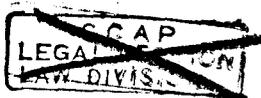
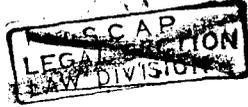


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Publications of the
Carnegie Endowment for International Peace
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Washington

SCAP
LEGAL SECTION
LAW DIVISION

THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES

Translation of the Official Texts

PREPARED IN THE
Division of International Law of the Carnegie
Endowment for International Peace

UNDER THE SUPERVISION OF
JAMES BROWN SCOTT
DIRECTOR

The Conference of 1907

VOLUME I
PLENARY MEETINGS OF THE CONFERENCE

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PREFATORY NOTE

The present translation of the proceedings of the Hague Peace Conferences, the first complete version to appear in the English language, has been prepared in the Division of International Law of the Carnegie Endowment for International Peace. It was undertaken at the special instance and request of the Honorable Robert Lansing, Secretary of State of the United States, who, on behalf of the Department of State, accepted the offer of the Trustees of the Endowment of the use of its offices and the services of its personnel at the outbreak of the war between the United States and Germany. The work of translation, although formidable, was fortunately completed early enough to print a sufficient number of preliminary copies for the use of the American Commission to Negotiate Peace.

The proceedings of the Conference of 1899, as originally published by the Netherland Government, are contained in a single large volume, consisting of four parts devoted respectively to the Conference and the First, Second and Third Commissions, and bearing the title-page: *Conférence internationale de la paix. La Haye, 18 mai-29 juillet 1899. Ministère des affaires étrangères. La Haye, Imprimerie nationale, 1899.* In 1907, the year of the meeting of the Second Conference, a new edition of the proceedings of the First Conference was printed bearing the title-page: *Conférence internationale de la paix. La Haye, 18 mai-29 juillet 1899. Ministère des affaires étrangères. Nouvelle édition, La Haye, Martinus Nijhoff, 1907.* Inasmuch as this latter edition is apparently the only one now generally accessible, it has been used for the present translation. In the French editions each of the four parts is preceded by its table of contents, but for the convenience of American and English readers the tables of contents of the several parts of the translation have been grouped at the beginning of the volume.

The proceedings of the Conference of 1907, as published by the Netherland Government, are contained in three large volumes bearing the title-page: *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.* Although these volumes, in the translation, form the second, third and fourth volumes of the series, no change has been made in their numbers. Volume I is devoted to the plenary meetings of the Conference, Volume II to the meetings of the First Commission, and Volume III to the meetings of the Second, Third and Fourth Commissions.

The numbers in brackets in both the text and footnotes of the translation indicate the folios of the French original. Editor's footnotes are likewise in brackets. The indexes to the original volumes have been greatly enlarged for the convenience of the general reader and students who may have occasion to consult them.

The Peace Conferences held at The Hague were the first truly international assemblies meeting in time of peace for the purpose of preserving peace, not of

concluding a war then in progress. They marked an epoch in the history of international relations. They showed on a large scale that international cooperation was possible, and they created institutions—imperfect it may be, as is the work of human hands,—which, when improved in the light of experience, will both by themselves and by the force of their example promote the administration of justice and the betterment of mankind.

JAMES BROWN SCOTT,

Director of the Division of International Law.

PARIS, FRANCE,

February 28, 1919.

NOTICE

The collection of the records of the Second Peace Conference is divided into three volumes, the first containing the program, the list of delegates, the minutes of the plenary session, the reports presented to the Conference and the Conventions,—the second containing the protocols of the meetings of the First Commission, its subcommissions and its committees, as well as the annexes regarding the projects, proposals and other communications of the delegations concerning the matters before the Commission, and finally synoptical tables prepared for its use during the deliberations,—and the third containing all similar papers relating to the work of the three other Commissions.

At the end of the third volume is an alphabetical index.

The reports relating to the subjects dealt with by the Conference appeared at different times during its session after having undergone each time changes of more or less importance. Indeed these reports reached the plenary meetings only after having passed through the different committees and commissions that dealt with the problem in question. In the *Actes et documents* we have inserted only the copies that differ essentially from one another.

The Second International Peace Conference

The Hague, June 15--October 18, 1907

ACTS AND DOCUMENTS

VOLUME I

PLENARY MEETINGS OF THE CONFERENCE

Ministry for Foreign Affairs

THE HAGUE
NATIONAL PRINTING OFFICE
1907

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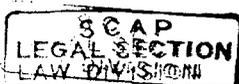
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PROGRAM PROPOSED BY THE IMPERIAL GOVERNMENT OF RUSSIA TO THE GOVERNMENTS INVITED TO THE SECOND PEACE CONFERENCE

(EXTRACT FROM THE CIRCULAR OF MARCH/APRIL, 1906)

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, etc. 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, etc.;

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 *force majeure*, 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.

[1]

A LIST OF THE POWERS REPRESENTED AT THE SECOND PEACE CONFERENCE AND THEIR DELEGATES

GERMANY

His Excellency Baron MARSCHALL VON BIEBERSTEIN, Imperial Ambassador at Constantinople, Minister of State, first delegate plenipotentiary;

Mr. KRIEGE, Imperial Envoy on Extraordinary Mission at the present Conference, Privy Councilor 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, Quartermaster General of the General Staff of the Royal Prussian Army, military delegate;

Dr. ZORN, Judicial Privy Councilor, member of the Prussian Upper Chamber professor of the Faculty of Law at the University of Bonn, and Crown Syndic, scientific delegate;

Mr. GÖPPERT, Counselor of Legation and Counselor attached to the Department for Foreign Affairs, assistant delegate;

Mr. RETZMANN, Lieutenant Commander on the Naval General Staff, assistant naval delegate;

Mr. TRAUTMANN, Vice Consul at the Consulate General of the German Empire at St. Petersburg, secretary of the delegation;

Mr. VON ROON, Lieutenant in the First Regiment of Dragoons, Legal Advisor to the General Staff, attaché to the first delegate;

Mr. WALDAMAR VON SCHEVEN, Attaché of Legation, secretary of the delegation;

Mr. VON STÜLPNAGEL, Lieutenant in the Feldjaeger Corps, attaché to the delegation.

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;

[2] 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;

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;

Mr. CHANDLER HALE, ex-First Secretary of the Embassy at Vienna, first secretary of the delegation;

Mr. A. BAILLY-BLANCHARD, Second Secretary of the Embassy at Paris, second secretary of the delegation;

Mr. WILLIAM M. MALLOY, assistant secretary of the delegation.

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;

Mr. RÓMULO S. NAÓN, professor of public law, Deputy, secretary general of the delegation;

Mr. JUAN CARLOS CRUZ, professor of commercial law, secretary of the delegation;

Mr. CARLOS A. BECÚ, Secretary of Legation, assistant professor of international law, secretary of the delegation.

AUSTRIA-HUNGARY

His Excellency Mr. CAJETAN MÉREY VON KAPOS-MÉRE, Privy Councilor 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;

[3] Mr. HEINRICH LAMMASCH, professor at the University of Vienna, Aulic Councilor, member of the Austrian Upper Chamber of the Reichsrath, member of the Permanent Court of Arbitration, scientific delegate;

Rear Admiral ANTON HAUS, 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 Councilor at the Ministry of the Imperial and Royal Household and of Foreign Affairs, delegate;

Mr. JULIUS SZILÁSSY VON SZILÁS UND PILIS, Counselor of Legation, delegate;

Mr. EMIL KONEK DE NORWALL, Naval Lieutenant of the First Class, delegate attached;

Mr. EGON BERGER VON WALDENEGG, Attaché of the Ministry of the Imperial and Royal Household and of Foreign Affairs, secretary of the delegation;

Mr. ALPHONSE TRAXLER, Clerk at the Ministry of the Imperial and Royal Household and of Foreign Affairs, secretary of the chancellery of the delegation.

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;

Mr. G. ALLART, Counselor of Legation at The Hague, secretary of the delegation.

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.

UNITED STATES OF 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;

[4] Mr. ARTHUR DE CARVALHO MOREIRA, First Secretary of Legation, first secretary of the delegation;

Mr. CARLOS LEMGRUBER KROFF, First Secretary of Legation at The Hague, first secretary of the delegation;

Mr. RODRIGO OCTAVIO DE LANGGAARD MENEZES, professor of private international law of the Faculty of Legal and Social Sciences at Rio Janeiro, first secretary of the delegation;

Mr. ABELARDO ROCAS, Secretary of Legation, second secretary of the delegation;

Mr. JOSÉ R. ALVES, Secretary of Legation, second secretary of the delegation;

Mr. A. BAPTISTA PEREIRA, Secretary of Legation, second secretary of the delegation;

Mr. LEOPOLDO DE MAGALHÃES CASTRO, second secretary of the delegation;
Mr. FERNANDO DOBBERT, second secretary of the delegation.

BULGARIA

Major General on the Staff VRBAN VINAROFF, Honorary General, 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;

Mr. M. MILTCHEFF, Chief of the Protocol Division of the Ministry for Foreign Affairs, secretary of the delegation.

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;

Mr. L. ALDUNATE, Chargé d'Affaires of Chile at The Hague, attached to the delegation;

Mr. FELIPE ANINAT, secretary of the delegation.

CHINA

His Excellency Mr. LOU TSENG-TSIANG, Ambassador Extraordinary, delegate plenipotentiary;

His Excellency the Honorable 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, delegate plenipotentiary;

[5] 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;

Mr. SZE CHAO-TSANG, secretary of the delegation;

Mr. CIENG-LOH, secretary of the delegation;

Mr. WANG KUANG-KY, secretary of the delegation;

Mr. H. REMSEN WHITEHOUSE, ex-Secretary of Embassy, secretary of the delegation;

Mr. JOHN FOSTER DULLES, secretary of the delegation.

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;
 Mr. EDUARDO PÉREZ TRIANA, First Secretary of Legation at Paris, secretary of the delegation.

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;
 Mr. ORESTES FERRARA, professor of the Faculty of Law of the University of Havana, first secretary of the delegation;
 Mr. FERNANDO SÁNCHEZ DE FUENTES, professor of the Faculty of Law of the University of Havana, second secretary of the delegation;
 Mr. JOSÉ F. CAMPILLO, Chancellor of the Legation of Cuba at Washington, assistant secretary.

