may be found to cause inconvenience ; the neutral State will shorten the lengt their stay or even will forbid them to enter. Along this line the first draft preamble provided for the adoption by neutrals of *more rigorous measures*. It was accordi criticized on that score ; and the present wording was adopted by twelve votes (Germa United States, Brazil, Denmark, Spain, France, Italy, Norway, Netherlands, Rus Sweden, Turkey) against two (Great Britain, Japan). His Excellency Sir Ernest Sa had said that he could not imagine cases where it would be necessary for the neu to take less rigorous measures ; but his Excellency Mr. Tcharykow thought the e tuality possible, and accordingly asked for a modification of the text considered by too restrictive. After the vote, their Excellencies Sir Ernest Satow and Mr. hary asked that it should be mentioned that in their opinion cases could not be conce

where a neutral State would be obliged to take *less* rigorous measures in the course of a war for the protection of its rights, whilst the English doctrine had always recognized that neutrals had the right, for this purpose, to lay down more rigorous measures.

This project of the Convention, containing enactments of a general kind regarding war, cannot in any way alter the provisions of special political treaties respecting particular waters.

Consequently the Third Commission submits to your approval the following draft:

[Here follows the draft Convention.[1]]

ANNEX 1[2]

PROPOSAL OF THE JAPANESE DELEGATION

With a view to relieve neutrals of onerous and useless responsibility and at the same time to prevent misunderstandings resulting from differences in practice, the delegation of Japan has the honour to submit to the consideration of the Commission a project defining the status of belligerent ships in neutral waters.

ARTICLE 1

Belligerent ships are forbidden to make use of ports and neutral waters either as places for observation, or for *rendezvous*, or as bases of military operations or acts of any kind with military purposes.

ARTICLE 2

Belligerent vessels shall neither enter nor sojourn in neutral ports or waters more than twenty-four hours except in the following cases:

(*a*) In case stress of weather prevents the said vessels from putting to sea, the length of legal stay will be extended until the weather ceases being dangerous.

(*b*) An interval of not more nor less than twenty-four hours should be maintained between the departure from a neutral port or neutral waters of a merchant ship or a war-ship of one belligerent and the departure from the same neutral port or waters of a war-ship of the other belligerent. It is for the neutral State to decide which of the hostile vessels shall leave first.

ARTICLE 3

More than three belligerent vessels belonging to the same State or its allies cannot anchor at one time in the same neutral port or waters.

ARTICLE 4

Belligerent ships cannot in neutral ports or waters increase their war forces nor make repairs other than those indispensable to their safety in sailing, nor take on any supplies other than coal and provisions sufficient, added to what is already on board, to enable them to reach under an economical speed the nearest port of their own country or a neutral destination still nearer.

ARTICLE 5

Neither belligerent vessels proceeding to the theatre of war or sailing in that direction or towards the zone of existing hostilities, nor those whose destination is doubtful or unknown can make repairs or take on coal or supplies in neutral ports or waters.

[1] *Actes et documents*, vol. i, p. 326, *annexe* D. The text of the articles of this draft, apart from the variance pointed out in the footnote on p. 847 *ante* and a few minor discrepancies in wording and punctuation, is identical with the articles as quoted in the foregoing report. Likewise, the preamble in this draft is substantially the preamble as it appears in the signed Convention, *ante*, p. 832. This draft was adopted in conference, October 9, 1907 (*Actes et documents*, vol. i, p. 285), and sent to the Drafting Committee. For the action of that committee, see *ante*, p. 224.

[2] Ibid., vol. iii, p. 700, *annexe* 46.

ARTICLE 6

Belligerent ships staying in neutral ports or waters beyond the limit of time allo by the rules above, and taking on other supplies than those allowed by the said rule violating in one way or another the limitations or restrictions imposed by the said ru shall be disarmed and interned for the rest of the war by the neutral Powers to wh such ports or waters belong.

ARTICLE 7

Neutral States should tak all necessary measures to secure the application of present provisions.

ANNEX 2[1]

PROPOSAL OF THE SPANISH DELEGATION

ARTICLE 1

War vessels shall not be allowed to enter or sojourn in neutral ports or waters and them as bases of military operations whatever be the nature of such operations.

ARTICLE 2

Entry and stay in neutral ports and waters are forbidden to vessels bringing p except in the case of putting in by reason of *force majeure*.

ARTICLE 3

Belligerent vessels cannot stay more than twenty-four hours in neutral ports or wa except by reason of damage, stress of weather, or other *force majeure*.

ARTICLE 4

In the cases of compulsory putting in the said vessels must leave the neutral por waters as soon as their damages are repaired or the circumstances of *force majeure*, w caused their arrival or stay, shall have ended.

ARTICLE 5

Belligerent vessels cannot, during their stay in neutral ports or waters, take on material nor any supplies of a kind to increase their military force. They may, neve less, provide themselves with food and coal necessary to reach the nearest port of own country or a neutral port that is still nearer.

A belligerent vessel which has taken on supplies in a neutral port cannot do so aga any port of the same neutral country save after the lapse of a period of three mont

ANNEX 3[2]

PROPOSAL OF THE BRITISH DELEGATION

PROJECT OF CONVENTION

ARTICLE 1

A neutral State is bound to take measures to preserve its neutrality only after r received from one of the belligerents a notification of the commencement of the war

ARTICLE 2

Every belligerent is bound to respect the sovereign rights of a neutral State a abstain in neutral territory or territorial waters from any act which, if it were comm with the express permission of the neutral Government, would constitute a viol of neutrality.

[1] *Actes et documents*, vol. iii, p. 701, *annexe* 47.

[2] Ibid., p. 695, *annexe* 44.

ARTICLE 3

A neutral State is forbidden to sell, either directly or indirectly, to a belligerent Power vessels of war, arms, supplies or any other war material belonging to the said State.

ARTICLE 4

A neutral State is bound to do its utmost to prevent a belligerent from committing hostile acts within its territorial waters.

ARTICLE 5

A neutral State must likewise prevent so far as possible any acts within the limits of its jurisdiction toward arming or equipping a war-ship or toward the conversion of a merchant vessel into a war-ship by one of the belligerents.

ARTICLE 6

A neutral State cannot knowingly permit a war-ship lying within its jurisdiction to take on board officers, men, or guns, or to increase in any degree its strength as a fighting unit.

ARTICLE 7

The neutral State is bound to use due diligence to prevent within its territorial waters the construction, arming, or equipping, whether altogether or in part, of any vessel which it has reasonable ground to believe is intended to serve in the navy of a belligerent Power.

ARTICLE 8

The neutral State must use due diligence to prevent the departure from its jurisdiction of any vessel flying a merchant flag, which it has reasonable cause to believe is intended to serve in the navy of a belligerent Power.

ARTICLE 9

A neutral State must prevent, so far as possible, a part of its territory or of its territorial waters from being used as a base of operations by a belligerent fleet.

ARTICLE 10

A neutral territory or neutral territorial waters shall be deemed to serve as a base of operations to a belligerent when, for example:

(*a*) There has been installed on the neutral territory or on board a ship in the neutral waters a wireless telegraph station or any other apparatus intended to maintain communication with the war-ships of the belligerent;

(*b*) Belligerent vessels revictual in neutral waters by means of auxiliary vessels of their fleet.

ARTICLE 11

A neutral Power must give notice to every war vessel of a belligerent Power—known to be lying in its harbours or territorial waters at the time of the opening of hostilities—that it is to leave within twenty-four hours.

ARTICLE 12

A neutral Power must not knowingly permit a belligerent ship to stay in its ports or territorial waters for a period longer than twenty-four hours except in the cases provided for in articles of the present Convention.

ARTICLE 13

If war vessels or merchant ships of the two belligerent parties are in the same neutr harbour or roadstead at the same time the neutral Government must not permit a wa vessel of one of the belligerents to leave the port or roadstead until twenty-fou hours have elapsed since the departure of a war-ship or merchant ship of the oth belligerent.

ARTICLE 14

If for any reason a belligerent war-ship does not leave the harbour or waters of a neutr Power after having received a notice that it must depart, it shall be interned until th end of the war by the neutral Power, except in case it has been detained by reason stress of weather.

ARTICLE 15

When a war vessel of a belligerent takes refuge in neutral waters in order to escap pursuit by the enemy it is incumbent upon the Government of the neutral State to inter it until the end of the war.

ARTICLE 16

A neutral Power must not knowingly permit a war-ship of a belligerent lying withi its jurisdiction to take on board supplies, food, or fuel in order to go to meet the enem or in order to enter upon operations of war.

ARTICLE 17

A neutral State must not knowingly permit a war-ship of a belligerent lying in i jurisdiction to take on board supplies, food or fuel except in case the supplies, food fuel already on board the ship would not be sufficient for it to reach the nearest po of its own country; the quantity of supplies, food or fuel taken on board the ship in th neutral jurisdiction must not in any case exceed the quantity necessary to enable it reach the nearest port of its own country.

ARTICLE 18

A neutral Power must not knowingly permit a war-ship of a belligerent lying in i jurisdiction to take on coal if the ship has already within the preceding three month taken on coal in the waters of the said neutral Power.

ARTICLE 19

A neutral State must not knowingly permit a war-ship of a belligerent to repair withi its jurisdiction the injuries resulting from a combat with the enemy, nor in any ca to make repairs in excess of what will be necessary for navigating.

ARTICLE 20

Shipwrecked, wounded or sick sailors disembarked in a neutral port with the consen of the local authorities must—in the absence of a contrary arrangement between th neutral State and the belligerents—be interned by the neutral State until the end the war.

ARTICLE 21

The neutral Power shall have the right to take the measures that it may deem necessa —such, for example, as the removal of some essential parts of the machinery or the arm ment of the ship—to render the ship incapable of putting to sea during the existence the war.

ARTICLE 22

When a belligerent ship is interned by a neutral Power the officers and crew sha likewise be interned unless the Government of the other belligerent party consents their going to their own country.

ARTICLE 23

The officers and crew of a belligerent ship interned by a neutral Power may be lodged on land or on a ship, and may likewise be subjected to the restrictive measures that it may be deemed necessary to impose upon them.

ARTICLE 24

The expense incurred by the neutral Government for the internment of the ship and the support or repatriation of its officers and crew shall be reimbursed by the Government of the country to which the interned vessel belongs.

ARTICLE 25

No prize court can be instituted upon neutral territory or upon a ship within neutral waters.

ARTICLE 26

A neutral Power cannot knowingly permit a belligerent to bring a prize into its jurisdiction unless the prize is short of fuel or provisions or is in danger by reason of unseaworthiness or stress of weather. The neutral Power shall not knowingly permit a prize to take on supplies, fuel, or provisions, or to make repairs beyond what is necessary to allow it to reach the nearest port of the belligerent country; the neutral Power must notify the prize that it is to depart as soon as possible after having effected the necessary repairs.

ARTICLE 27

Every belligerent prize brought into neutral waters to escape pursuit by the enemy shall be released with its officers and crew by the neutral Power, but the crew put on board the prize by the captor shall be interned.

ARTICLE 28

When a prize has been captured in territorial waters in violation of neutrality, the neutral Power shall, if the prize is still within its jurisdiction, release it, as well as its officers and crew, and intern the crew put on board by the captor; if the prize has left the neutral jurisdiction, the neutral Power shall address a protest to the belligerent Government, asking that the prize be released with its officers and crew and the belligerent Government shall take steps to that end.