DENMARK

His Excellency Mr. C. BRUN, Envoy Extraordinary and Minister Plenipotentiary at Washington, first delegate plenipotentiary;
 Read Admiral C. F. SCHELLER, second delegate plenipotentiary;
 Mr. A. VEDEL, Chamberlain, Head of Department at the Royal Ministry for Foreign Affairs, third delegate plenipotentiary;
 Mr. H. ZAHLE, Gentleman of the Chamber, secretary of the delegation.

[6]

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;
 Mr. TULIO M. CESTERO, ex-Consul General of the Republic at Hamburg, secretary of the delegation;
 Mr. EMILIO TEJERA, Consul of the Republic at Havre, secretary of the delegation.

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 For-

eign 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;

Mr. P. SPOTTORNO, Embassy Secretary of the Second Class, secretary of the delegation.

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;

Rear Admiral ARAGO, naval delegate;

[7] 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;

Mr. P. DELVINCOURT, Embassy Secretary of the First Class, secretary of the delegation;

Mr. A. RIBOT, Embassy Secretary of the First Class, secretary of the delegation;

Mr. JAROUSSE DE SILLAC, Embassy Secretary of the Second Class, secretary of the delegation;

Baron CLAUZEL, Embassy Secretary of the Third Class, secretary of the delegation;

Mr. HENRI PARISOT, Assistant Director of the Private Secretariat of the Ministry for Foreign Affairs, assistant secretary;

Mr. CAILLIOT, Lieutenant in the 23d Regiment of Dragoons, attaché to the delegation.

GREAT BRITAIN

His Excellency the Right Honorable 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 Honorable 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 Honorable 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, Counselor of Embassy, technical delegate, first secretary to the delegation;

Mr. CECIL HURST, Counselor of Embassy, technical delegate, legal adviser to the delegation.

Lieutenant Colonel the Honorable HENRY YARDE-BULLER, D.S.O., Military Attaché at The Hague, technical delegate;

Commander J. R. SEGRAVE, technical delegate;

Major GEORGE K. COCKERILL, General Staff, technical delegate.

The Honorable CHARLES TUFTON, Second Embassy Secretary, assistant secretary;

Mr. JOSEPH ADDISON, Third Embassy Secretary, assistant secretary.

[8]

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;

Mr. NICOLAS THÉOTOKY, Secretary of the Royal Legation at Vienna, secretary of the delegation;

Mr. A. DIOMÈDE, assistant professor at the University of Athens, attaché to the delegation.

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;

Mr. ERNESTO DE MERCK, secretary of the delegation.

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;

Mr. AUGUSTE JEAN JOSEPH, Secretary of the Legation at Paris, secretary of the delegation;

Mr. ABEL LÉGER, Attaché at the Legation at Paris, secretary of the delegation.

ITALY

His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI VERGANO, Senator of the Kingdom, Ambassador of His Majesty the King at Paris, member of the Permanent Court of Arbitration, president of the Italian delegation, delegate plenipotentiary;

His Excellency Mr. GUIDO POMPILJ, Councilor of State, Parliamentary Deputy, Assistant Secretary of State at the Royal Ministry for Foreign Affairs, delegate plenipotentiary;

Mr. GUIDO FUSINATO, Councilor 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;

Mr. ARTHUR RICCI-BUSATTI, Counselor of Legation, secretary of the delegation;

Mr. CHARLES GARBASSO, First Secretary of the Royal Embassy at Paris, secretary of the delegation;

[9] Mr. LUC ORSINI-BARONI, Legation Secretary of the First Class, Secretary of His Excellency the Assistant Secretary of State for Foreign Affairs, secretary of the delegation;

Mr. VITTORIO CERRUTI, Secretary of the Royal Legation at The Hague, assistant secretary of the delegation;

Mr. EMILE BONGIOVANNI, attaché to the delegation.

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;

Mr. TETSUKICHI KURACHI, Councilor to the Imperial Ministry for Foreign Affairs, secretary of the delegation;

Commander KEIZABURO MORIYAMA, Naval Attaché to the Imperial Embassy at Paris, secretary of the delegation;

Mr. SHICHTA TATSUKÉ, First Secretary of the Imperial Embassy at Paris, secretary of the delegation;

Mr. YASOZO YOSHIMURA, Councilor of the Imperial War Ministry, secretary of the delegation;

Mr. TADAO YAMAKAWA, Councilor of the Imperial Naval Ministry, secretary of the delegation;

Major TSUYOSHI TAKATSUKA, secretary of the delegation;

Mr. F. OTORI, Second Secretary of the Imperial Legation at The Hague, secretary of the delegation;

Mr. HARUZAKU NAGAOKA, Third Secretary of the Imperial Legation at The Hague, secretary of the delegation.

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.

UNITED STATES OF 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;

[10] His Excellency Mr. FRANCISCO L. DE LA BARRA, Envoy Extraordinary and Minister Plenipotentiary at Brussels and at The Hague, third delegate plenipotentiary;

Mr. L. S. CARMONA, Second Secretary of Legation, secretary of the delegation.

MONTENEGRO

His Excellency Mr. NELIDOW, Privy Councilor, Russian Ambassador at Paris, delegate plenipotentiary;

His Excellency Mr. MARTENS, Privy Councilor, permanent member of the Council of the Imperial Russian Ministry for Foreign Affairs, delegate plenipotentiary;

His Excellency Mr. TCHARYKOW, Councilor 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;

Mr. ALEXANDRE COUSIN, secretary of the delegation.

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 Storting, technical delegate;
 Mr. EIVIND BLEHR, Secretary of Legation, secretary of the delegation.

PANAMA

Mr. BELISARIO PORRAS, delegate plenipotentiary.
 Mr. ELLERY CORY STOWELL, secretary of the delegation.

PARAGUAY

His Excellency Mr. EUSEBIO MACHAIN, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

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;

[11] 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, 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;

Mr. A. OPPENHEIM, Consul General of Persia, secretary of the delegation;
MIRZA MAHMOUD KHAN, Third Secretary of the Legation at The Hague, secretary of the delegation;

EMIR KHAN DE BÉHARLOU, Attaché to the Legation at Paris, attaché to the delegation;

ABBAS GOULI KHAN, attaché to the delegation.

PORTUGAL

His Excellency the MARQUIS DE SOVERAL, Council 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;

[12] Mr. GUILHERME IVENS FERRAZ, Lieutenant Commander in the Navy, technical delegate.

Mr. F. QUINTELLA DE SAMPAYO, First Secretary of the Legation at Paris, secretary of the delegation;

Mr. CARLOS RANGEL DE SAMPAIO, secretary of the legation of Portugal at The Hague, second secretary of the delegation;

Mr. LUIZ HENRIQUEZ DE LANCASTRE, attaché to the delegation.

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;

Mr. MICHEL BOERESCO, Second Secretary of Legation at Berlin, secretary of the delegation.

RUSSIA

His Excellency Mr. NELIDOW, Privy Councilor, Russian Ambassador at Paris, delegate plenipotentiary;

His Excellency Mr. MARTENS, Privy Councilor, 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, Councilor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary;

His Excellency Mr. PROZOR, Councilor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at Rio de Janeiro, Buenos Aires and Montevideo, 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;

Baron NOLDE, College Councilor, professor extraordinary of international law at the Polytechnic Institute at St. Petersburg, Director of the First Department of the Imperial Ministry for Foreign Affairs, secretary of the delegation;

Mr. MANDELSTAM, Aulic Councilor, Second Dragoman of the Embassy at Constantinople, secretary of the delegation;

Mr. BASILY, College Assessor, Gentleman of the Chamber, Third Secretary of the Chancellery of the Imperial Ministry for Foreign Affairs, secretary of the delegation;

Honorary Councilor MOURAVIEFF, Attaché at the Embassy at Paris, secretary of the delegation;

[13] Count SCHOUVALOW, Gentleman of the Chamber, Honorary Councilor, Attaché in the First Department of the Imperial Ministry for Foreign Affairs, secretary of the delegation;

Captain DIMITRI WONLARLARSKY, Attaché to the General Staff, secretary of the delegation.

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;

Mr. R. M. MERINO, secretary of the delegation.

SERBIA

His Excellency General SAVA GROUITCH, 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;

Mr. BRANISLAV J. SOUBOTITCH, Secretary of the Legation at Rome, secretary of the delegation.

SIAM

Major General MOM CHATIDEJ UDOM, delegate plenipotentiary;

Mr. CORRAGONI D'ORELLI, Counselor of Legation at Paris, delegate plenipotentiary;

Captain LUANG BHÜVANARTH NARÜBAL, delegate plenipotentiary.

SWEDEN

His Excellency Mr. KNUT HJALMAR LEONARD DE HAMMARSKJÖLD, Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, ex-Minister of Jus-

tice, 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;

Baron C. G. BONDE, First Secretary of the Ministry for Foreign Affairs, secretary of the delegation.

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SWITZERLAND

His Excellency Mr. GASTON CARLIN, Envoy Extraordinary and Minister Plenipotentiary at London and The Hague, delegate plenipotentiary;

Colonel 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;

Mr. G. DU PASQUIER, ex-Secretary of Legation, secretary of the delegation.

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 MEHEMED SAÏD BEY, assistant delegate;

MAZHAR BEY, Head of the Bureau of the Ministry for Foreign Affairs, first secretary of the delegation;

NABI BEY, Counselor of the Embassy at Paris, secretary of the delegation;

BASRY BEY, Assistant Head of the Bureau of the Ministry for Foreign Affairs, secretary of the delegation;

NIHAD BEY, Assistant to the Head of the Cabinet of the Ministry for Foreign Affairs, secretary of the delegation.

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;

Mr. SAMUEL BLIXEN, ex-professor at the University, Secretary of the Chamber of Deputies, secretary of the delegation;

Mr. PEDRO MANINI RIOS, Deputy, secretary of the delegation.

UNITED STATES OF VENEZUELA

Mr. JOSÉ GIL FORTOUL, Chargé d'Affaires at Berlin, delegate plenipotentiary;
Mr. LAUREANO VALLENILLA LANZ, secretary of the delegation.

BUREAU OF THE CONFERENCE

Honorary President

His Excellency Jonkheer D. A. W. VAN TETS VAN GOUDRIAAN, Minister for Foreign Affairs of Her Majesty the Queen of the Netherlands.

President

His Excellency Mr. NELIDOW, first delegate of Russia.

Vice President

Mr. W. H. DE BEAUFORT, first delegate of the Netherlands.

SECRETARIAT

Secretary General

Mr. W. DOUDE VAN TROOSTWIJK, Resident Minister of Her Majesty the Queen of the Netherlands.

Secretary General in Charge of Drafting

His Excellency Mr. PROZOR, Councilor of State, technical delegate of Russia.

Secretaries

Mr. P. DELVIN COURT, Secretary of Embassy of the First Class of France;
Mr. J. H. VAN ROYEN, Counselor of Legation of the Netherlands;
Jonkheer C. VAN VREDENBURCH, Counselor of Legation of the Netherlands;
Mr. A. BAILLY-BLANCHARD, Second Secretary of Embassy of the United States of America;
Mr. A. RIBOT, Secretary of Embassy of the First Class of France;
Count DE LICHTERVELDE, Secretary of Legation of the First Class of Belgium;
Mr. E. MARGARITescu-GRECIANU, Secretary of Legation of the First Class of Roumania;
Mr. CHARLES GARBASSO, Secretary of Embassy of the First Class of Italy;
Mr. C. CROMMELIN, Secretary of Legation of the First Class of the Netherlands;
Mr. JAROUSSE DE SILLAC, Secretary of Embassy of the Second Class of France;
Mr. R. SPOTTORNO, Secretary of Embassy of the First Class of Spain;
Baron NOLDE, secretary of the delegation of Russia;

- Mr. MANDELSTAM, Second Dragoman of the Embassy of Russia;
Mr. LORIS-MÉLIKOFF, Second Secretary of the Legation of Russia;
Baron CLAUZEL, Secretary of Embassy of the Third Class of France;
[16] Mr. H. NAGAOKA, Third Secretary of the Legation of Japan;
Mr. WALFORD H. M. SELBY, Third Secretary of Legation of Great Britain;
Mr. N. THÉOTOKY, Secretary of Legation of the Second Class of Greece;
Mr. G. J. W. PUTNAM-CRAMER, Lieutenant in the Netherland Royal Navy;
Baron G. GUILLAUME, Secretary of Legation of the Second Class of Belgium;
Mr. W. VON SCHEVEN, Attaché of Legation of Germany;

Assistant Secretaries

- Mr. F. DONKER CURTIUS;
Jonkheer C. DE JONGE;
Mr. ELLERY CORY STOWELL, Secretary of the delegation of Panama;
Jonkheer O. VAN SWINDEREN;
Mr. CHENG-LOH, Secretary of the delegation of China;
Jonkheer G. C. W. VAN TETS.

BUREAUS AND MEMBERS OF THE COMMISSIONS AND SUBCOMMISSIONS

FIRST COMMISSION

Improvements to be made in the provisions of the Convention relative to the
 pacific settlement of international disputes.

International commissions of inquiry and questions relating thereto.

Questions relative to maritime prizes.

Honorary Presidents: His Excellency Mr. CAJETAN MÉREY VON KAPOS-MÉRE.
 His Excellency Mr. RUY BARBOSA.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.

President: His Excellency Mr. LÉON BOURGEOIS.

Vice Presidents: Mr. KRIEGE.
 His Excellency Mr. CLÉON RIZO RANGABÉ.
 His Excellency Mr. GUIDO POMPILJ.
 His Excellency Mr. GONZALO A. ESTEVA.

FIRST SUBCOMMISSION

Improvements to be made in the provisions of the Convention relative to the
 pacific settlement of international disputes.

International commissions of inquiry and questions relating thereto.

President: His Excellency Mr. LÉON BOURGEOIS.
Assistant President: Mr. GUIDO FUSINATO.
Secretary: Baron d'ESTOURNELLES DE CONSTANT.
Reporter: His Excellency BARON GUILLAUME.
Members: Mr. KRIEGE.
 Dr. ZORN.
 His Excellency Mr. JOSEPH H. CHOATE.

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His Excellency Mr. HORACE PORTER.
 His Excellency Mr. URIAH M. ROSE.
 His Excellency Mr. DAVID JAYNE HILL.
 Mr. WILLIAM I. BUCHANAN.
 Mr. JAMES BROWN SCOTT.
 Mr. CHARLES HENRY BUTLER.
 His Excellency Mr. ROQUE SÁENZ PEÑA.
 His Excellency Mr. LUIS M. DRAGO.
 His Excellency Mr. CARLOS RODRÍGUEZ LARRETA.
 Captain JUAN A. MARTÍN.
 His Excellency Baron CARL VON MACCHIO.

Mr. HEINRICH LAMMASCH.
 Chevalier OTTO VON WEIL.
 His Excellency Mr. J. VAN DEN HEUVEL.
 His Excellency Mr. FERNANDO E. GUACHALLA.
 His Excellency Mr. RUY BARBOSA.
 His Excellency Mr. EDUARDO F. S. DOS SANTOS LISBÔA.
 Major General VRBAN VINAROFF.
 Mr. IVAN KARANDJOULOFF.
 His Excellency Mr. DOMINGO GANA.
 His Excellency Mr. AUGUSTO MATTE.
 His Excellency Mr. CÁRLOS CONCHA.
 His Excellency Mr. LOU TSENG-TSIANG.
 His Excellency the Honorable JOHN W. FOSTER.
 His Excellency Mr. TSIEN SUN.
 General JORGE HOLGUÍN.
 Mr. SANTIAGO PÉREZ TRIANA.
 Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE.
 His Excellency Mr. GONZALO DE QUESADO Y ARÓSTEGUI.
 Mr. MANUEL SANGUILY.
 His Excellency Mr. C. BRUN.
 Mr. FRANCISCO HENRIQUEZ I CARVAJAL.
 Mr. APOLINAR TEJERA.
 His Excellency Mr. VICTOR RENDÓN.
 Mr. ENRIQUE DORN Y DE ALSÚA.
 His Excellency Mr. DE VILLA URRUTIA.
 Mr. GABRIEL MAURA Y GAMAZO, COUNT DE LA MORTERA.
 Mr. LOUIS RENAULT.
 Mr. FROMAGEOT.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.
 His Excellency Sir HENRY HOWARD, K.C.M.G., C.B.
 Mr. EYRE CROWE.
 Mr. CECIL HURST.
 His Excellency Mr. CLÉON RIZO RANGABÉ.
 Mr. GEORGIOS STREIT.
 Colonel of Artillery C. SAPOUNTZAKIS.
 Mr. JOSÉ TIBLE MACHADO.
 His Excellency Mr. JEAN JOSEPH DALBÉMAR.
 His Excellency Mr. JACQUES LÉGER.
 Mr. PIERRE HUDICOURT.
 His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI
 VERGANO.
 His Excellency Mr. GUIDO POMPILJ.
 His Excellency Mr. KEIROKU TSUDZUKI.
 Mr. HENRY WILLARD DENISON.
 His Excellency Mr. EYSCHEN.
 Count DE VILLIERS.
 His Excellency Mr. GONZALO A. ESTEVA.
 His Excellency Mr. FRANCISCO L. DE LA BARRA.
 His Excellency Mr. CRISANTO MEDINA.

PLENARY CONFERENCE

His Excellency Mr. FRANCIS HAGERUP.
 Mr. CHRISTIAN LOUS LANGE.
 Mr. BELISARIO PORRAS.
 His Excellency Mr. EUSEBIO MACHAIN.
 His Excellency Mr. T. M. C. ASSER.
 Mr. J. A. LOEFF.
 Jonkheer W. J. M. VAN EYSINGA.
 His Excellency Mr. CARLOS G. CANDAMO.
 Mr. GUSTAVO DE LA FUENTE.
 His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
 His Excellency MIRZA AHMED KHAN SADIG UL MULK.
 His Excellency the MARQUIS DE SOVERAL.
 His Excellency Count DE SELIR.
 His Excellency Mr. ALBERTO D'OLIVEIRA.
 His Excellency Mr. ALEXANDRE BELDIMAN.
 His Excellency Mr. EDGARD MAVROCORDATO.
 Captain ALEXANDRE STURDZA.
 His Excellency Mr. MARTENS.
 His Excellency Mr. TCHARYKOW.
 His Excellency Mr. PROZOR.
 Mr. PEDRO J. MATHEU.
 Mr. SANTIAGO PÉREZ TRIANA.
 His Excellency Mr. MILOVAN MILOVANOVITCH.
 His Excellency Mr. MICHEL MILITCHEVITCH.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGIONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 His Excellency Mr. KNUT HJALMAR LEONARD DE HAM-
 MARSKJÖLD.
 Mr. JOHANNES HELLNER.
 His Excellency Mr. GASTON CARLIN.
 Mr. MAX HUBER.
 His Excellency TURKHAN PASHA.
 His Excellency RÉCHID BEY.
 RAIF BEY.
 Mr. JOSÉ BATLLE Y ORDOÑEZ.
 His Excellency Mr. JUAN P. CASTRO.
 Mr. JOSÉ GIL FORTOUL.

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 SECOND SUBCOMMISSION

Questions relative to maritime prizes.

President: His Excellency Mr. LÉON BOURGEOIS.
Assistant President: Mr. HEINRICH LAMMASCH.
Secretary: Mr. GABRIEL MAURA Y GAMAZO, COUNT DE LA MORTERA.
Reporter: Mr. LOUIS RENAULT.
Members: Mr. KRIEGE.