ARTICLE 29

When a prize brought into neutral waters does not obey the order to depart communicated to it, if the delay is not occasioned by stress of weather, the neutral Power shall release it with its officers and crew and intern the crew put on board by the captor.

ARTICLE 30

A neutral State has the right to prohibit in whole or in part, if it deems it necessary, access to its ports or territorial waters by war-ships or prizes or even by certain ships or certain classes of ships of a belligerent Power, either for the entire duration of the war or for a fixed period of time.

ARTICLE 31

A neutral State is not bound to prevent its subjects from violating a blockade established by a belligerent (or from preventing the exportation from its territory of contraband articles) but it must not lend them aid and assistance for that purpose.

ARTICLE 32

None of the provisions contained in the preceding articles shall be interpreted so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent.

ANNEX 4[1]

PROPOSAL OF THE RUSSIAN DELEGATION

ARTICLE 1

The conditions of stay of war-ships of belligerent States in neutral ports and wate should be regulated in the first place on the basis of respect for the immutable right of sovereignty of neutral States.

ARTICLE 2

Any act of hostility is forbidden war-ships belonging to a belligerent State durin their stay in neutral ports and territorial waters.

ARTICLE 3

It is likewise forbidden to said vessels to make use of neutral ports and territori waters as bases of operations of war.

ARTICLE 4

It belongs to the neutral State to fix the period of stay to be accorded to war-ship of belligerent States in the ports and territorial waters belonging to that neutral State

ARTICLE 5

The stay of war-ships of belligerent States in a neutral port may be prolonged if stres of weather, lack of provisions, or damage prevents the said ships from putting to sea.

ARTICLE 6

When war-ships and merchant ships of the two belligerent parties are simultaneously in a neutral port there shall be an interval of twenty-four hours between the departur of ships of one of the belligerents and the subsequent departure of ships of the othe belligerent.

The priority of request made by the ships of one of the belligerent States may b freely utilized by the other ships of the same belligerent that happen to be in the same port.

ARTICLE 7

It is forbidden war-ships of belligerent States during their stay in neutral ports an territorial waters to increase, by the aid of resources derived from the land, their war material or to reinforce their crew.

Nevertheless, the vessels above mentioned may provide themselves with food, pro visions, stores, coal and means of repairing necessary to the subsistence of their crew or the continuation of their navigation.

No pilot can be furnished to these vessels without the authorization of the neutra Government.

ANNEX 5[2]

QUESTIONNAIRE

QUESTIONS INVOLVED IN THE PROPOSITIONS MADE BY THE JAPANESE, SPANISH, BRITISH, AND RUSSIAN DELEGATIONS[3]

I. Is there a general principle controlling the whole subject?

Great Britain, Article 2; Japan, preamble; Russia, Article 1.

[1] *Actes et documents*, vol. iii, p. 702, *annexe* 48.

[2] Ibid., p. 703, *annexe* 49. This *questionnaire* is the work of a committee composed of th president, the secretary, and the reporter of the second subcommission, as well as representatives the delegations that made the proposals (decision taken by the subcommission, July 16).

[3] *Ante*, pp. 869, 870; and *supra*. The proposal of the British delegation had a wider scope, since dealt in a general manner with the rights and duties of neutral States in naval war. Moreover, som articles of that proposal could not be included in the *questionnaire*, which was confined to the expre terms of the programme. The text of these articles, which may be made use of in relevant matter follows: . . . [For the text of these articles—1, 3, 5, 7, 31—see *ante*, pp. 870 *et seq.*]

II. What are the rights of neutral States as regards the entrance of belligerent ships of war into their ports?

Great Britain, Article 30.

III. To what extent should ships of war be prohibited from using neutral ports and territorial waters? Place of observation. *Rendezvous*. Passage. Base of military operations. Establishment of prize courts. Military objects of every kind.

Spain, Article 1; Great Britain, Articles 2, 6, 8, 9, 10 *a*, *b*, 25, 32; Japan, Article 1; Russia, Articles 2, 3.

IV. If a prize is taken in neutral waters what are the rights and duties of the neutral State, if the prize is still within its jurisdiction, and if it has left it?

Great Britain, Article 28.

V. Should the period of stay of belligerent ships of war in neutral ports and waters be limited?

Spain, Article 3; Great Britain, Articles 11, 12; Japan, Articles 2 *a*, *b*; Russia, Article 4.

VI. If the principle of a limitation is admitted, what exceptions should be made? Stress of weather. Repairs.

Spain, Articles 3, 4; Japan, Article 2 *a*; Russia, Article 5.

VII. What is the position of a belligerent war-ship which has taken refuge in a neutral port to escape pursuit by the enemy?

Great Britain, Article 15.

VIII. What rule should be applied in case ships of both belligerents are in a neutral port simultaneously? How should the order of departure be fixed?

Great Britain, Article 13; Japan, Article 2 *b*; Russia, Article 6.

IX. Is it necessary to distinguish between single ships and groups of ships?

Japan, Article 3.

X. Is any special rule required for ships accompanied by prizes?

Spain, Article 2; Great Britain, Articles 26, 27, 29.

XI. Can belligerent war-ships effect repairs in a neutral port?

Great Britain, Article 19; Japan, Article 4.

XII. What amount of provisions and coal may they take on board?

Spain, Article 5; Great Britain, Article 17; Japan, Article 4; Russia, Article 7.

XIII. Should a second supply be allowed in the same neutral country except after the lapse of some definite period of time?

Spain, Article 5, paragraph 2; Great Britain, Article 18.

XIV. Should special provision be made for war-ships proceeding to the seat of war or being in proximity to the zone of hostilities?

Great Britain, Article 10; Japan, Article 5.

XV. How should belligerent war-ships be dealt with for not conforming to the rules as to the duration and conditions of their stay in neutral ports and waters?

Great Britain, Articles 14, 21, 22, 23, 24, 29; Japan, Article 6.

XVI. What is the duty of neutral States to ensure respect for the rules adopted?

Great Britain, Article 4; Japan, Article 7

ANNEX 6[1]

FIRST DRAFT OF CONVENTION

[*After the heading*]

With a view to preventing the misunderstandings resulting from the uncertainty and instability of laws as well as from the application of divergent practices and usages, and in order to relieve neutral Powers from heavy and insupportable responsibilities;

[1] *Actes et documents*, vol. iii, p. 716, *annexe* 55.

Seeing that, even if it is impossible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame rules of general application tending to give the respective national legislations the necessary stability, especially during the period of hostilities, to meet the case when war has unfortunately broken out between some of the signatory Powers, and further that it could not enter into the contemplation of the Powers that the cases not provided for in this Convention should, for the want of a written stipulation, be left to the arbitrary determination of those who direct military or naval forces;

The high contracting Parties express the desire that in the exercise of their legislative independence reciprocally and formally recognized, the Powers will establish by national law the public rules of neutrality that they shall have declared.

They recognize that the impartial application of this law to all the belligerent parties is the very principle of neutrality and that from this principle falls the reciprocal inhibition of changing or modifying their legislation on this subject while war exists between two or more of them, except in the case where experience might demonstrate the necessity of adopting measures more rigorous in order to safeguard the rights of neutrals.

They declare that belligerents are bound to respect the sovereign rights of neutral States and to refrain, within the territory or waters of neutrals, from every act which if it were accomplished with the express permission of the neutral Government, would constitute a violation of neutrality.

To this end the high contracting Parties have agreed to observe the following common rules, to wit:

ARTICLE 1

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral State, constitutes a violation of neutrality and is strictly forbidden.

ARTICLE 2

When a ship has been captured in the territorial waters of a neutral State, this State must take the necessary measures, if the prize is still within its jurisdiction, to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral State, the latter will address the belligerent Government, which must liberate the prize with its officers and crew.

ARTICLE 3

A prize court cannot be set up on neutral territory or on a vessel in neutral waters.

ARTICLE 4

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy apparatus or any other means of communication.

ARTICLE 5

The supply, in any manner, directly or indirectly, by a neutral State to a belligerent Power, of war-ships, ammunition or war material of any kind whatever is forbidden.

ARTICLE 6

A neutral State is not bound to prevent the export of arms or munitions to a belligerent destination.

ARTICLE 7

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming within its jurisdiction of any vessel which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure

from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, the vessel having been adapted entirely or partly within the said jurisdiction for use in war.

ARTICLE 8

A neutral State may permit under determined conditions and even forbid, if it deems it necessary, belligerent war-ships or prizes to enter its ports or certain of its ports.

The conditions, restrictions or prohibitions must be applied impartially to the two belligerents.

A neutral State may forbid any belligerent ship which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

ARTICLE 9

A neutral State may not forbid the mere passage through its territorial waters by war-ships belonging to belligerents.

ARTICLE 10

The war vessels of belligerents may employ the pilots authorized by the neutral Government.

ARTICLE 11

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State (situated in the immediate proximity of the theatre of war) for more than twenty-four hours, except in the cases covered by the present Convention.

The rules on the duration of the stay of the ships of belligerents in the ports and territorial waters are not applicable to those which are there present solely for the protection of their nationals.

ARTICLE 12

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports, or in its territorial waters (situated in the immediate proximity of the theatre of war), it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

ARTICLE 13

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports or waters do not apply to ships devoted exclusively to scientific or charitable purposes.

ARTICLE 14

The neutral State must fix in advance the maximum number of war-ships belonging to a belligerent which may be in one of the ports of that State simultaneously. In the absence of such determination this number shall be three.

ARTICLE 15

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

If a belligerent war-ship is preparing to enter a neutral port or roadstead where a war-ship of its adversary is present, the local authorities should so far as possible notify it of the presence of the hostile ship.

ARTICLE 16

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary and these must be carried out with the least possible delay.

ARTICLE 17

Belligerent war-ships may not make use of neutral ports for replenishing or increasing their supplies of war material or their armament or for completing their crews.

ARTICLE 18

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard; revictualling gives no right to an extension of the lawful length of stay.

The vessels likewise may only ship fuel to bring up their load to the peace standard. They shall not receive it within twenty-four hours of their arrival. In this case, the lawful length of their stay is extended by twenty-four hours.

ARTICLE 19

Belligerent war-ships which have shipped fuel in a neutral port may not within the succeeding three months replenish their supply in the same neutral territory.

ARTICLE 20

A prize may only be brought into a neutral port on account of unseaworthiness or stress of weather.

It must leave as soon as the circumstances which justify its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must release it with its officers and crew and intern the prize crew.

ARTICLE 21

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 20.

ARTICLE 22

Entrance into neutral ports is permitted to prizes whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

ARTICLE 23

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port within the time fixed by Articles 11 and 18, the neutral Power takes the necessary measures so that the ship cannot take the sea and the commanding officer of the ship must facilitate the execution of such measures.

ARTICLE 24

A neutral Government is bound to exercise all necessary diligence in its own ports and waters and with regard to every person within its jurisdiction to prevent any violation of the preceding provisions.

ARTICLE 25

The exercise by a neutral State of the rights laid down in this agreement within the limits there indicated can under no circumstances be considered by one or other belligerent as an unfriendly act.