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Rear Admiral SIEGEL.
 Dr. ZORN.
 His Excellency Mr. JOSEPH H. CHOATE.
 His Excellency Mr. HORACE PORTER.
 His Excellency Mr. URIAH M. ROSE.
 His Excellency Mr. DAVID JAYNE HILL.
 Mr. WILLIAM I. BUCHANAN.
 Mr. JAMES BROWN SCOTT.
 Mr. CHARLES HENRY BUTLER.
 His Excellency Mr. ROQUE SÁENZ PEÑA.
 His Excellency Mr. LUIS M. DRAGO.
 His Excellency Mr. CARLOS RODRÍGUEZ LARRETA.
 Captain JUAN A. MARTÍN.
 Chevalier OTTO VON WEIL.
 His Excellency BARON GUILLAUME.
 His Excellency Mr. CLAUDIO PINILLA.
 His Excellency Mr. RUY BARBOSA.
 His Excellency Mr. EDUARDO F. S. DOS SANTOS LISBÔA.
 Major General VRBAN VINAROFF.
 Mr. IVAN KARANDJOULOFF.
 His Excellency Mr. DOMINGO GANA.
 His Excellency Mr. AUGUSTO MATTE.
 His Excellency the Honorable JOHN W. FOSTER.
 His Excellency Mr. CARLOS CONCHA.
 His Excellency Mr. TSIEN SUN.
 Colonel W. S. Y. TING.
 General JORGE HOLGUÍN.
 Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE.
 His Excellency Mr. GONZALO DE QUESADA Y ARÓSTEGUI.
 Mr. MANUEL SANGUILY.
 Mr. FRANCISCO HENRIQUEZ I CARVAJAL.
 Mr. APOLINAR TEJERA.
 His Excellency Mr. DE VILLA URRUTIA.
 Baron d'ESTOURNELLES DE CONSTANT.
 Mr. LOUIS RENAULT.
 Rear Admiral ARAGO.
 Mr. FROMAGEOT.
 Captain LACAZE.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.
 His Excellency Sir HENRY HOWARD, K.C.M.G., C. B.
 Captain C. L. OTTLEY, M.V.O., R.N.A.D.C.
 Mr. EYRE CROWE.
 Mr. CECIL HURST.
 His Excellency Mr. CLÉON RIZO RANGABÉ.
 Mr. GEORGIOS STREIT.
 Colonel of Artillery C. SAPOUNTZAKIS.
 Mr. PIERRE HUDICOURT.
 His Excellency Count GIUSEPPI TORNIELLI BRUSATI DI
 VERGANO.

His Excellency Mr. GUIDO POMPILJ.
 Mr. GUIDO FUSINATO.
 His Excellency Mr. KEIROKU TSUDZUKI.
 Mr. HENRY WILLARD DENISON.
 His Excellency Mr. EYSCHEN.
 Count DE VILLERS.
 His Excellency Mr. GONZALO A. ESTEVA.
 His Excellency Mr. SEBASTIÁN B. DE MIER.
 His Excellency Mr. FRANCIS HAGERUP.
 Mr. JOACHIM GRIEG.
 Mr. BELISARIO PORRAS.
 His Excellency Mr. T. M. C. ASSER.
 His Excellency Jonkheer J. C. C. DEN BEER POORTUGAEL.
 Mr. J. A. LOEFF.
 Jonkheer H. A. VAN KARNEBEEK.
 His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
 His Excellency MIRZA AHMED KHAN SADIG UL MULK.
 His Excellency the MARQUIS DE SOVERAL.
 His Excellency Count DE SELIR.
 His Excellency Mr. ALBERTO D'OLIVEIRA.
 His Excellency Mr. ALEXANDRE BELDIMAN.
 His Excellency Mr. EDGAR MAVROCORDATO.
 His Excellency Mr. MARTENS.
 His Excellency Mr. TCHARYKOW.
 His Excellency Mr. PROZOR.
 Colonel OVTCHINNIKOW of the Admiralty.
 Mr. PEDRO J. MATHEU.
 Mr. SANTIAGO PÉREZ TRIANA.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 Mr. JOHANNES HELLNER.
 Commander GUSTAF AF KLINT.
 His Excellency Mr. GASTON CARLIN.
 Colonel EUGÈNE BOREL.
 His Excellency TURKHAN PASHA.
 His Excellency RÉCHID BEY.
 RAIF BEY.
 Mr. JOSÉ BATLLE Y ORDOÑEZ.
 His Excellency Mr. JUAN P. CASTRO.

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 SECOND COMMISSION

Improvements to be made to the Convention of 1899 respecting the laws and
 customs of war on land.
 Declarations of 1899.
 The rights and duties of neutrals on land.
 Opening of hostilities.

<i>Honorary Presidents:</i>	His Excellency Baron MARSCHALL VON BIEBERSTEIN. His Excellency Mr. HORACE PORTER. His Excellency the MARQUIS DE SOVERAL.
<i>President:</i>	His Excellency Mr. A. BEERNAERT.
<i>Assistant President:</i>	His Excellency Mr. T. M. C. ASSER.
<i>Vice Presidents:</i>	His Excellency Mr. C. BRUN. His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH. His Excellency Mr. ALEXANDRE BELDIMAN. His Excellency Mr. GASTON CARLIN.

FIRST SUBCOMMISSION

Improvements to be made to the Convention of 1899 respecting the laws and customs of war on land.

Declarations of 1899.

<i>President:</i>	His Excellency Mr. A. BEERNAERT.
<i>Reporter:</i>	Major General Baron WLADIMIR GIESL VON GIESLINGEN.
<i>Members:</i>	Major General VON GÜNDELL. Mr. GÖPPERT. His Excellency Mr. JOSEPH H. CHOATE. His Excellency Mr. HORACE PORTER. Brigadier General GEORGE B. DAVIS. Rear Admiral CHARLES S. SPERRY. Mr. WILLIAM I. BUCHANAN. Mr. JAMES BROWN SCOTT. Mr. CHARLES HENRY BUTLER. General FRANCISCO REYNOLDS.
[24]	His Excellency Mr. CAJETAN MÉREY VON KAPOŠ-MÉRE. Major General Baron WLADIMIR GIESL VON GIESLINGEN. Mr. JULIUS SZILÁSSY VON SZILÁS UND PILIS. His Excellency Mr. J. VAN DEN HEUVEL. His Excellency Baron GUILLAUME. Colonel ROBERTO TROMPOWSKY LEITÃO D'ALMEIDA. Major General VRBAN VINAROFF. His Excellency Mr. DOMINGO GANA. His Excellency Mr. CÁRLOS CONCHA. His Excellency Mr. LOU TSENG-TSIANG. Colonel W. S. Y. TING. Mr. CHANG CHING-TONG. Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE. His Excellency Mr. GONZALO DE QUESADA Y ARÓSTEGUI. Mr. MANUEL SANGUILY. His Excellency Mr. C. BRUN. Rear Admiral C. F. SCHELLER. Mr. J. JOFRE MONTOJO, Colonel on the Staff.

Captain FRANCISCO CHACÓN.
 His Excellency Mr. MARCELLIN PELLET.
 General of Division AMOUREL.
 Lieutenant Colonel SIBEN.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.
 His Excellency the Right Honorable Lord REAY, G.C.S.I.,
 G.C.I.E.
 Lieutenant General Sir EDMOND R. ELLES, G.C.I.E., K.C.B.
 Mr. EYRE CROWE.
 Major GEORGE K. COCKERILL.
 Mr. GEORGIOS STREIT.
 Colonel of Artillery C. SAPOUNTZAKIS.
 Mr. JOSÉ TIBLE MACHADO.
 Mr. GUIDO FUSINATO.
 Brigadier General MARIUS NICOLIS DE ROBILANT.
 Captain FRANÇOIS CASTIGLIA.
 His Excellency Mr. KEIROKU TSUDZUKI.
 His Excellency Mr. AIMARO SATO.
 Mr. HENRY WILLARD DENISON.
 Major General YOSHIFURU AKIYAMA.
 His Excellency Mr. EYSCHIEN.
 His Excellency Mr. FRANCIS HAGERUP.
 His Excellency Jonkheer J. C. C. DEN BEER POORTUGAEL.
 Lieutenant Colonel H. L. VAN OORDT.
 Mr. GUSTAVO DE LA FUENTE.
 His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
 His Excellency MIRZA AHMED KHAN SADIG UL MULK.
 His Excellency the MARQUIS DE SOVERAL.
 His Excellency COUNT DE SELIR.
 Lieutenant Colonel on the Staff TOMAZ ANTONIO GARCIA
 ROSADO.
 His Excellency Mr. ALEXANDRE BELDIMAN.
 His Excellency Mr. EDGARD MAVROCORDATO.
 Captain ALEXANDRE STURDZA.
 His Excellency Mr. MARTENS.
 His Excellency Mr. TCHARYKOW.
 Major General YERMOLOW.
 Colonel MICHELSON.
 Mr. SANTIAGO PÉREZ TRIANA.
 His Excellency GENERAL SAVA GROUÏTCH.
 His Excellency Mr. MILOVAN MILOVANOVITCH.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGIONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 Colonel DAVID HEDENGREN.
 Commander GUSTAF AF KLINT.
 His Excellency Mr. GASTON CARLIN.
 Colonel EUGÈNE BOREL.

Mr. MAX HUBER.
 His Excellency RÉCHID BEY.
 Staff Colonel MEHEMMED SAÏD BEY.
 Mr. JOSÉ BATLLE Y ORDOÑEZ.
 His Excellency Mr. JUAN P. CASTRO.

SECOND SUBCOMMISSION

Rights and duties of neutrals on land.
 Opening of hostilities.

President: His Excellency Mr. T. M. C. ASSER.
Secretary and Reporter:
Members: Colonel EUGÈNE BOREL.
 Major General VON GÜNDELL.
 Mr. GÖPPERT.
 His Excellency Mr. JOSEPH H. CHOATE.
 His Excellency Mr. HORACE PORTER.
 Brigadier General GEORGE B. DAVIS.
 Rear Admiral CHARLES S. SPERRY.
 Mr. WILLIAM I. BUCHANAN.
 Mr. JAMES BROWN SCOTT.
 Mr. CHARLES HENRY BUTLER.
 General FRANCISCO REYNOLDS.
 His Excellency BARON CARL VON MACCHIO.
 Major General Baron WLADIMIR GIESL VON GIESLINGEN.
 Mr. JULIUS SZILÁSSY VON SZILÁS UND PILIS.
 His Excellency Mr. A. BEERNAERT.
 His Excellency Mr. J. VAN DEN HEUVEL.
 His Excellency Baron GUILLAUME.
 Colonel ROBERTO TROMPOWSKY LEITÃO D'ALMEIDA.
 Major General VRBAN VINAROFF.
 His Excellency Mr. DOMINGO GANA.
 His Excellency Mr. CÁRLOS CONCHA.
 His Excellency Mr. LOU TSENG-TSIANG.
 Colonel W. S. Y. TING.
 Mr. CHANG CHING-TONG.
 Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE.
 His Excellency Mr. GONZALO DE QUESADA Y ARÓSTEGUI.
 Mr. MANUEL SANGUILY.
 His Excellency Mr. C. BRUN.
 Rear Admiral C. F. SCHELLER.
 Mr. ENRIQUE DORN Y DE ALSÚA.
 Mr. J. JOFRE MONTOJO, Colonel on the Staff.
 Captain FRANCISCO CHACÓN.
 Mr. LOUIS RENAULT.
 His Excellency Mr. MARCELLIN PELLET.
 General of Division AMOUREL.

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PLENARY CONFERENCE

Commander LACAZE.
 Lieutenant Colonel SIBEN.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.
 His Excellency the Right Honorable Lord REAY, G.C.S.I.,
 G.C.I.E.
 Lieutenant General Sir EDMOND R. ELLES, G.C.I.E., K.C.B.
 Mr. EYRE CROWE.
 Major GEORGE K. COCKERILL.
 Mr. GEORGIOS STREIT.
 Colonel of Artillery C. SAPOUNTZAKIS.
 Mr. JOSÉ TIBLE MACHADO.
 Mr. GUIDO FUSINATO.
 Brigadier General MARIUS NICOLIS DE ROBILANT.
 Chevalier FRANÇOIS CASTIGLIA.
 His Excellency Mr. KEIROKU TSUDZUKI.
 His Excellency Mr. AIMARO SATO.
 Mr. HENRY WILLARD DENISON.
 Major General YOSHIFURU AKIYAMA.
 Count DE VILLERS.
 His Excellency Mr. FRANCIS HAGERUP.
 Mr. BELISARIO PORRAS.
 His Excellency Jonkheer J. C. C. DEN BEER POORTUGAEL.
 Lieutenant Colonel H. L. VAN OORDT.
 Mr. GUSTAVO DE LA FUENTE.
 His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
 His Excellency MIRZA AHMED KHAN SADIG UL MULK.
 His Excellency the MARQUIS DE SOVERAL.
 His Excellency Count DE SELIR.
 Lieutenant Colonel on the Staff TOMAZ ANTONIO GARCIA
 ROSADO.
 His Excellency Mr. ALEXANDRE BELDIMAN.
 His Excellency Mr. EDGARD MAVROCORDATO.
 Captain ALEXANDRE STURDZA.
 His Excellency Mr. MARTENS.
 His Excellency Mr. TCHARYKOW.
 Major General YERMOLOW.
 Colonel MICHELSON.
 Mr. PEDRO J. MATHEU.
 His Excellency General SAVA GROUÏTCH.
 His Excellency Mr. MILOVAN MILOVANOVITCH.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 His Excellency Mr. KNUT HJALMAR LEONARD DE HAM-
 MARSKJÖLD.
 Colonel DAVID HEDENGREN.
 His Excellency Mr. GASTON CARLIN.
 Colonel EUGÈNE BOREL.
 Mr. MAX HUBER.

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His Excellency RÉCHID BEY.
Mr. MEHEMMED SAÏD BEY, Colonel on the Staff.

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THIRD COMMISSION

Bombardment of ports, towns and villages by a naval force.
Laying of torpedoes, etc.
Regulations to which are submitted the ships of belligerents in neutral ports.
Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864, revised in 1906.

Honorary Presidents: His Excellency Mr. JOSEPH H. CHOATE.
His Excellency Mr. LOU TSENG-TSIANG.
His Excellency TURKHAN PASHA.
His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI VERGANO.

Vice Presidents: His Excellency Mr. LUIS M. DRAGO.
His Excellency Mr. DOMINGO GANA.
Baron d'ESTOURNELLES DE CONSTANT.
His Excellency Mr. KNUT HJALMAR LEONARD DE HAMMARSKJÖLD.

FIRST SUBCOMMISSION

Bombardment of ports, towns and villages by naval force.
Laying of torpedoes, etc.

President: His Excellency Mr. FRANCIS HAGERUP.
Secretary: His Excellency Mr. VAN DEN HEUVEL.
Reporter: Mr. GEORGIOS STREIT.
Members: Rear Admiral SIEGEL.
Mr. GÖPPERT.
Mr. RETZMANN.
His Excellency Mr. JOSEPH H. CHOATE.
His Excellency Mr. HORACE PORTER.
Brigadier General GEORGE B. DAVIS.
Rear Admiral CHARLES S. SPERRY.
Mr. WILLIAM I. BUCHANAN.
Mr. JAMES BROWN SCOTT.
Mr. CHARLES HENRY BUTLER.
Captain JUAN A. MARTÍN.
Rear Admiral ANTON HAUS.
Chevalier OTTO VON WEIL.

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PLENARY CONFERENCE

Mr. EMIL KONEK DE NORWALL, Naval Lieutenant of the First Class.

His Excellency Mr. A. BEERNAERT.

His Excellency BARON GUILLAUME.

Commander TANCREDO BURLAMAQUI DE MOURA.

Commander S. DIMITRIEFF.

His Excellency Mr. AUGUSTO MATTE.

His Excellency Mr. CARLOS CONCHA.

His Excellency Mr. LOU TSENG-TSIANG.

Colonel W. S. Y. TING.

Mr. CHANG CHING-TONG.

Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE.

His Excellency Mr. GONZALO DE QUESADA Y ARÓSTEGUI.

Mr. MANUEL SANGUILY.

Rear Admiral C. F. SCHELLER.

Mr. FRANCISCO HENRIQUEZ I CARVAJAL.

Mr. APOLINAR TEJERA.

Mr. J. JOFRE MONTOJO, Colonel on the Staff.

Captain FRANCISCO CHACÓN.

General of Division AMOUREL.

Rear Admiral ARAGO.

Captain LACAZE.

His Excellency the Right Honorable Sir EDWARD FRY, G.C.B.

His Excellency the Right Honorable Sir ERNEST SATOW, G.C.M.G.

Captain C. L. OTTLEY, M.V.O., R.N.A.D.C.

Mr. EYRE CROWE.

Mr. CECIL HURST.

Commander J. R. SEGRAVE, R.N.

Colonel of Artillery C. SAPOUNTZAKIS.

His Excellency Mr. JACQUES LÉGER.

Mr. PIERRE HUDICOURT.

Mr. GUIDO FUSINATO.

Brigadier General MARIUS NICOLIS DE ROBILANT.

Captain FRANÇOIS CASTIGLIA.

His Excellency Mr. KEIROKU TSUDZUKI.

His Excellency Mr. AIMARO SATO.

Mr. HENRY WILLARD DENISON.

Rear Admiral HAYAO SHIMAMURA.

His Excellency Mr. GONZALO A. ESTEVA.

Mr. BELISARIO PORRAS.

Jonkheer J. C. C. DEN BEER POORTUGAEL.

Jonkheer J. A. RÖELL.

[30]

Mr. H. G. SURIE, Naval Lieutenant of the First Class.

Lieutenant Colonel TOMAZ ANTONIO GARCIA ROSADO, General Staff.

Mr. IVENS FERRAZ, Lieutenant Commander in the Navy.

His Excellency Mr. EDGARD MAVROCORDATO.

Captain ALEXANDRE STURDZA.

His Excellency Mr. MARTENS.
 His Excellency Mr. TCHARYKOW.
 Major General YERMOLOW.
 Captain BEHR.
 Colonel OVTCHINNIKOW, of the Admiralty.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 Colonel DAVID HEDENGREN.
 Commander GUSTAF AF KLINT.
 Colonel EUGÈNE BOREL.
 His Excellency TURKHAN PASHA.
 His Excellency Vice Admiral MEHEMED PASHA.
 Colonel SEBASTIAN BUQUET.

 SECOND SUBCOMMISSION

Regulations governing belligerent ships in neutral ports.
 Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864, revised in 1906.

President: His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI VERGANO.
Secretary: Rear Admiral SIEGEL.
Reporter: Mr. LOUIS RENAULT.
Members: Mr. KRIEGE.
 Mr. GÖPPERT.
 Mr. RETZMANN.
 His Excellency Mr. JOSEPH H. CHOATE.
 His Excellency Mr. HORACE PORTER.
 Brigadier General GEORGE B. DAVIS.
 Rear Admiral CHARLES S. SPERRY.
 Mr. WILLIAM I. BUCHANAN.
 Mr. JAMES BROWN SCOTT.
 Mr. CHARLES HENRY BUTLER.
 Captain JUAN A. MARTÍN.
 Rear Admiral ANTON HAUS.
 Chevalier OTTO VON WEIL.
 Mr. EMIL KONEK DE NORWALL, Naval Lieutenant of First Class.
 His Excellency Mr. J. VAN DEN HEUVEL.
 His Excellency BARON GUILLAUME.
 Commander TANCREDO BURLAMAQUI DE MOURA.
 Commander S. DIMITRIEFF.
 His Excellency Mr. AUGUSTO MATTE.
 His Excellency Mr. CARLOS CONCHA.
 His Excellency Mr. LOU TSENG-TSIANG.