ANNEX 71

SECOND DRAFT CONVENTION PREPARED BY THE COMMITTEE OF EXAMINATION

With a view to harmonizing the divergent views which are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise ;

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out between some of the signatory Powers ;

Seeing that, in cases not covered, it is expedient to take into consideration the general principles of the law of nations ;

Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them ;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents ;

Seeing that, in this category of ideas, the rules should not, in principle, be altered in the course of the war, except in a case where experience has shown the necessity for prescribing stricter measures for the protection of neutral rights ;

To this end the high contracting Parties have agreed to observe the following common rules, which cannot however modify provisions laid down in existing general treaties, to wit :

ARTICLE 1

Belligerents are bound to respect the sovereign rights of neutral States and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any State, constitute a violation of neutrality.

ARTICLE 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral State, constitutes a violation of neutrality and is strictly forbidden.

ARTICLE 3

When a ship has been captured in the territorial waters of a neutral State, this State must take the necessary measures, if the prize is still within its jurisdiction, to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral State, the latter addresses the belligerent Government, which must liberate the prize with its officers and crew.

ARTICLE 4

A prize court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

ARTICLE 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any other apparatus for the purpose of communicating with the belligerent forces on land or sea.

[1] *Actes et documents*, vol. iii, p. 723, *annexe* 63.

ARTICLE 6

The supply, in any manner, directly or indirectly, by a neutral State to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

ARTICLE 7

A neutral State is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

ARTICLE 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming within its jurisdiction of any vessel which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace, and also to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, this vessel having been adapted entirely or partly within the said jurisdiction for use in war.

ARTICLE 9

A neutral State must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral State may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports.

ARTICLE 10

The neutrality of a State is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

ARTICLE 11

A neutral State may allow belligerent war-ships to employ its licensed pilots.

ARTICLE 12

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State (situated in the immediate proximity of the theatre of war) for more than twenty-four hours, except in the cases covered by the present Convention.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports, or in its territorial waters (situated in immediate proximity to the theatre of war), it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

ARTICLE 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, or waters, do not apply to war-ships devoted exclusively to scientific, religious, or charitable purposes.

ARTICLE 15

The neutral State must fix in advance the maximum number of war-ships belonging to a belligerent which may be in one of the ports of that State simultaneously. In the absence of such determination this number shall be three.

ARTICLE 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

ARTICLE 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

ARTICLE 18

Belligerent war-ships may not make use of neutral ports, or roadsteads, for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

ARTICLE 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard; revictualling gives no right to an extension of the lawful length of stay.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country.

These vessels likewise may only ship fuel to bring up their load to the peace standard.

If in accordance with the law of the neutral State they are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

ARTICLE 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral State may not within the succeeding . . . months replenish their supply in a port of the same State less than . . . miles distant.

ARTICLE 21

A prize may only be brought into a neutral port on account of unseaworthiness, or stress of weather.

It must leave as soon as the circumstances which justify its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

ARTICLE 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

ARTICLE 23

The neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

ARTICLE 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port within the time fixed, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained, unless the Government of the other belligerent party consents to their repatriation.

The officers and crew of a belligerent ship detained by a neutral Power may be left in the ship or kept either on another vessel or on land, and they may be subjected to the measures of restriction which it may appear necessary to impose upon them.

ARTICLE 25

A neutral Government is bound to exercise all necessary diligence in its own ports and waters, and with regard to every person within its jurisdiction to prevent any violation of the preceding provisions.

ARTICLE 26

If it deems it necessary in order better to safeguard its neutrality a neutral State is free to maintain or establish stricter provisions than those which are laid down by the present Convention.

ARTICLE 27

The exercise by a neutral State of the rights laid down in this agreement within the limits there indicated can under no circumstances be considered by one or other belligerent as an unfriendly act.

ANNEX 8[1]

ITALIAN MERCANTILE MARINE CODE OF 1877

CHAPTER VII.—*On the Neutrality of the State in regard to Belligerent Powers*

246. In case of war between Powers with regard to which the State is neutral, their privateers or war-ships with prizes will not be received in the harbours, roadsteads, or coasts of the realm, except in case of being driven in by distress.

They will leave as soon as the danger has ceased. No ship of war or privateer of a belligerent may remain more than twenty-four hours in a harbour or roadstead, or off the coast of the realm or adjoining it even when alone, except in case of being driven in by stress of weather, damage, or the want of supplies necessary for the safe prosecution of the voyage.

In no case will the sale, exchange, whether in money or kind, or gift of things captured be permitted in the harbours, roadsteads, or shores of the realm.

247. Ships of war of a friendly Power, even when it is a belligerent, may enter and remain in the ports, roadsteads, and off the shores of the State, provided that they are only employed in scientific pursuits.

248. In no case can a belligerent vessel make use of an Italian port for warlike purposes or to obtain arms or munitions.

Nor can they under pretence of repairs undertake works of such a nature as to increase their capacity for war.

249. Ships of war and privateers of a belligerent will not be supplied except with provisions and stores, and means for repairs actually necessary for the support of their crews and the safety of their voyage.

[1] *Actes et documents*, vol. iii. p. 601, *annexe* B.

Ships of war and privateers of a belligerent which wish to take on coal cannot receive supplies of it until twenty-four hours after their arrival.

250. When ships of war, privateers, or merchant vessels of two belligerents are found at the same time in a harbour, or roadstead, or off the shore of the realm, an interval of at least twenty-four hours must be required between the departure of any ship of one belligerent and that of any ship of the other. This interval may be increased, according to circumstances, by the maritime authority of the place.

251. A capture or any hostile operation between ships of belligerent States in the territorial waters or in waters adjacent to islands belonging to the realm will constitute a violation of territory.

ANNEX 9[1]

THE RULES OF NEUTRALITY IN THE TREATY OF WASHINGTON OF MAY 8, 1871.

Article 6

In deciding the matters submitted to the arbitrators, they shall be governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the arbitrators shall determine to have been applicable to the case.

Rules

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

ANNEX 10[2]

AMENDMENT OF THE DANISH DELEGATION TO THE PROPOSAL OF THE BRITISH DELEGATION[3]

First Article

Add to the article: 'but if it mobilizes its military forces before receiving this notice, in order to prepare in good time for the defence of its neutrality, this fact shall not be considered as an unfriendly act towards either of the parties in conflict.'

Article 32

Replace the words, 'so as to prohibit the mere passage through neutral waters in time of war by a war-ship or auxiliary ship of a belligerent,' with the words, 'so as to prohibit in time of war the mere passage through neutral waters joining two open seas by a war-ship or auxiliary ship of a belligerent'.

[1] *United States Statutes at Large*, vol. 17, p. 863.
[2] *Actes et documents*, vol. iii, p. 699, *annexe* 45.
[3] *Ante*, p. 870.

ANNEX 11[1]

AMENDMENT OF THE GERMAN DELEGATION TO THE SECOND DRAFT CONVENTION

Statement of Reasons

The German delegation proposes to insert the words 'situated in the immediate proximity of the theatre of war' after the word 'State' in Article 12 and after 'territorial waters' in Article 13. The reasons that have led it to make this proposal are as follows:

There are two schools or rather two practices relative to the length of stay that neutral States may accord belligerent ships in their ports and waters. One restricts the stay to twenty-four hours everywhere except in special cases, the other does not restrict the stay and limits itself to prohibiting vessels from everything that might be considered as an act violative of neutrality. It is not necessary to the argument to cite the countries that apply these different theories, it is sufficient to state that these two schools exist.

Now, the former, a very strict one, imposes a heavy responsibility upon neutrals, because it obliges them to guard all their ports and roadsteads in an effective manner so as to cause their sovereignty to be respected and to avoid every complaint on the part of belligerents. The latter school, a very liberal one, does not place the neutral under the necessity of watching all his anchorages unless to prevent the belligerents from making use of them as bases of operations. By reason of these two opposed principles the German delegation has tried to find an intermediate solution that can be accepted by all interested. To this end it has presented a proposal which, however, has not obtained a majority in the committee of examination, and which it has the honour to lay before you in order that it may be submitted to the full Commission in the hope that it may receive its high approval. The principle of this proposal is in brief as follows:

We propose to apply a different system in the regions that we would like to call the 'theatre of war' than in the rest of the world. In proximity with the 'theatre of war' an international regulation would fix the length of stay of belligerent ships in neutral ports and roadsteads. In regions not having this character the neutral State would itself regulate the sojourn of vessels according to its own decision and in virtue of its sovereignty. To avoid all mistake I hasten to add that the expression 'theatre of war' is here employed in *a special sense*, and that any other expression, as field of activity of the hostilities, field of action of the belligerents, etc., would suffice, provided that the dominant idea be accepted that that sea area would be considered as the 'theatre of war' upon which an operation of war is taking place or has just taken place, or upon which such an operation can take place in consequence of the presence or the approach of the armed forces of *both* belligerents. Thus, the presence or the approach of *both* adversaries who are relatively near each other is necessary in order that we may speak of the theatre of war. The case where a single cruiser would exercise the right of capture or of search, or the case where a naval force of only one of the belligerents might be proceeding does not enter into our plan.

A navy must be very powerful in order to control all its coasts; it is certain that most States are not in a position to do this. There are some countries whose coasts are of great extent and sown with islands and islets; there are other countries that have vast colonial possessions with numerous roadsteads and anchorages. It is practically impossible, especially for Powers whose navies are small, to watch over all these regions where there may perhaps exist no establishment or no dwelling. Now, without a certain control, without any surveillance whatever, an international regulation would rest a dead letter; it is easily seen that this state of things could not help but cause complications.

On the other hand, every State is in a position to keep a watch over some regions, some ports of its coasts in an efficacious manner. It can likewise control its waters near that part of the sea that is used as a field of battle for naval forces and squadrons, an area that is always relatively small. Here it is that will be decided the fate of fleets, and especial vigilance will be exercised.

[1] *Actes et documents*, vol. iii, p. 728, *annexe* 64.

It is objected that it is impossible to define exactly the limits of the theatre of war and that this definition cannot be left to the neutral. And also that it is to be feared that two neutrals may have different opinions as to what the theatre of war is and that complications will result, and complaints and even serious dangers. But it does not seem to be very difficult to decide where the theatre of war is. If, for example, we take the war between the United States and Spain in 1898, it is clear that the theatres of war were in the regions of the Philippines and the West Indies and not at all in the Mediterranean nor in the eastern part of the Atlantic Ocean.

So there is no reason to fear that difficulties would arise in practice. In our day, with its multiplied means of communication, neutrals will always know the places where naval forces are stationed. They will be in a position to determine whether these naval forces are preparing to approach their coasts, and they will declare such regions 'the theatre of war' and take the necessary steps to learn whether either of the belligerents is visiting their ports.

The neutral State can then take the necessary measures to cause the visitor to leave the port within twenty-four hours. As the neutral is the sole judge of this question, because it is he and not the belligerent who determines what is to be considered the theatre of war, there is no danger of dispute.

Germany followed this rule in the war in the Far East, and experience has shown that it answered the necessity of the situation. Moreover, it is scarcely to be feared that two neutrals whose territories are near each other will have such different opinions on which constitutes the theatre of war as to result in complications. In general, every neutral will take the greatest care to protect himself against every complaint, and it will be rather too strict than too complaisant.

This proposed international rule is then a strict one for the theatre of war, but for regions outside of that theatre it is evident that such a rule would not be necessary. In regions where a meeting between belligerents is not to be feared or where the forces of a *single one* of the adversaries are present, national or local legislation will suffice. If the neutral sees that a cruiser is stationed in the neighbourhood of its coasts and is desirous of making use of its ports as a base of operations, it will always possess the possibility and the right to forbid it access to its anchorages. Nothing in the proposition tends to permit a belligerent vessel to misuse the ports of a neutral State. The object aimed at is that outside of the theatre of war the *neutral* itself decides what it may grant.

By accepting the proposal, neutrals would be disembarrassed of a responsibility that would weigh upon them if they accepted the strict rule of twenty-four hours. For they would not be obliged to guard their entire littoral, which would for many of them be also impossible. When the locality of the naval action is in the Indian Ocean, it is not necessary for Powers in the north of Europe to watch over their ports and roadsteads. In case the theatre of war should be in the Mediterranean, the coasts of the two Americas would not need strict control. Moreover, neutral States are evidently free to make such enactments as seem good to them. In the absence of special provisions in the legislation of a neutral Power, the length of stay, outside the theatre of war, would not be limited, provided that the belligerent respects the hospitality and conforms to the ordinary conditions of neutrality.

To sum up, the proposal consists in this:

1. We propose an *international* regulation for the stay of belligerent ships in the sea area that we have called the theatre of war;

2. We propose that the stay of belligerent ships outside of the theatre of war be governed by *national* or *local law*.

It is stated in the following amendment.

ARTICLE 12

Belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State, situated in the immediate proximity of the theatre of war, for more than twenty-four hours, except in the cases covered by the present Convention.

ARTICLE 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or in its territorial waters situated in the immediate proximity of the theatre of war, it must notify the said ship that it is to depart within twenty-four hours.

ARTICLE 13 *bis*

In the absence of special provisions to the contrary in the law of the neutral State, the stay of belligerent war-ships in the ports and roadsteads outside of the theatre of war is not limited. Nevertheless, the belligerent is bound to conform to the ordinary conditions of neutrality and to the requirements that the neutral State deems necessary. Moreover, it is bound to depart if the neutral State so orders.

ANNEX 12[1]

AMENDMENTS OF THE PORTUGUESE DELEGATION TO THE PROPOSALS OF THE JAPANESE, SPANISH, BRITISH, AND RUSSIAN DELEGATIONS[2]

In Article 30 of the British proposal replace the words 'of a belligerent Power' with 'of the belligerent Powers'.[3]

Add at the end of Article 2 of the Japanese proposal the following words: 'With the view to prevent, so far as possible, a meeting or combat between these vessels.'

In Article 15 of the British draft, after the words 'of a belligerent', add 'in the course of an engagement'.

The delegation thinks that Article 4 of the Japanese proposal is responsive to the questions put in Nos. II (last part), VI, XI, and XII of the *Questionnaire*. It will be sufficient to add to the words 'war forces' these: 'nor take on officers or men,' and replace the words 'other than' (third line) with the following words: 'of damages resulting from a combat with the enemy or any others except'.

Replace Article 4 of the British proposal and 7 of the Japanese proposal with the following article substantially:

> In general the neutral State should prevent by all the means in its power the belligerents from committing in its territorial waters acts which may constitute war assistance for the combating forces.

ANNEX 13[4]

ARTICLES PRESENTED TO THE COMMITTEE OF EXAMINATION

(*Duration of Stay in case of Voluntary Sojourn*)

ARTICLE (11)

In the absence of special provisions to the contrary in the law of a neutral State, belligerent ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said State for a period of more than twenty-four hours except in the cases covered in the articles of the present Convention.

(*Notice to Leave*)

ARTICLE (12)

If it is within the knowledge of a neutral Power that at the moment of the outbreak of hostilities a belligerent war-ship is in one of its ports or in its territorial waters, this Power must notify the said ship to depart within twenty-four hours, or within the time prescribed by local regulations.

[1] *Actes et documents*, vol. iii, p. 713, *annexe* 50.

[2] *Ante*, pp. 869, 870, 874

[3] This change was made in the third meeting, July 27, of the second subcommission of the Third Commission on motion of Sir Ernest Satow. *Actes et documents*, vol iii, p. 587.

[4] Ibid., p. 714, *annexe* 53.

(Interval between Departures)

ARTICLE (15)

When war-ships or merchant-ships belonging to both belligerents are present together in a neutral port or roadstead, an interval of at least twenty-four hours must elapse between the departure of any one of the ships belonging to one of the belligerents and the departure of one of the ships belonging to the other belligerent.

This interval may be increased according to circumstances by the maritime authority of the place with a view to prevent, so far as possible, a meeting or combat between these vessels.

It is for the neutral State to decide which of the hostile vessels shall leave first, taking into account priority of request and the date of arrival.

(Notice to be given to the Belligerent Ship before its Entrance into the Port)

ARTICLE (15)

If a belligerent ship wishes to enter a neutral port or roadstead where a war-ship of the other belligerent State is already present, the local authorities should warn it of the presence of the hostile ship.

(Extension of the Legal Stay)

ARTICLE (13)

No belligerent war-ship may prolong its legal stay in the ports and roadsteads or in the territorial waters of a neutral State except in case of enforced sojourn on account of bad weather, damage, or lack of provisions necessary for its security at sea.

The said ship must quit the port, roadstead, or waters as soon as the cause of its arrival or its stay shall have ceased.

(Repair of Damage)

ARTICLE (16)

In neutral ports, roadsteads, and territorial waters belligerent ships may only carry out such repairs as are absolutely necessary to render them seaworthy.

They may not, under pretext of repairs, perform work calculated to add in any manner whatever to their fighting force.

DECLARATION (XIV) PROHIBITING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS[1]

The undersigned, plenipotentiaries of the Powers invited to the Second International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 (December 11), 1868, and being desirous of renewing the Declaration of The Hague of July 29, 1899, which has now expired,

Declare :

The contracting Powers agree, for a period extending to the close of the Third Peace Conference, to forbid the throwing of projectiles and explosives from balloons or by other new methods of a similar nature.

The present Declaration is only binding on the contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of the ratifications, of which a duly certified copy shall be sent, through the diplomatic channel, to all the contracting Powers.

Non-signatory Powers may adhere to the present Declaration. To do so, they must make known their adhesion to the contracting Powers by means of a written notification, addressed to the Netherland Government, and communicated by it to all the other contracting Powers.

In the event of one of the high contracting parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall only have effect in regard to the notifying Power.

In faith of which the plenipotentiaries have appended their signatures to the present Declaration.

Done at The Hague, October 18, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and copies of which, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

[Here follow signatures.]

[1] *Actes et documents*, vol. i, p. 687. For the corresponding Declaration (IV, 1) of 1899, see *ante*, p.

Report to the Conference from the Second Commission [1]

(Reporter, Baron Giesl von Gieslingen)

II

Declarations of 1899. Renewal of the Declaration on the Prohibition against Launching Projectiles and Explosives from Balloons

This declaration, which was made only for a period of five years, having expired, the delegation of Belgium, which undertook to move its readoption, stated it in the same terms as in 1899 [2]:

> The contracting Powers agree, for a term of five years, to forbid the throwing of projectiles and explosives from balloons or by other new methods of similar nature.
>
> The present Declaration is only binding on the contracting Powers in case of war between two or more of them.
>
> It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents is joined by a non-contracting Power.
>
> Non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.
>
> In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other contracting Powers.
>
> This denunciation shall have effect only in regard to the notifying Power.

Besides, the subcommission had before it two subsidiary amendments proposed by the delegations of Russia and Italy in case that the main proposition should not be adopted.

The Russian amendment was to replace the general and temporary prohibition formulated in the above text by a permanent restriction, prohibiting the throwing of projectiles or explosives from balloons against undefended towns, villages, houses, or buildings. That prohibition, as it relates to means of injuring the enemy, would properly be inserted where these matters are dealt with in the first chapter of the second section of the Regulations of 1899, and it would suffice to complete Article 25 [3] by wording it as follows:

> It is forbidden to attack or bombard, by artillery or by throwing projectiles or explosives from balloons or by the aid of other new methods of a similar nature, towns, villages, dwellings or buildings that are not defended and do not contain establishments or depots that can be utilized by the enemy for purposes of the war.

The amendment proposed by the Italian delegation was to the same effect as the Russian, and its provisions were intended to be permanent, whereas the main proposition carried a time limit of five years. It further required that a balloon, if employed

[1] *Actes et documents*, vol. i, p. 104. For Part I of this report, see *ante*, p. 521.
[2] *Actes et documents*, vol. iii, p. 252, *annexe* 18.
[3] *Ante*, p. 132.

in operations of war, must be *dirigible* and *manned by a military crew*. It was thus worded :

1

It is forbidden to throw projectiles and explosives from balloons that are not dirigible and manned by a military crew.

2

Bombardment by military balloons is subject to the same restrictions accepted for land and sea warfare, in so far as this is compatible with the new method of fighting.

The discussion first centred on the text proposed by the delegation of Belgium. The delegations of Austria-Hungary, China, Great Britain, Greece, Portugal and Turkey declared themselves in favour of it, while the French delegation felt [illegible] its support.

This delegation said that in its opinion the humanitarian principle [illegible] the Belgian delegation were already contained in Articles 25 [illegible] of 1899 on the laws and customs of war on land, which forbade [illegible] towns, villages, dwellings or buildings that are not defended [illegible] and bombardments all necessary steps must be taken to [illegible] localities and edifices that it is particularly desired to protect [illegible] tial idea that it is necessary above all to assure their protection [illegible] question as to the mode of discharging projectiles enter into the [illegible] delegation thought it could not support a renewal of the Declaration [illegible]

The Belgian proposal was carried by 29 votes, 2 of these being [illegible] unanimity, to 6 ; 10 countries not being represented.

On the request of the delegation of Italy, its subsidiary amendment, which was supported by the Russian delegation, was also put to vote under reserve of the vote already taken. On account of the distinct character of its two articles, the German delegation asked that they be separated, observing, as regards the first, that it was possible to throw projectiles from non-dirigible balloons, and further, that there was no connexion between the power to direct balloons and that of throwing projectiles from them.

The first article of the Italian amendment was carried by 21 votes to 8, with 6 abstentions.

After this vote, a remark was made with a view to establish that it[1] was not to be taken as filling a gap in the old Article 25, as the prohibitions already contained in that article apply generally to throwing projectiles in any manner whatever against undefended towns, villages, etc.

After an exchange of views on this subject, it was recognized that the second provision related to Article 25 and that it should be inserted there, while the main declaration should be preserved in the form in which it was voted.

Article 2 of the Italian amendment was then put to vote and carried by 31 votes to 1, with 3 not voting.

The Russian and Italian proposals had the same design, and were calculated to supplement Article 25 of the 1899 Regulations with a provision securing to undefended towns, villages, dwellings or buildings absolute immunity from all attack or bombardment, 'even by the aid of balloons or other new methods of a similar nature'.

[1] The second article of the Italian proposal.