PLENARY CONFERENCE

His Excellency Mr. TSIEN SUN.
 Colonel W. S. Y. TING.
 Mr. CHAO-HI-CHIOU.
 General JORGE HOLGUÍN.
 Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE.
 His Excellency Mr. GONZALO DE QUESADA Y ARÓSTEGUI.
 Mr. MANUEL SANGUILY.
 Rear Admiral C. F. SCHELLER.
 Mr. A. VEDEL.
 Mr. FRANCISCO HENRIQUEZ I CARVAJAL.
 Mr. APOLINAR TEJERA.
 Mr. ENRIQUE DORN Y DE ALSÚA.
 Mr. JOFRE MONTOJO, Colonel on the Staff.
 Captain FRANCISCO CHACÓN.
 His Excellency Mr. LÉON BOURGEOIS.
 Rear Admiral ARAGO.
 Captain LACAZE.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.
 His Excellency the Right Honorable Sir ERNEST SATOW,
 G.C.M.G.
 Captain C. L. OTTLEY, M.V.O., R.N.A.D.C.
 Mr. EYRE CROWE.
 Mr. CECIL HURST.
 Commander J. R. SEGRAVE, R.N.
 Mr. GEORGIOS STREIT.
 Colonel of Artillery C. SAPOUNTZAKIS.
 Mr. GUIDO FUSINATO.
 Captain FRANÇOIS CASTIGLIA.
 His Excellency Mr. KEIROKU TSUDZUKI.
 His Excellency Mr. AIMARO SATO.
 Mr. HENRY WILLARD DENISON.
 Rear Admiral HAYAO SHIMAMURA.
 His Excellency Mr. SEBASTIÁN B. DE MIER.
 His Excellency Mr. FRANCISCO L. DE LA BARRA.
 His Excellency Mr. FRANCIS HAGERUP.
 Mr. BELISARIO PORRAS
 His Excellency Jonkheer J. C. C. DEN BEER POORTUGAEL.
 His Excellency Jonkheer J. A. RÖELL.
 Jonkheer H. A. VAN KARNEBEEK.
 Mr. H. G. SURIE, Naval Lieutenant of the First Class.
 His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
 His Excellency MIRZA AHMED KHAN SADIG UL MULK.
 His Excellency the Marquis DE SOVERAL.
 His Excellency Mr. ALBERTO D'OLIVEIRA.
 Mr. IVENS FERRAZ, Lieutenant Commander in the Navy.
 Captain ALEXANDRE STURDZA.
 His Excellency Mr. MARTENS.
 His Excellency Mr. TCHARYKOW.
 Major General YERMOLOW.

Captain BEHR.
 Colonel OVTCHINNIKOW, of the Admiralty.
 Mr. PEDRO J. MATHEU.
 Mr. SANTIAGO PÉREZ TRIANA.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 His Excellency Mr. KNUT HJALMAR LEONARD DE HAM-
 MARSKJÖLD.
 Commander GUSTAF AF KLINT.
 Mr. MAX HUBER.
 His Excellency TURKHAN PASHA.
 His Excellency Vice Admiral MEHEMED PASHA.
 Colonel SEBASTIAN BUQUET.

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FOURTH COMMISSION

The conversion of merchant ships into war-ships.
 Private property at sea.
 Days of grace.
 Contraband of war.
 Blockade.
 Destruction of neutral prizes by force majeure.
 Provisions relative to land warfare which would apply equally to naval war-
 fare.

Honorary Presidents: His Excellency Mr. DE VILLA URRUTIA.
 His Excellency Mr. KEIROKU TSUDZUKI.
President: His Excellency Mr. MARTENS.
Vice Presidents: Mr. HEINRICH LAMMASCH.
 His Excellency Sir ERNEST SATOW, G.C.M.G.
 His Excellency Mr. F. HAGERUP.
 His Excellency Mr. MILOVAN MILOVANOVITCH.
Secretary; Reporter: Mr. FROMAGEOT.
Members: His Excellency Baron MARSCHALL VON BIEBERSTEIN.
 Mr. KRIEGE.
 Rear Admiral SIEGEL.
 Major General VON GÜNDELL.
 Dr. ZORN.
 Mr. RETZMANN.
 His Excellency Mr. JOSEPH H. CHOATE.
 His Excellency Mr. HORACE PORTER.
 His Excellency Mr. URIAH M. ROSE.
 His Excellency Mr. DAVID JAYNE HILL.
 Brigadier General GEORGE B. DAVIS.
 Rear Admiral CHARLES S. SPERRY.

PLENARY CONFERENCE

- Mr. WILLIAM I. BUCHANAN.
 Mr. JAMES BROWN SCOTT.
 Mr. CHARLES HENRY BUTLER.
 His Excellency Mr. CARLOS RODRÍGUEZ LARRETA.
 Captain JUAN A. MARTÍN.
 [34] His Excellency Mr. CAJETAN MÉREY VON KAPOS-MÉRE.
 His Excellency Baron CARL VON MACCHIO.
 Rear Admiral ANTON HAUS.
 Mr. EMIL KONEK DE NORWALL, Naval Lieutenant of the
 First Class.
 His Excellency Mr. A. BEERNAERT.
 His Excellency Mr. J. VAN DEN HEUVEL.
 His Excellency Baron GUILLAUME.
 His Excellency Mr. RUY BARBOSA.
 Mr. IVAN KARANDJOULOFF.
 Commander S. DIMITRIEFF.
 His Excellency Mr. DOMINGO GANA.
 His Excellency Mr. AUGUSTO MATTE.
 His Excellency Mr. LOU TSENG-TSIANG.
 His Excellency the Honorable JOHN W. FOSTER.
 Colonel W. S. Y. TING.
 Mr. SANTIAGO PÉREZ TRIANA.
 Mr. ANTONIO SÁNCHEZ DE BUSTAMANTE.
 His Excellency Mr. GONZALO DE QUESADA Y ARÓSTEGUI.
 Mr. MANUEL SANGUILY.
 Mr. A. VEDEL.
 His Excellency Mr. VICTOR RENDÓN.
 His Excellency Mr. JOSÉ DE LA RICA Y CALVO.
 Mr. GABRIEL MAURA Y GAMAZO, COUNT DE LA MORTERA.
 His Excellency Mr. LÉON BOURGEOIS.
 Baron d'ESTOURNELLES DE CONSTANT.
 Mr. LOUIS RENAULT.
 General of Division AMOUREL.
 Rear Admiral ARAGO.
 Mr. FROMAGEOT.
 Captain LACAZE.
 His Excellency the Right Honorable Sir EDWARD FRY,
 G.C.B.
 His Excellency the Right Honorable Sir ERNEST SATOW,
 G.C.M.G.
 His Excellency the Right Honorable Lord REAY, G.C.S.I.,
 G.C.I.E.
 Lieutenant General Sir EDMOND ELLES, G.C.I.E., K.C.B.
 Captain C. L. OTTLEY, M.V.O., R.N. A.D.C.
 Mr. EYRE CROWE.
 Mr. CECIL HURST.
 Lieutenant Colonel the Honorable HENRY YARDE-BULLER,
 D.S.O.
 Commander J. R. SEGRAVE, R.N.
 His Excellency Mr. CLÉON RIZO RANGABÉ.

[35]

Mr. GEORGIOS STREIT.
 Colonel of Artillery C. SAPOUNTZAKIS.
 Mr. JOSÉ TIBLE MACHADO.
 His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI
 VERGANO.
 His Excellency Mr. GUIDO POMPILJ.
 Mr. GUIDO FUSINATO.
 Mr. MARIUS NICOLIS DE ROBILANT
 Chevalier FRANÇOIS CASTIGLIA.
 His Excellency Mr. AIMARO SATO.
 Mr. HENRY WILLARD DENISON.
 Rear Admiral HAYAO SHIMAMURA.
 His Excellency Mr. EYSCHEN.
 His Excellency Mr. GONZALO A. ESTEVA.
 His Excellency Mr. SEBASTIÁN B. DE MIER.
 His Excellency Mr. FRANCISCO L. DE LA BARRA.
 His Excellency Mr. CRISANTO MEDINA.
 Mr. JOACHIM GRIEG.
 Mr. BELIASARIO PORRAS.
 His Excellency Mr. T. M. C. ASSER.
 His Excellency Jonkheer J. C. C. DEN BEER POORTUGAEL.
 His Excellency Jonkheer J. A. RÖELL.
 Jonkheer W. J. M. VAN EYSINGA.
 Jonkheer H. A. VAN KARNEBEEK.
 Lieutenant Colonel H. L. VAN OORDT.
 Mr. H. G. SURIE.
 Mr. GUSTAVO DE LA FUENTE.
 His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
 His Excellency MIRZA AHMED KHAN SADIG UL MULK.
 His Excellency the Marquis DE SOVERAL.
 His Excellency Mr. ALBERTO D'OLIVEIRA.
 Mr. IVENS FERRAZ.
 His Excellency Mr. ALEXANDRE BELDIMAN.
 His Excellency Mr. EDGARD MAVROCORDATO.
 Captain ALEXANDRE STURDZA.
 His Excellency Mr. PROZOR.
 Colonel MICHELSON.
 Captain BEHR.
 Colonel OVTCHINNIKOW, of the Admiralty.
 Mr. PEDRO J. MATHEU.
 Major General MOM CHATIDEJ UDOM.
 Mr. CORRAGIONI D'ORELLI.
 Captain LUANG BHÜVANARTH NARÜBAL.
 His Excellency Mr. KNUT HJALMAR LEONARD DE HAM-
 MARSKJÖLD.
 Mr. JOHANNES HELLNER.
 Mr. GUSTAF AF KLINT.
 His Excellency Mr. GASTON CARLIN.
 Colonel EUGÈNE BOREL.
 Mr. MAX HUBER.

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PLENARY CONFERENCE

His Excellency RÉCHID BEY.
 His Excellency Vice Admiral MEHEMED PASHA.
 RAIF BEY.
 Mr. JOSÉ BATLLE Y ORDOÑEZ.
 His Excellency Mr. JUAN P. CASTRO.

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DRAFTING COMMITTEE

President:

His Excellency Mr. NELIDOW, President of the Conference.

Members:

Mr. W. H. DE BEAUFORT, Vice President of the Conference.

Mr. KRIEGE.

Rear Admiral SIEGEL.

His Excellency Mr. DAVID JAYNE HILL.

Mr. JAMES BROWN SCOTT.

His Excellency Mr. ROQUE SÁENZ PEÑA.

His Excellency Baron CARL VON MACCHIO.

Mr. HEINRICH LAMMASCH.

Major General Baron WLADIMIR GIESL VON GIESLINGEN.

His Excellency Mr. A. BEERNAERT.

His Excellency Mr. J. VAN DEN HEUVEL.

His Excellency Baron GUILLAUME.

Mr. GABRIEL MAURA Y GAMAZO, COUNT DE LA MORTERA.

His Excellency Mr. LÉON BOURGEOIS.

Baron D'ESTOURNELLES DE CONSTANT.

Mr. LOUIS RENAULT.

Mr. FROMAGEOT.

His Excellency the Right Honorable Lord REAY.

Mr. CECIL HURST.

Mr. GEORGIOS STREIT.

His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI VERGANO.

Mr. GUIDO FUSINATO.

His Excellency Mr. TSUDZUKI.

His Excellency Mr. FRANCIS HAGERUP.

His Excellency Mr. T. M. C. ASSER.