Desiring to reach complete agreement on the question, the delegation of Russia, seconded by the Italian delegation, submitted the following new text to the Commission when the matter came up before it:

> It is forbidden to attack or bombard, with artillery, or by throwing projectiles and explosives from balloons, or by other new methods of a similar nature, towns, villages, dwellings or buildings which are not defended, and not to observe, when throwing the above mentioned projectiles or explosives, the accepted restrictions for bombardments in land and sea warfare, so far as those restrictions are compatible with this new method of fighting.

The delegation of France then observed that the prohibition contemplated by the new Russian text, while entirely conforming to its opinio as previously expressed is already contained in the text now in force in Article 25, and that consequently it is sufficient, if deemed necessary to avoid misunderstanding by rendering its terms precise, to insert the words 'by any means whatever' after 'to attack or bombard'.

The delegations of Russia and Italy having accepted this proposal and withdrawn their own, the Commission adopted without objection the new wording of Article 25 as follows:

> It is forbidden to attack or bombard, by any means whatever, towns, villages, dwellings or buildings that are not defended.

It is in this form that it is submitted to the Conference, which will also have to decide finally on the Belgian proposition for a renewal of the Declaration of 1899.[1]

The Convention of 1899 and the Regulations with respect to the laws and customs of war on land were also supplemented by two other Declarations—one prohibiting 'the use of bullets which expand or flatten easily in the human body', and the other, 'the use of projectiles that have for their sole object the diffusion of asphyxiating or deleterious gases'.

As no State had asked for a revision of these two Declarations, the subcommission was of the opinion that any discussion thereof would be out of order. They had been concluded for an indefinite term, and can be denounced only by giving one year's notice in advance. No Power has expressed such an intention. Moreover, their modification or abrogation does not appear in the programme, and the proposition of the United States looking to a prohibition of 'bullets that inflict unnecessarily cruel wounds, such as explosive bullets and, in general, every kind of bullet that exceeds the limit necessary for placing a man immediately *hors de combat*',[2] a more restricted proposition than the one in force, could not be brought up for discussion.

Great Britain, which did not sign these two Declarations in 1899, has announced through its delegation that it was adhering to both. The delegation of Portugal also has announced that its Government will sign the first one.

It is particularly agreeable to the Commission to bring these important adhesions to the knowledge of the Conference at the time when it submits the propositions which it has drawn up to complete and render precise the work of the First Peace Conference, and which it trusts that this Conference will see its way to adopt.

[1] Regarding the action of the Conference on this Declaration, see Mr Renault's report on the Final Act, *ante*, p. 224.

[2] *Actes et documents*, vol. iii, p. 251, *annexe* 17.

THE LIMITATION OF ARMAMENT

EXTRACT FROM THE MINUTES OF THE FOURTH PLENARY SESSION OF THE CONFERENCE HELD AUGUST 17, 1907 [1]

His Excellency Sir EDWARD FRY: Mr. President, I have the honour to submit to you in behalf of the Government of His Britannic Majesty a proposal of the highest importance.

When His Imperial Majesty of Russia convoked the First Peace Conference at The Hague he proposed as the prime object of its work that 'of seeking without delay means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments'.

After having taken into consideration the report of the First Commission of the Conference, which had been charged with the examination of the question, the Conference unanimously adopted the following resolution [2]:

> The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

Count Mouravieff, in his memorandum of August, 1898, addressed to Europe in the name of His Majesty the Emperor of Russia, said:

> The ever-increasing financial charges strike and paralyze public prosperity at its source; the intellectual and physical strength of the nations, their labour and capital, are for the most part diverted from their natural application and unproductively consumed; hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development.
>
> Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments. Economic crises, due in great part to the system of amassing armaments to the point of exhaustion, and the continual danger which lies in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

These words, so eloquent and so true when they were first uttered, are to-day still more forcible and more true. For, Mr. President, since that date military expenditure upon armies as well as upon navies has considerably increased. Thus, according to the most exact information which I have received, this expenditure reached in 1898—that is to say in the year which immediately preceded the First Conference at The Hague—a total of more than £251,000,000 for the countries of Europe—with the exception of Turkey and Montenegro (regarding which I have no information),—the United States of America and

[1] *Actes et documents*, vol. I, p. 90.

[2] *Ante*, p. 21.

Japan; while in the year 1906 the similar expenditure of the same countries exceeded a total of £320,000,000.

It will thus be seen that in the interval between the two Conferences annual military expenditure has been augmented by the sum of £69,000,000, or more than 1,725 millions of francs, which is an enormous increase.

Such is this excessive expenditure, which might be employed for better ends; such, Mr. President, is the burden under which our populations are groaning; such is the Christian peace of the civilized world in the twentieth century.

I will not speak of the economic aspect of the question, of the great mass of men who are compelled by these preparations for war to leave their occupations, and of the prejudicial effect of this state of things upon the general prosperity. You know this aspect of the question better than I do.

I am, therefore, quite sure that you will agree with me in the conclusion that the realization of the desire expressed by the Emperor of Russia and by the First Conference would be a great blessing for the whole of humanity. Is this desire capable of being realized? This is a question to which I cannot supply a categorical answer. I can only assure you that my Government is a convinced supporter of these high aspirations, and that it charges me to invite you to work together for the realization of this noble desire.

In ancient times, Mr. President, men dreamed of an age of gold which had existed on earth in the distant past; but in all ages and among all nations poets, sibyls, prophets, and all noble and inspired souls have always cherished the hope of the return of this golden age under the form of the reign of universal peace.

Ultima Cumaei venit iam carminis aetas;
Magnus ab integro saeclorum nascitur ordo.
Iam redit et virgo, redeunt Saturnia regna.

Such was the dream of the Latin poet for his age; but to-day the sense of the solidarity of the human race has more than ever spread over the whole world. It is this sentiment that has rendered possible the convocation of the present Conference; and it is in the name of this sentiment that I request you not to separate without having asked that the Governments of the world should devote themselves very earnestly to the question of the limitation of military charges.

My Government recognizes that it belongs to the duty of every country to protect itself against its enemies and against the dangers by which it may be threatened, and that every Government has the right and the duty to decide what its own country ought to do for this purpose. It is, therefore, only by means of the good-will, the free-will, of each Government, acting in its own right, for the welfare of its own country, that the object of our desires can be realized.

The Government of His Britannic Majesty, recognizing that several Powers desire to restrict their military expenditure, and that this object can only be realized by the independent action of each Power, has thought it to be its duty to inquire whether there are any means for satisfying these aspirations. My Government has therefore authorized us to make the following declaration:

> The Government of Great Britain will be prepared to communicate annually to Powers which would pursue the same course the programme for the construction of new ships of war and the expenditure which this programme would entail. This exchange of information would facilitate an exchange of views between the Govern-

ments on the subject of the reductions which it might be possible to effect by mutual agreement.

The British Government believes that in this way it might be possible to arrive at an understanding with regard to the expenditure which the States which should undertake to adopt this course would be justified in incorporating in their estimates.

In conclusion, therefore, Mr. President, I have the honour to propose to you the adoption of the following resolution :

> The Conference confirms the resolution adopted by the Conference of 1899 in regard to the limitation of military expenditure ; and inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the Governments should resume the serious examination of this question.

The PRESIDENT : The British proposition that you have just heard, gentlemen, is supported by the United States of America, whose first delegate has addressed me the following letter :

> Mr. President,—In the course of the negotiations which preceded the present Conference the Government of the United States considered it to be its duty to reserve the right to bring forward here the important subject of the limitation of armaments, in the hope that they might advance in some small degree the lofty conception which inspired the Emperor of Russia in his first appeal.
>
> While regretting that more progress in the direction indicated by His Imperial Majesty cannot be made at this moment, we are happy to think that there is no intention on the part of the nations to abandon his endeavours, and we request to be allowed to express our sympathy for the views expressed by his Excellency the first delegate of Great Britain, and to support the proposal that he has just made.
>
> JOSEPH H. CHOATE

His Excellency Mr. LÉON BOURGEOIS : In the name of the French delegation I declare our support of the proposal formulated by his Excellency Sir Edward Fry and supported by our colleagues of the United States of America.

The first delegate of the French Republic, remembering that he was in 1899 the initiator of the *vœu* of the First Conference, will perhaps be allowed to express the confident hope that between now and the meeting of the next peace assembly the study to which the Conference invites the Governments in the name of humanity will be resolutely pursued.

The PRESIDENT : A similar communication has come to me from the Spanish delegation in a letter from the first delegate, his Excellency Mr. de Villa Urrutia, worded as follows :

> Mr. President, The Spanish Government, at the time of the convocation of the present Conference, expressed its desire to reserve the right to discuss the question of the limitation of armaments, which had already been submitted to the previous Conference through the generous initiative of His Majesty the Emperor of Russia.
>
> While regretting that existing circumstances have not permitted us to follow in the same efficacious manner the great and noble idea with which his Imperial Majesty was inspired, and while we express our sympathy with the views expounded by his Excellency the first delegate of Great Britain, which are also those of the Spanish Government, we are happy to think that all nations will exert their efforts in this direction and that they will one day be crowned with success.
>
> W. R. DE VILLA URRUTIA

The PRESIDENT : I have received a communication on the same subject from the delegates of the Argentine Republic and Chile also.

They acquaint the Conference with the fact that these two States have been the first to give effect to the wish expressed by the Conference in 1899 by concluding on May 28, 1902, a Convention on the limitation of naval forces which has been put into execution under a special protocol signed January 9, 1903.[1] The communication reads:

> The delegations of the Argentine Republic and the Republic of Chile have the honour to present to the Peace Conference a treaty of May 28, 1902, and the supplementary agreement of January 9, 1903, treaties which have been faithfully observed by the two nations.
>
> By the terms of these protocols a part of the fleets of the two Governments was dismantled, armed cruisers in course of construction on account of the respective Governments were sold upon the docks, and the countries agreed to abstain for a period of five years from the acquisition of new vessels of war.
>
> In the belief that the annexed protocols may be of some use in a study of the proposal of Great Britain on the subject of the limitation of armaments, we beg you, etc., etc.

We can welcome, gentlemen, with the greater pleasure and satisfaction the communication of this Convention and protocol since the latter, which regulates the details of the limitations of the Chilean and Argentine naval forces, is the work of two of our most distinguished young colleagues, who were at that time, one the Minister for Foreign Affairs and the other the Envoy Extraordinary and Minister Plenipotentiary of their respective countries, Messrs. Drago and Concha, to whom it is my duty to offer, as well as to the delegations of the States that they represent, in the name of the Conference, our thanks and congratulations.

The eloquence of his Excellency the first British delegate, and the proposal with which it concluded, as well as the communications with which I have just acquainted you, cannot, it seems to me, fail to meet with a sympathetic reception on our part. The idea of diminishing the charges which weigh upon the populations owing to the fact of wars, by seeking the means of putting an end to the progressive increase of armaments on land and on sea, constituted the chief motive of the initiative taken by the Emperor of Russia in order to bring about the meeting of the Peace Conferences. This thought has been, so to speak, the corner-stone of that action. It formed the starting-point of the Russian circular of August 12/24, 1898, and was placed at the head of the programme which the Cabinet of St. Petersburg proposed to the Powers in its circular of December 30, 1898/January 11, 1899. All the Governments gave their adherence, and the Conference, from the outset, had to occupy itself with a proposal of the Russian delegation which aimed at preventing the increase of armaments.

Contact with reality, however, was not long in revealing all the practical difficulties which this generous thought involved when the question of applying it arose. In the Commission which was entrusted with the consideration of the subject very keen differences of opinion soon broke out, and the debates assumed such a character that, instead of the desired understanding, there was a danger of a disagreement which might have proved fatal to the rest of the labours of the Conference. It had to be acknowledged that the question was not ripe, that it required further study on the part of the different Governments at home; and it was in this sense that, after having unanimously adopted the

[1] *Actes et documents*, vol. i, pp. 120, 121, *Annexes* G and H. The original Spanish text appears in *Tratados, Convenciones*, etc. (Argentine Republic), vol. vii, pp. 277–295. For English versions, see *British and Foreign State Papers*, vol. 95, p. 702, vol. 96, p. 311; and *Foreign Relations of the United States*, 1902, p. 21.

resolution which has just been recalled by the first delegate of Great Britain, the Commission expressed the wish that 'the Governments, taking into consideration the proposals made at the Conference,' should 'examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets'.

But here once more practical experience was not destined to correspond with the ideal nature of the wish. As I have just intimated, only two States, the Argentine Republic and Chile, have been able to give effect to that wish by concluding a convention of disarmament, which I have had the honour of reading to you. The majority of the Powers of Europe had other preoccupations. Scarcely had the Conference terminated its labours when troubles which arose in an empire of eastern Asia obliged the Governments to intervene with armed force. A short time afterwards one of the great European Powers found itself engaged in South Africa in a struggle which necessitated on its part a great military effort. Finally, during these last years, the Far East was the theatre of a gigantic war, the liquidation of which is barely finished. Need I also mention the colonial struggles and diplomatic difficulties which may have temporarily compelled one Power or another to increase its armaments? The result was that the Governments, far from having been able to occupy themselves, in conformity with the desire expressed by the Conference, with the means of limiting armaments, had, on the contrary, to increase their armaments to an extent which has just been shown you by the figures adduced by Sir Edward Fry.

It was in consideration of these circumstances, gentlemen, that the Russian Government this time refrained from placing the limitation of armaments upon the programme of the Conference which it proposed to the Powers. To begin with, it considered that this question was not ripe for fruitful discussion. In the second place, it did not desire to provoke discussions which, as the experience of 1899 showed, could only, in opposition to the aim of our common endeavours, accentuate a disagreement among the Powers by giving occasion for irritating debates. The Russian Government, for its part, was determined not to take part in such discussions, and it knew that this was likewise the determination of some other Great Powers.

Yet the seed sown at the time of the First Conference has germinated independently of the action of the Governments. A very emphatic movement of public opinion has arisen in different countries in favour of the limitation of armaments, and the Governments, whose sympathies for the principle have not diminished, in spite of the difficulties of carrying it out, find themselves confronted with manifestations which they are not in a position to satisfy. Thus it is, gentlemen, that the British Government, giving expression to its own preoccupations, and making itself the organ of public feeling, evinced its intention of nevertheless calling the attention of the Powers assembled in Conference at The Hague to the question of the limitation of armaments, and that its first delegate has just brought before us the wish which the cabinet of London would like to see adopted by us.

I for my part am unable to discover any other means of evincing the interest which the Powers take in this question. If the question was not ripe in 1899, it is not any more so in 1907. It has not been possible to do anything on these lines, and the Conference to-day finds itself as little prepared to enter upon them as in 1899. Any discussion which should in itself prove sterile could only be harmful to the cause which was in view by accentuating differences of opinion on questions of fact, while there exists unity of general intentions which might one day meet with their realization. It is for this reason, gentlemen, that the proposal now made to us by the British delegation, to confirm the resolution adopted

by the Conference of 1899 by formulating anew the desire which was then expressed, is what best corresponds with the present state of the question and with the interest which we all have in seeing it directed into a channel where the unanimity of the Powers could alone constitute a guarantee of its further progress. And it will be an honour for the Second Peace Conference to have contributed to this end by its immediate vote.

I therefore can only applaud the English initiative, and recommend you to unite in accepting the resolution, as it has been proposed to us by Sir Edward Fry, with unanimous acclamation.

The unanimity of your acclamations appears to make it unnecessary to proceed to a vote.

The meeting adjourned at 4.15 p.m.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK.
PROZOR.

TABLE OF SIGNATURES, RATIFICATIONS, ADHESIONS AND RESERVATIONS OF THE SECOND

Abbreviations S = signed Rat. = ratified Adh. = adhered Res. = reservation	I *Convention for the pacific settlement of international disputes*	II *Convention respecting the limitation of the employment of force for the recovery of contract debts*	III *Convention relative to the opening of hostilities*	IV *Convention respecting the laws and customs of war on land*	V *Convention respecting the rights and duties of neutral Powers and persons in case of war on land*	VI *Convention relating to the status of enemy merchant ships at the outbreak of hostilities*	VII *Convention relating to the conversion of merchant ships into war-ships*	VIII *Convention relative to the laying of automatic submarine contact mines*
Argentine Republic	S	S res.	S	S	S res.	S	S	S
Austria-Hungary	S	S	S	S res.	S	S	S	S
Rat. Nov. 27, 1909	Rat.	Rat.	Rat.	Rat. res.	Rat	Rat.	Rat	Rat.
Belgium	S	.....	S	S	S	S	S	S
Rat. Aug. 8, 1910	Rat.	.....	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.
Bolivia	S	S res	S	S	S	S	S	S
Rat. Nov. 27, 1909	Rat.	.....	Rat.	Rat.	Rat.	.....	.....	.....
Brazil	S res.	.....	S	S	S	S	S	S
Rat. Jan. 5, 1914	Rat. res.	.....	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.
Bulgaria	S	S	S	S	S	S	S	S
Chile	S res.	S	S	S	S	S	S	S
China	S	.....	.....	.....	.....	.....	.....	.....
Rat. Nov 27, 1909	Rat	Adh.	Adh.	.....	Adh.	.....	.....	.....
Adh. Jan. 15, 1910								
Colombia	S	S res.	S	S	S	S	S	S
Cuba	S	S	S	S	S	S	S	S
Rat. Feb. 22, 1912	Rat.	.....	.....	Rat.	Rat.	Rat.	.....	.....
Denmark	S	S	S	S	S	S	S	S
Rat. Nov. 27, 1909	Rat.	Rat	Rat	Rat.	Rat.	Rat.	Rat.	Rat.
Dominican Republic	S	S res.	S	S	S	S	.....	S res.
Ecuador	S	S res.	S	S	S	S	S	S
France	S	S	S	S	S	S	S	S res.
Rat. Oct. 7, 1910	Rat.	Rat.	Rat	Rat.	Rat	Rat	Rat.	Rat. res.
Germany	S	S	S	S res.	S	S res	S	S res.
Rat. Nov. 27, 1909	Rat.	Rat.	Rat.	Rat. res.	Rat	Rat. res.	Rat.	Rat res.
Great Britain	S	S	S	S	S res.	S	S	S res
Rat. Nov. 27, 1909	.....	Rat.	Rat.	Rat	.....	Rat.	Rat.	Rat. res
Greece	S res.	S res.	S	S	S	S	S	S
Guatemala	S	S res	S	S	S	S	S	S
Rat. Mar. 15, 1911	Rat.	Rat. res.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat
Haiti	S	S	S	S	S	S	S	S
Rat. Feb. 2, 1910	Rat.	Rat.	Rat.	Rat	Rat.	Rat.	Rat.	Rat
Italy	S	S	S	S	S	S	S	S
Japan	S res.	S	S	S res.	S	S	S	S
Rat. Dec. 13, 1911	Rat. res.	Rat.	Rat.	Rat. res	Rat	Rat.	Rat.	Rat.
Liberia	.....	.....	.....	.....	.....	.....	.....	.....
Adh. Feb. 4, 1914	.....	Adh.	Adh.	Adh.	Adh.	Adh.	Adh.	Adh.
Luxemburg	S	.....	S	S	S	S	S	S
Rat. Sept 5, 1912	Rat.	.....	Rat.	Rat.	Rat	Rat	Rat.	Rat.
Mexico	S	S	S	S	S	S	S	S
Rat. Nov. 27, 1909	Rat.	Rat.	Rat.	Rat.	Rat	Rat.	Rat.	Rat
Montenegro	S	S	S	S res.	S	S	S	S
Netherlands	S	S	S	S	S	S	S	S
Rat. Nov. 27, 1909	Rat	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.
Nicaragua	.....	.....	.....	.....	.....	.....	.....	.....
Adh. Dec. 10, 1909	Adh	Adh. res	Adh.	Adh.	Adh	Adh.	Adh.	Adh.
Norway	S	S	S	S	S	S	S	S
Rat. Sept. 19, 1910	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.

RESERVATIONS TO THE CONVENTIONS AND DECLARATION PEACE CONFERENCE

IX *Convention concerning bombardment by naval forces in time of war*	X *Convention for the adaptation to maritime warfare of the principles of the Geneva Convention*	XI *Convention relative to certain restrictions with regard to the exercise of the right of capture in naval war*	XII *Convention relative to the creation of an International Prize Court*	XIII *Convention concerning the rights and duties of neutral Powers in naval war*	XIV *Declaration prohibiting the discharge of projectiles and explosives from balloons*	*Final Act*	*Protocol of September 19, 1910, additional to Hague Convention XII on an International Prize Court*	
S	S	S	S	S	S	S	S	**Argentine Republic**
S	S	S	S	S	S	S	S	**Austria-Hungary**
Rat.	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S	S	S	S	S	S	S	S	**Belgium**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S	S	S	S	S	S	S	**Bolivia**
Rat.	Rat.	.....	.....	.....	Rat.	.....	.....	
S	S	S	.....	S	S	S	.....	**Brazil**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S	S	S	S	S	S	S	**Bulgaria**
S res.	S	S	S res.	S	.....	S	S	**Chile**
.....	S res.	.....	.....	.....	S	S	.....	**China**
Adh.	Rat. res.	.....	.....	Adh. res.	Rat.	.....	.....	
S	S	S	S	S	S	S	S	**Colombia**
S	S	S	S res.	.....	S	S	S	**Cuba**
Rat	Rat.	.....	.....	.....	.....	.....	.....	
S	S	S	S	S	.....	S	S	**Denmark**
Rat.	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S	S	S	.....	S. res.	S	S	.....	**Dominican Republic**
S	S	S	S res.	S	S	S	S	**Ecuador**
S res.	S	S	S	S	.....	S	S	**France**
Rat. res	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S res.	S	S	S	S res.	.....	S	S	**Germany**
Rat. res.	Rat.	Rat.	.....	Rat. res.	.....	.....	.....	
S res.	S res.	S	S	S res.	S	S	S	**Great Britain**
Rat. res.	.....	Rat.	.....	.....	Rat.	.....	.....	
S	S	S	.....	S	S	S	.....	**Greece**
S	S	S	S res.	S	.....	S	S	**Guatemala**
Rat	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S	S	S	S res.	S	S	S	S	**Haiti**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S	S	S	S	.....	S	S	**Italy**
S res.	S	S	S	S res.	.....	S	S	**Japan**
Rat. res.	Rat.	Rat.	.....	Rat. res.	.....	.....	.....	
.....	.....	.....	.....	.....	.....	.....	.....	
Adh.	.....	Adh.	.....	Adh.	Adh.	.....	.....	**Liberia**
S	S	S	.....	S	S	S	.....	**Luxemburg**
Rat.	Rat.	Rat.	.....	Rat	Rat.	.....	.....	
S	S	S	S	S	.....	S	S	**Mexico**
Rat.	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S	S	.....	.....	S	.....	S	.....	**Montenegro**
S	S	S	S	S	S	S	S	**Netherlands**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
.....	.....	.....	.....	.....	.....	S	.....	**Nicaragua**
Adh.	Adh.	Adh.	.....	Adh.	Adh.	.....	.....	
S	S	S	S	S	S	S	S	**Norway**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	