His Excellency Count DE SELIR.

His Excellency Mr. MARTENS.

His Excellency Mr. PROZOR.

Colonel EUGÈNE BOREL.

SUBCOMMITTEE

President:

Mr. LOUIS RENAULT.

Members:

Mr. KRIEGE.

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Mr. JAMES BROWN SCOTT.

Mr. HEINRICH LAMMASCH.

His Excellency Mr. J. VAN DEN HEUVEL.

Mr. CECIL HURST.

Mr. GUIDO FUSINATO.

His Excellency Mr. T. M. C. ASSER.

COMMISSION IN CHARGE OF CORRESPONDENCE*President:*

Mr. DE BEAUFORT.

Members:

His Excellency Mr. URIAH M. ROSE.

His Excellency Mr. EYSCHEN.

His Excellency Mr. TCHARYKOW.

His Excellency Mr. BATLLE Y ORDOÑEZ.

OPENING MEETING

JUNE 15, 1907

Germany, the United States of America, Argentine Republic, Austria-Hungary, Belgium, Bolivia, the United States of Brazil, Bulgaria, Chile, China, Colombia, Republic of Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Republic of Haiti, Honduras, Italy, Japan, Luxemburg, the United States of Mexico, Montenegro, Nicaragua, Norway, Republic of Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay, Venezuela:

Having accepted the invitation of His Majesty the Emperor of All the Russias to take part in the Second Peace Conference, proposed in the first instance by the President of the United States of America, convoked by Her Majesty the Queen of the Netherlands, and assembled for the purpose of giving a fresh development to the humanitarian principles which served as a basis for the work of the great international assemblage of 1899, the delegates of the said Powers have met in conference to-day, June 15, 1907, at three o'clock, in the Hall of the Knights, at The Hague.

Present:

For Germany.

His Excellency Baron MARSCHALL VON BIEBERSTEIN, Minister of State, Imperial Ambassador at Constantinople, first delegate plenipotentiary;

Mr. KRIEGE, Imperial Envoy on Extraordinary Mission at the present Conference, Privy Councilor 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, Quartermaster 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 Councilor, member of the Prussian Upper Chamber, Crown Syndic, scientific delegate;

[40] Mr. GÖPPER, Counselor of Legation and Counselor attached to the Department for Foreign Affairs, assistant delegate;

Mr. RETZMANN, Lieutenant Commander on the Naval General Staff, assistant naval delegate.

For 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;

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.

For 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.

For Austria-Hungary:

His Excellency Mr. CAJETAN MÉREY VON KAPOŠ-MÉRE, Privy Councilor 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 Councilor, 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 [41] Imperial and Royal Legation at Athens, military delegate;

The Chevalier OTTO VON WIEL, Aulic and Ministerial Councilor at the Ministry of the Imperial and Royal Household and of Foreign Affairs, delegate;

Mr. JULIUS SZILÁSSY VON SZILÁS UND PILIS, Counselor of Legation, delegate.

For Belgium:

His Excellency Mr. JULES 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.

For 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.

For the United States of Brazil:

His Excellency Mr. RUY BARBOSA, Ambassador Extraordinary and Plenipotentiary, Vice President of the Senate, ex-Minister of the Treasury and Vice President of the Provisional Government, member of the Permanent Court of Arbitration, delegate plenipotentiary.

For Bulgaria:

Major General on the Staff VRBAN VINAROFF, Honorary General, 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.

For 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.

For China:

His Excellency Mr. LOU TSENG-TSIANG, Ambassador Extraordinary, delegate plenipotentiary;

His Excellency the Honorable 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.

For 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.

For 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.

For 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.

For 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.

For 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 at Paris, delegate plenipotentiary.

For 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 [43] Cortes, delegate plenipotentiary;
Mr. J. JOFRE MONTOJO, Colonel on the Staff, Aide-de-camp to the Minister of War, assistant military delegate;
Captain F. CHACÓN, Head of the Naval Commission in Europe, assistant naval delegate.

For 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 at 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;

Lieutenant General AMOUREL, military delegate;

Rear Admiral ARAGO, naval delegate;

Mr. FROMAGEOT, advocate at the Court of Appeal at Paris, technical delegate;

Captain LACAZE, second naval delegate.

For Great Britain:

His Excellency the Right Honorable 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 Honorable 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 Honorable 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.

For 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.

[44] *For Guatemala:*

Mr. JOSÉ TIBLE MACHADO, Chargé d'Affaires at The Hague and London, member of the Permanent Court of Arbitration, delegate plenipotentiary.

For the Republic of Haiti:

His Excellency Mr. JEAN JOSEPH DALBÉMAR, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary;

Mr. PIERRE HUDICOURT, ex-professor of international public law, advocate at the bar of Port au Prince, delegate plenipotentiary.

For Italy:

His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI VERGANO, Senator of the Kingdom, Ambassador of His Majesty the King at Paris, member of the Permanent Court of Arbitration, president of the Italian delegation, delegate plenipotentiary;

His Excellency Mr. GUIDO POMPILJ, Parliamentary Deputy, Assistant Secretary of State at the Royal Ministry for Foreign Affairs, delegate plenipotentiary;

Mr. GUIDO FUSINATO, Councilor of State, Parliamentary Deputy, ex-Ministér of Education, delegate plenipotentiary;

Mr. MARIUS NICOLIS DE ROBILANT, General of Brigade, technical delegate;

Mr. FRANÇOIS CASTIGLIA, Captain in the Navy, technical delegate.

For 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.

For Luxemburg:

Count DE VILLERS, Chargé d'Affaires at Berlin, delegate plenipotentiary.

For 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.

For Montenegro:

His Excellency Mr. NELIDOW, Privy Councilor, Russian Ambassador at Paris, delegate plenipotentiary;

[45] His Excellency Mr. MARTENS, Privy Councilor, permanent member of the Council of the Imperial Russian Ministry for Foreign Affairs, delegate plenipotentiary;

His Excellency Mr. TCHARYKOW, Councilor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary of Russia at The Hague, delegate plenipotentiary.

For Nicaragua:

His Excellency Mr. CRISANTO MEDINA, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

For 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 Storting, technical delegate.

For Panama:

Mr. BELISARIO PORRAS, delegate plenipotentiary.

For Paraguay:

His Excellency Mr. EUSEBIO MACHAIN, Envoy Extraordinary and Minister Plenipotentiary at Paris, delegate plenipotentiary.

For 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;

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.

For 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;

[46] Mr. GUSTAVO DE LA FUENTE, First Secretary of Legation at Paris, assistant delegate.

For Persia:

His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH, Envoy Extraordinary

and Minister Plenipotentiary at Paris, member of the Permanent Court of Arbitration, first delegate plenipotentiary;

His Excellency MIRZA AHMED KHAN SADIGH UL MULK, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary.

For Portugal:

His Excellency the Marquis DE SOVERAL, Councilor 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.

For 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.

For Russia:

His Excellency Mr. NELIDOW, Privy Councilor, Russian Ambassador at Paris, delegate plenipotentiary;

His Excellency Mr. MARTENS, Privy Councilor, permanent member of the Council of the Imperial Ministry for Foreign Affairs, delegate plenipotentiary;

His Excellency Mr. TCHARYKOW, Councilor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary;

His Excellency Mr. PROZOR, Councilor of State, Chamberlain, Russian Minister at Rio de Janeiro, Buenos Aires and Montevideo, 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.

[47] *For 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.

For 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.

For Siam:

Major General MOM CHATIDEJ UDOM, Envoy Extraordinary and Minister Plenipotentiary, first delegate plenipotentiary;

Mr. CORRAGONI D'ORELLI, Counselor of Legation at Paris, delegate plenipotentiary;

Captain LUANG BHÜVANARTH NARÜBAL, delegate plenipotentiary.

For 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.

For 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.

For 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;

[48] RAIF BEY, Legal Adviser on the Civil List, assistant delegate;

Colonel on the Staff MEHEMMED SAÏD BEY, assistant delegate.

For Uruguay:

His Excellency 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;

Colonel SEBASTIAN BUQUET, Commanding a Regiment of Field Artillery, technical delegate.

For Venezuela:

Mr. JOSÉ GIL FORTOUL, Chargé d'Affaires at Berlin, delegate plenipotentiary.

His Excellency Jonkheer **van Tets van Goudriaan**, Minister of Foreign Affairs of the Netherlands, opens the meeting with the following address:

GENTLEMEN: In the name of Her Majesty the Queen, my august sovereign, I have the honor 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 favor of the work of the assembly of 1899.

[49] 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 favorable 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 labors 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 favorable symptom. In my opinion, we cannot easily fail to perceive the far-reaching effect of this, for the greater number of the States participating in the Conference, the more certain will be the general and undisputed observance of the provisions upon which they agree.

The House in the Wood, where in 1899 the delegates of the Powers held their meetings, was not large enough to welcome 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 labors, 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 labor with all its power for the accomplishment of the task, as delicate as it is arduous, which has been entrusted to it. (*Unanimous assent.*)

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 labors. (*Unanimous assent.*)

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.

His Excellency Mr. Nelidow takes the presidential chair and delivers the following address:

GENTLEMEN: Permit me first of all to perform an agreeable duty — to express to you my profound gratitude for the honor which you do me by entrusting me with the direction of your labors.

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 honor to represent, who was the [50] initiator of the Peace Conferences, and concerning whom his Excellency VAN TETS VAN GOUDRIAAN has just expressed himself in terms which deeply touch me.

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 honor 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 connection with the Conference by deigning to accept the title of its honorary president. (*Unanimous assent.*)

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. (*Unanimous assent.*)

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 endeavor 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 cooperation 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 honor 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. (*Unanimous assent.*)

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. (*Unanimous applause.*)

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 labors 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,¹ consists of two parts: on the one hand, we must endeavor 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 endeavor 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

[51] 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 endeavor 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

¹ See *ante, in initio*. vol. i.

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 honor of the First Peace Conference, and which are to be completed by the labors 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 labors. 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. (*Assent.*)

However, let us not be too ambitious, gentlemen. Let us not forget that our [52] 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 honor, dignity, and essential interests are involved, where individuals are concerned as well as where nations are con-

cerned, and in which neither, whatever may be the consequences, will recognize any other authority than that of their own judgment 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. (*Unanimous applause.*)

On the proposal of the President, the Conference elects, to compose its secretariat:

As secretary general: Mr. W. DOUDE VAN TROOSTWIJK, Minister resident of Her Majesty the Queen of the Netherlands.