TABLE OF SIGNA-

Abbreviations S = signed Rat. = ratified Adh. = adhered Res. = reservation	I *Convention for the pacific settlement of international disputes*	II *Convention respecting the limitation of the employment of force for the recovery of contract debts*	III *Convention relative to the opening of hostilities*	IV *Convention respecting the laws and customs of war on land*	V *Convention respecting the rights and duties of neutral Powers and persons in case of war on land*	VI *Convention relating to the status of enemy merchant ships at the outbreak of hostilities*	VII *Convention relating to the conversion of merchant ships into war-ships*	VIII *Convention relative to the laying of automatic submarine contact mines*
Panama	S	S	S	S	S	S	S	S
Rat. Sept. 11, 1911	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.
Paraguay	S	S	S	S	S	S	S	S
Persia	S	S	S	S	S	S	S	S
Peru	S	S. res.	S	S	S	S	S	.....
Portugal	S	S	S	S	S	S	S	.....
Rat. April 13, 1911	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.	.....
Roumania	S res.	.....	S	S	S	S	S	S
Rat. Mar. 1, 1912	Rat. res.	.....	Rat.	Rat.	Rat.	Rat.	Rat.	Rat
Russia	S	S	S	S res.	S	S res.	S	.....
Rat. Nov. 27, 1909	Rat.	Rat.	Rat.	Rat. res.	Rat.	Rat. res.	Rat.	.....
Salvador	S	S res.	S	S	S	S	S	S
Rat. Nov. 27, 1909	Rat.	Rat. res.	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.
Serbia	S	S	S	S	S	S	S	S
Siam	S	.....	S	S	S	S	S	S res
Rat. Mar. 12, 1910	Rat.	.....	Rat.	Rat.	Rat.	Rat.	Rat.	Rat. res.
Spain	S	S	S	.....	S	S	S	.....
Rat. Mar. 18, 1913	Rat.	Rat.	Rat.	.....	Rat.	Rat.	Rat.	.....
Adh. Feb. 24, 1913								
Sweden	S	.....	S	S	S	S	S	.....
Rat. Nov. 27, 1909; and July 13, 1911, as regards Convention X.	Rat.	.....	Rat.	Rat.	Rat.	Rat.	Rat.	.....
Switzerland	S res.	.....	S	S	S	S	S	S
Rat. May 12, 1910	Rat. res.	.....	Rat.	Rat.	Rat.	Rat.	Rat.	Rat.
Turkey	S res.	S	S	S res.	S	S	S res.	S res
United States	S res.	S	S	S	S	.....	.....	S
Rat. Nov. 27, 1909	Rat. res.	Rat. res.	Rat.	Rat.	Rat.	.....	.....	Rat.
Adh. Dec. 3, 1909.								
Uruguay	S	S res.	S	S	S	S	.....	S
Venezuela	S	.....	S	S	S	S	S	.....

NOTE.— The above table, taken from *The Hague Conventions and Declarations of 1899 and 1907*, 2nd ed
correct by the Netherland Government as of October 1, 1915. The table of signatures appearing in th

TURES, etc. (*continued*)

IX *Convention concerning bombardment by naval forces in time of war*	X *Convention for the adaptation to maritime warfare of the principles of the Geneva Convention*	XI *Convention relative to certain restrictions with regard to the exercise of the right of capture in naval war*	XII *Convention relative to the creation of an International Prize Court*	XIII *Convention concerning the rights and duties of neutral Powers in naval war*	XIV *Declaration prohibiting the discharge of projectiles and explosives from balloons*	*Final Act*	*Protocol of September 19, 1910, additional to Hague Convention XII on an International Prize Court*	
S	S	S	S	S	S	S	S	**Panama**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S	S	S	S	.....	.....	S	**Paraguay**
S	S res.	S	S res.	S res.	S	S	S	**Persia**
S	S	S	S	S	S	S	S	**Peru**
S	S	S	S	S	S	S	S	**Portugal**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S	S	.....	S	.....	S	.....	**Roumania**
Rat.	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S	S	.....	.....	S	.....	S	.....	**Russia**
Rat.	Rat.	.....	.....	Rat.	.....	.....	.....	
S	S	S	S res.	S	S	S	S	**Salvador**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S	S	.....	S	.....	S	.....	**Serbia**
S	S	S	S res.	S res.	S	S	S	**Siam**
Rat.	Rat.	Rat.	.....	Rat. res.	Rat.	.....	.....	
.....	S	S	S	.....	.....	S	S	**Spain**
Adh.	Rat.	Rat.	.....	.....	.....	.....	.....	
S	S	S	S	S	.....	S	S	**Sweden**
Rat.	Rat.	Rat.	.....	Rat.	.....	.....	.....	
S	S	S	S	S	S	S res.	S	**Switzerland**
Rat.	Rat.	Rat.	.....	Rat.	Rat.	.....	.....	
S	S res.	S	S res.	S res.	S	S	S	**Turkey**
S	S	S	S	.....	S	S	S	**United States**
Rat.	Rat.	Rat.	.....	Adh. res.	Rat.	.....	.....	
S	S	S	S res.	S	S	S	S	**Uruguay**
S	S	S	.....	S	.....	S	.....	**Venezuela**

New York, 1915, a publication of the Carnegie Endowment for International Peace, was pronounced *Actes et documents*, vol. i, p. 709, was necessarily limited to those placed prior to January 10, 1908.

CONVENTION I

	Reservations at Signature	At Ratification
Brazil.	With reservation as to Article 53, paragraphs 2, 3, and 4.	Reservation maintained in the act of ratification.
Chile.	Under reservation of the declaration[1] formulated with regard to Article 39 in the seventh meeting of the First Commission on October 7.	[Not yet ratified.]
Greece.	With the reservation of paragraph 2 of Article 53.	[Not yet ratified.]
Japan.	With reservation of paragraphs 3 and 4 of Article 48, of paragraph 2 of Article 53, and of Article 54.	Reservation maintained in the act of ratification.
Roumania.	With the same reservations formulated by the Roumanian plenipotentiaries on signing the Convention for the pacific settlement of international disputes of July 29, 1899.[2]	Reservations maintained in the act of ratification.
Switzerland.	Under reservation of Article 53, number 2.	Reservation maintained in the act of ratification.
Turkey.	Under reservation of the declarations[3] recorded in the *procès-verbal* of the ninth plenary session of the Conference held on October 16, 1907.	[Not yet ratified.]

[1] His Excellency Mr. Domingo Gana: The delegation of Chile desires to make the following declaration in the name of its Government with respect to this article. Our delegation at the time of signing the Convention of 1899 for the pacific settlement of international disputes did so with the reservation that the adhesion of its Government as regards Article 17 would not include controversies or questions prior to the celebration of the Convention.

The delegation of Chile believes it to be its duty to-day to renew, with respect to the same provision, the reservation that it has previously made, although it may not be strictly necessary in view of the similar character of the provision. *Actes et documents*, vol. II, p. 121.

[2] See *ante*, p. 178.

[3] 'The Ottoman delegation declares, in the name of its Government, that while it is not unmindful of the beneficent influence which good offices, mediation, commissions of inquiry, and arbitration are able to exercise on the maintenance of the pacific relations between States; in giving its adhesion to the whole of the draft, it does so on the understanding that such methods remain, as before, purely optional; it could in no case recognize them as having an obligatory character rendering them susceptible of leading directly or indirectly to an intervention.

'The Imperial Government proposes to remain the sole judge of the occasions when it shall be necessary to have recourse to the different proceedings or to accept them without its determination on the point being liable to be viewed by the signatory States as an unfriendly act.

'It is unnecessary to add that such methods should never be applied in cases of internal order.' *Actes et documents*, vol. I, p. 336. See *ante*, p. 354.

	Reservations at Signature	At Ratification
United States.	Under reservation of the declaration [1] made in the plenary session of the Conference held on October 16, 1907.	Reservation maintained in the act of ratification, which contains, besides, the following reservation : That the United States approves this Convention with the understanding that recourse to the Permanent Court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute ; and the United States now exercises the option contained in Article 53 of said Convention, to exclude the formulation of the *compromis* by the Permanent Court, and hereby excludes from the competence of the Permanent Court the power to frame the *compromis* required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the *compromis* required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise.

CONVENTION II

Argentine Republic.	The Argentine Republic makes the following reservations : 1. With regard to debts arising from ordinary contracts between the citizen or subject of a nation and a foreign Government, recourse shall not be had to arbitration except in the specific case of denial of justice by the courts of the country which made the contract, the remedies before which courts must first have been exhausted.	[Not yet ratified.]

[1] The delegation of the United States renews the reservation made in 1899 on the subject of Article 48 of the Convention for the pacific settlement of international disputes in the form of the following declaration :

'Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State ; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.' Ibid., vol. 1, p. 335.

	Reservations at Signature	At Ratification
	2. Public loans, secured by bond issues and constituting the national debt, shall in no case give rise to military aggression or the material occupation of the soil of American nations.	
Bolivia.	Under the reservation stated to the First Commission.[1]	[Not yet ratified.]
Colombia.	Colombia makes the following reservations: It does not agree to the employment of force in any case for the recovery of debts, whatever be their nature. It accepts arbitration only after a final decision has been rendered by the Courts of the debtor nations.	[Not yet ratified.]
Dominican Republic.	With the reservation[2] made at the plenary session of October 16, 1907.	[Not yet ratified.]
Ecuador.	With the reservations[3] made at the plenary session of October 16, 1907.	[Not yet ratified.]
Greece.	With the reservation[4] made at the plenary session of October 16, 1907.	[Not yet ratified.]
Guatemala.	1. With regard to debts arising from ordinary contracts between the citizens or subjects of a nation	1. Reservation maintained in the act of ratification.

[1] His Excellency Mr. Claudio Pinilla: It seems to me, therefore, that the acceptance of the proposition before us will but mean the legitimation by the *Peace* Conference of a certain class of *wars*, or at least interventions based on disputes which relate neither to the honour nor vital interests of the creditor States.

In consequence of these forceful reasons the delegation of Bolivia regrets not to give its entire assent to the proposition under discussion. *Actes et documents*, vol. ii, p. 142.

[2] Mr. Apolinar Tejera: The delegation of the Dominican Republic confirms its favorable vote on the proposal of the delegation of the United States relative to the limitation of the employment of force for the recovery of contract debts; but it renews its reservation as to the condition contained in this part of the clause: 'or, after accepting the offer, prevents any *compromis* from being agreed on', as its interpretation might lead to excessive consequences, which would be the more regrettable as they are provided for and avoided in the plan of Article 53 of the new Convention for the pacific settlement of international disputes. Ibid., vol. i, p. 337.

[3] Mr. Dorn y de Alsúa: The delegation of Ecuador will vote affirmatively while maintaining the reservations made in the First Commission. Ibid., p. 338. See *ante*, p. 495.

[4] His Excellency Mr. Rangabé: In the eighth meeting of the First Commission the Greek delegation, being without definite instructions, was obliged to reserve its vote on the subject of the proposition of the United States of America on the treatment of contract debts. We are to-day in a position to declare that the Royal Government accepts the said proposition, which has for its aim the doing away, by peaceful means, of differences between nations and the exclusion, conformably to the principles of international law, of the employment of armed force outside of armed conflicts. We consider, at the same time, that the provisions contained in paragraphs 2 and 3 of the text voted can not affect existing stipulations nor laws in force in the realm. *Actes et documents*, vol. i, p. 336.

	Reservations at Signature	At Ratification
	and a foreign Government, recourse shall be had to arbitration only in case of denial of justice by the courts of the country which made the contract, the remedies before which courts must first have been exhausted. 2. Public loans secured by bond issues and constituting national debts shall in no case give rise to military aggression or the material occupation of the soil of American nations.	2. Reservation maintained in the act of ratification.
Nicaragua.	[Not a signatory Power.]	The act of *adhesion* contains the following reservations : (*a*) With regard to debts arising from ordinary contracts between the citizen or subject of a nation and a foreign Government, recourse shall be had to arbitration only in the specific case of a denial of justice by the courts of the country where the contract was made, the remedies before which courts must first have been exhausted. (*b*) Public loans secured by bond issues and constituting the national debt shall in no case give rise to military aggression or the material occupation of the soil of American nations.
Peru.	Under the reservation that the principles laid down in this Convention shall not be applicable to claims or differences arising from contracts concluded by a country with foreign subjects when it has been expressly stipulated in these contracts that the claims or differences must be submitted to the judges or courts of the country.	[Not yet ratified.]
Salvador.	We make the same reservations as the Argentine Republic above.[1]	Reservations maintained in the act of ratification.

[1] See *ante*, pp. 603-4.

	Reservations at Signature	At Ratification
United States.	[Signed without reservation.]	The act of ratification contains the following reservation: That the United States approves this Convention, with the understanding that recourse to the Permanent Court for the settlement of the differences referred to in said Convention can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute.
Uruguay.	Under reservation of the second paragraph of Article 1, because the delegation considers that arbitration may always be refused as a matter of right if the fundamental law of the debtor nation, prior to the contract which has given rise to the doubts or disputes, or this contract itself, has stipulated that such doubts or disputes shall be settled by the courts of the said nation.	[Not yet ratified.]
	CONVENTION IV	
Austria-Hungary.	Under reservation of the declaration [1] made in the plenary session of the Conference of August 17, 1907.	Reservation maintained in the *procès-verbal* of deposit of ratifications.
Germany.	Under reservation of Article 44 of the annexed Regulations.	Reservation maintained in the act of ratification.
Japan.	With reservation of Article 44.	Reservation maintained in the act of ratification.
Montenegro.	Under the reservations [2] formulated as to Article 44 of the Regulations annexed to the present	[Not yet ratified.]

[1] His Excellency Mr. Mérey von Kapos-Mére: The delegation of Austria-Hungary, having accepted the new Article 22 *a* on condition that Article 44 of the Convention now in force be maintained as it is, can not consent to the Article 44 *a*, proposed by the Second Commission. *Actes et documents*, vol. 1, p. 86.

[2] His Excellency Mr. Tcharykow: The delegation of Montenegro has the honour to declare that having accepted the new Article 22 *a*, proposed by the delegation of Germany, in the place of Article 44 of the existing Regulations of 1899, it makes reservations on the subject of the new wording of the said Article 44 *a*. Ibid., p. 86.

	Reservations at Signature	At Ratification
	Convention and contained in the minutes of the fourth plenary session of August 17, 1907.	
Russia.	Under the reservatio s [1] formulated as to Article 44 of the Regulations annexed to the present Convention and contained in the minutes of the fourth plenary session of August 17, 1907.	Reservations maintained in the act of ratification.
Turkey.	Under reservation of Article 3.	[Not yet ratified.]
	CONVENTION V	
Argentine Republic.	The Argentine Republic makes reservation of Article 19.	[Not yet ratified.]
Great Britain.	Under reservation of Articles 16, 17, and 18.	[Not yet ratified.]
	CONVENTION VI	
Germany.	Under reservation of Article 3 and of Article 4, paragraph 2.[2]	Reservation maintained in the act of ratification.
Russia.	Under the reservations made as to Article 3 and Article 4, paragraph 2, of the present Convention, and recorded in the minutes of the seventh plenary session of September 27, 1907.[2]	Reservations maintained in the act of ratification.
	CONVENTION VII	
Turkey.	Under reservation of the declaration [3] made at the eighth plenary session of the Conference of October 9, 1907.	[Not yet ratified.]

[1] His Excellency Mr. Martens: The delegation of Russia has the honour to declare that having accepted the new Article 22 *a*, proposed by the delegation of Germany, in the place of Article 44 of the existing Regulations of 1899, it makes reservations on the subject of the new wording of the said Article 44 *a*. Ibid., p. 86.

[2] The German and Russian delegations considered that these provisions established an inequality between States in imposing financial burdens on those Powers which, lacking naval stations in different parts of the world, are not in a position to take vessels which they have seized into a port, but find themselves compelled to destroy them. Ibid., vol. i, p. 236; vol. iii, p. 918.

[3] The Imperial Ottoman Government does not engage to recognize as vessels of war, ships which, being in its waters or on the high seas under a merchant flag, are converted on the opening of hostilities. Ibid., vol. i, p. 277.

	Reservations at Signature	At Ratification
	CONVENTION VIII	
Dominican Republic.	With reservation as to the first paragraph of Article 1.	[Not yet ratified.]
France.	Under reservation of Article 2.	Reservation maintained in the act of ratification.
Germany.	Under reservation of Article 2.	Reservation maintained in the act of ratification.
Great Britain.	Under reservation of the following declaration: In affixing their signatures to the above Convention the British plenipotentiaries declare that the mere fact that this Convention does not prohibit a particular act or proceeding must not be held to debar His Britannic Majesty's Government from contesting its legitimacy.	Reservation maintained in the act of ratification.
Siam.	Under reservation of Article 1, paragraph 1.	Reservation maintained in the act of ratification.
Turkey.	Under reservation of the declarations[1] recorded in the *procès-verbal* of the eighth plenary session of the Conference held on October 9, 1907.	[Not yet ratified.]
	CONVENTION IX	
Chile.	Under the reservation of Article 3, made at the fourth plenary session of August 17.[2]	
France.	Under reservation of the second paragraph of Article 1.	Reservation maintained in the act of ratification.
Germany.	Under reservation of Article 1, paragraph 2.	Reservation maintained in the act of ratification.

[1] His Excellency Turkhan Pasha: The Imperial Ottoman delegation can not at the present time undertake any engagement whatever for perfected systems which are not yet universally known. . . . The Imperial Ottoman delegation believes that it should declare that, given the exceptional situation created by treaties in force of the straits of the Dardanelles and the Bosporus, straits which are an integral part of the territory, the Imperial Government could not in any way subscribe to any undertaking tending to limit the means of defence that it may deem necessary to employ for these straits in case of war . . . with the aim of causing its neutrality to be respected. . . . The Imperial Ottoman delegation can not . . . at the present time take part in any engagement as regards the conversion mentioned in Article 6. *Actes et documents*, vol. i, p. 280.

[2] Ibid., p. 90.

	Reservations at Signature	At Ratification
Great Britain.	Under reservation of the second paragraph of Article 1.	Reservation maintained in the act of ratification.
Japan.	With reservation of paragraph 2 of Article 1.	Reservation maintained in the act of ratification.
	CONVENTION X	
China.	Under reservation of Article 21.	Reservation maintained in the act of ratification.
Great Britain.	Under reservation of Articles 6 and 21 and of the following declaration: In affixing their signatures to the above Convention, the British plenipotentiaries declare that His Majesty's Government understand Article 12 to apply only to the case of combatants rescued during or after a naval engagement in which they have taken part.	[Not yet ratified.]
Persia.	Under reservation of the right, admitted by the Conference, to use the Lion and Red Sun instead of and in the place of the Red Cross.	[Not yet ratified.]
Turkey.	Under reservation of the right, admitted by the Peace Conference, to use the Red Crescent.	[Not yet ratified.]
	CONVENTION XII	
Chile.	Under the reservation of Article 15 made at the sixth plenary session of September 21.	[Not yet ratified.]
Cuba.	Under reservation of Article 15.	[Not yet ratified.]
Ecuador.	Under reservation of Article 15.	[Not yet ratified.]
Guatemala.	Under the reservations made concerning Article 15.	[Not yet ratified.]
Haiti.	With reservation regarding Article 15.	[Not yet ratified.]
Persia.	Under reservation of Article 15.	[Not yet ratified.]
Salvador.	Under reservation of Article 15.	[Not yet ratified.]

	Reservations at Signature	At Ratification
Siam.	Under reservation of Article 15.	[Not yet ratified.]
Turkey.	Under reservation of Article 15.	[Not yet ratified.]
Uruguay.	Under reservation of Article 15.	[Not yet ratified.]

CONVENTION XIII

China.	[Not a signatory Power.]	*Adhesion* with reservation of paragraph 2 of Article 14, paragraph 3 of Article 19, and of Article 27.
Dominican Republic.	With reservation regarding Article 12.	[Not yet ratified.]
Germany.	Under reservation of Articles 11, 12, 13, and 20.	Reservation maintained in the act of ratification.
Great Britain.	Under reservation of Articles 19 and 23.	[Not yet ratified.]
Japan.	With reservation of Articles 19 and 23.	Reservation maintained in the act of ratification.
Persia.	Under reservation of Articles 12, 19, and 21.	[Not yet ratified.]
Siam.	Under reservation of Articles 12, 19, and 23.	Reservation maintained in the act of ratification.
Turkey.	Under reservation of the declaration[1] concerning Article 10 contained in the *procès-verbal* of the eighth plenary session of the Conference held on October 9, 1907.	
United States.	[Not a signatory Power.]	The act of *adhesion* contains the following reservation : That the United States adheres to the said Convention, subject to the reservation and exclusion of its Article 23 and with the understanding that the last clause of Article 3 thereof implies the duty of a neutral Power to make the

[1] 'The Ottoman delegation declares that the straits of the Dardanelles and the Bosporus can not in any case be referred to by Article 10. The Imperial Government could undertake no engagement whatever tending to limit its undoubted rights over these straits.' *Actes et documents*, vol. i, p. 285.

Reservations at Signature	At Ratification
	demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction.

FINAL ACT[1]

Switzerland. Under reservation of *vœu* No. 1, which the Swiss Federal Council does not accept.	

[1] The Final Act, being a summary of the proceedings of the Conference, is not a conventional agreement, and accordingly is not ratified.

INDEX OF PERSONS

For lists of the delegates grouped by countries see the final acts, pages 15–21 and 205–14 *ante*.
The principal offices held within the conferences by the various delegates are here noted, even when they have not been given in the body of this volume.

GENERAL INDEX

For the attitude of the several Governments on various questions before the Conference see under both the names of the countries in this index and under the names of their delegates in the preceding index of persons

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