As secretary general of drafting: Councilor of State Mr. PROZOR, technical delegate of Russia.

As secretaries:

Mr. P. DELVINCOURT, Secretary of Embassy of First Class of France;

Mr. J. H. VAN ROYEN, Counselor of Legation of the Netherlands;

Mr. A. BAILLY-BLANCHARD, Second Secretary of Embassy of the United States of America;

Count DE LICHTERVELDE, Secretary of Legation of the First Class of Belgium;

Mr. E. MARGARITescu-GRECIANU, Secretary of Legation of First Class of Roumania;

Jonkheer VAN VREDENBURCH, Secretary of Legation of First Class of the Netherlands;

Mr. C. CROMMELIN, Secretary of Legation of First Class of the Netherlands;

Mr. A. RIBOT, Secretary of Embassy of Second Class of France;

Mr. CH. GARBASSO, Second Secretary of Embassy of Italy;

Mr. JAROUSSE DE SILLAC, Secretary of Embassy of Second Class of France;

[53] Mr. R. SPOTTORNO, Secretary of Embassy of Second Class of Spain;

Baron NOLDE, Acting Secretary of the Ministry for Foreign Affairs of Russia;

Mr. MANDELSTAM, Second dragoman of the Russian Embassy at Constantinople;

Mr. LORIS-MÉLIKOFF, Second Secretary of Legation of Russia;

Baron CLAUZEL, Secretary of Embassy of Third Class of France;

Mr. H. NAGAOKA, Third Secretary of Legation of Japan;

Mr. WALFORD H. M. SELBY, Third Secretary of Legation of Great Britain;

Mr. N. THÉOTOKY, Secretary of Legation of Greece;

Mr. G. J. W. PUTNAM-CRAMER, Lieutenant in the Royal Navy of the Netherlands;

Mr. W. VON SCHEVEN, Attaché of the Legation of Germany;

Baron G. GUILLAUME, Attaché of the Legation of Belgium.

With a view to affording to the delegates of all the Powers the opportunity to

get into touch with each other and to discuss the order of the important work which the Conference is to undertake, the PRESIDENT proposes to postpone the next meeting to a date to be later communicated to the delegates.

The meeting adjourns at 3:45 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK.
PROZOR.

SECOND PLENARY MEETING

JUNE 19, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 3:15 o'clock.

The minutes of the first plenary meeting are adopted.

The **President** reads the following telegram which Her Majesty the Queen of the Netherlands has been pleased to address to him in reply to the message of the Conference.

I am happy to see the representatives of the different States united at The Hague for the Second Peace Conference. Thanking your Excellency for the sentiments of which you have been the interpreter, I extend best wishes for the successful accomplishment of the great aim which the Conference has in view.

(Signed) WILHELMINA.

The **PRESIDENT** proposes that the Conference request for the delegates, through the kind medium of his Excellency the Minister for Foreign Affairs, the favor of a reception by Her Majesty the Queen of the Netherlands, Her Majesty the Queen Mother, and His Royal Highness the Prince of the Netherlands, Duke of Mecklenburg. (*Assent.*)

The **PRESIDENT** then reads the telegram from His Majesty the Emperor of Russia in response to the telegram which the Minister for Foreign Affairs of the Netherlands had addressed to him in the name of the Conference after the opening meeting.

This reply is thus worded:

Deeply touched by the sentiments contained in your telegram, I hasten to extend to the Second Peace Conference my best wishes for the success of the noble task entrusted to it.

(Signed) NICHOLAS.

The **PRESIDENT** informs the Conference that all the States which had not participated in the Conference of 1899 and have been invited to the present Conference, have adhered to the acts of the former. (*Applause.*)

[55] The **PRESIDENT** asks the delegates to be good enough to deposit their full powers with the secretary general, in so far as they have them in their possession.

The **PRESIDENT** then reads the letter from his Excellency the first delegate of China stating that as the condition of his health necessitates an absolute rest, he has asked the second delegate, his Excellency Mr. JOHN W. FOSTER, to replace him temporarily in the meetings of the Conference.

The PRESIDENT states that the Bureau has been completed by the appointment of Messrs. DONKER CURTIUS, Jonkheer C. DE JONGE, Jonkheer VAN SWINDEREN, Jonkheer G. VAN TETS et TCHENG-LOH to the office of the secretary general of the Conference.

The PRESIDENT speaks a few words in praise of the late Baron STAAL, who presided at the Conference of 1899. Mr. STAAL, he says, was an honorable man, liked and esteemed by all. Many delegates remember the eminent rôle played by him in the First Peace Conference.

The PRESIDENT proposes that the delegates honor the memory of Mr. STAAL by rising from their seats. (*They rise.*)

The PRESIDENT proposes to follow the method employed by the Conference of 1899, adapting it to new conditions. The assembly being, indeed, very numerous, it seemed useful for the regulation of its labors, to form a code of rules, which the PRESIDENT reads article by article.

This code is worded as follows:

REGULATIONS

ARTICLE 1

The Second Peace Conference is composed of all the plenipotentiaries and technical delegates of the Powers signatories of or adherents to the Conventions and Acts signed at the First Peace Conference of 1899. (*Adopted.*)

ARTICLE 2

After the composition of its bureau, the Conference shall form commissions for the study of the questions included in its program.

The plenipotentiaries of the Powers are free to register in any of these commissions according to their own convenience and to choose the technical delegates who shall take part therein. (*Adopted.*)

ARTICLE 3

The Conference appoints the president and vice president of each commission. The commissions appoint their secretary and their reporter. (*Adopted.*)

ARTICLE 4

Each commission shall have the power to divide itself into subcommissions which shall choose their own bureaus. (*Adopted.*)

ARTICLE 5

A drafting committee for coordinating the acts adopted by the Conference and preparing them in their final form shall likewise be appointed by the Conference at the beginning of its labors. (*Adopted.*)

[56]

ARTICLE 6

The members of the delegations are authorized to take part in the deliberations of the plenary meetings of the Conference, as well as in the commissions of which they form a part. Members of one and the same delegation may mutually replace one another. (*Adopted.*)

ARTICLE 7

Members of the Conference attending meetings of the commissions of which they are not members are not entitled to take part in the deliberations without special authorization by the presidents of the commissions. (*Adopted.*)

ARTICLE 8

Each delegation has a right to only one vote.

The vote is taken by roll call according to the alphabetical order of the Powers represented.

The delegation of one Power may have itself represented by that of another.

His Excellency Sir **Edward Fry** declares that the British delegation objects to the third paragraph of Article 8. It feels that the Conference is a deliberative assembly and that, consequently, a delegation which has not taken part in the deliberations cannot take part in the vote.

His Excellency Baron **Marschall von Bieberstein** shares the view of the British delegation and is of the opinion that a delegation which wishes to vote must be present.

His Excellency Mr. **Léon Bourgeois** observes that, if he rightly understands the idea of the bureau, this paragraph had been designed to give greater facility to the work. But he considers the fact that prejudice in regard thereto has been disclosed within the Conference a sufficient reason for taking it into consideration and rejecting the paragraph.

The **President** consults the Conference concerning the rejection of paragraph 3 of Article 8.

Paragraphs 1 and 2 of Article 8 are adopted and paragraph 3 rejected.

ARTICLE 9

Every proposition of a resolution or *vau* to be discussed by the Conference must, as a general rule, be delivered in writing to the president in order to be printed and distributed before being brought to discussion. (*Adopted.*)

ARTICLE 10

The public shall be admitted to the plenary meetings of the Conference. Tickets for this purpose shall be distributed by the secretary general with the authority of the president.

The bureau may decide at any time that certain meetings shall not be public. (*Adopted.*)

ARTICLE 11

The minutes of the plenary meetings of the Conference and of the commissions give a brief summary of the deliberations.

[57] They shall in due time be submitted in proof to the members of the Conference, and shall not be read at the beginning of the meetings.

Each delegate has the right to ask that his official declarations be inserted in full, according to the text handed by him to the secretary's office, and to make observations on the minutes.

The reports of the commissions and subcommissions shall be printed and distributed before being brought to discussion. (*Adopted.*)

ARTICLE 12

The French language is recognized as the official language for the deliberations and acts of the Conference.

Addresses delivered in another language shall be summarized orally in French under the supervision of the secretary's office in conjunction with the speaker himself. (*Adopted.*)

The project, modified by the rejection of the third paragraph of Article 8, is unanimously adopted by the Conference.¹

The PRESIDENT calls attention to the fact that in view of the considerable number of delegates, it would be desirable to observe some general rule in order not to prolong the deliberations beyond a certain limit. He proposes to shorten the duration of the addresses as much as possible. Ten minutes is a period of time adopted in many parliaments. They should therefore agree not to speak longer than ten minutes at a time. (*Adopted by applause.*)

The PRESIDENT suggests that the Conference proceed to the division of its work. The basis of this work is the program proposed by the Russian Government to the Powers and adopted by them. The numerous subjects included therein have been grouped by specialists to be distributed among commissions. The Conference of 1899 had three commissions. But inasmuch as the present Conference comprehends a greater number of subjects, the president recommends the formation of four commissions whose provinces would be determined as follows:

First Commission

Arbitration.

International commissions of inquiry and questions connected therewith.

Second Commission

Improvements in the Regulations concerning the laws and customs of war on land.

Opening of hostilities.

Declarations of 1899.

Rights and duties of neutrals on land.

Third Commission

Bombardment of ports, towns and villages by a naval force.

Laying of torpedoes, etc.

Regulations governing belligerent vessels in neutral ports.

Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864, revised in 1906.

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Fourth Commission

Conversion of merchant ships into war-ships.

Private property at sea.

Days of grace.

Contraband of war. Blockades.

¹ See annex to this day's minutes.

Destruction of neutral prizes by *force majeure*.

Provisions relating to land warfare which would apply equally to naval warfare.

The proposition of the PRESIDENT is adopted.

The PRESIDENT adds that these subjects exhaust the Russian program and are grouped with the view to giving unity to the arrangement of the work.

His Excellency Baron **Marschall von Bieberstein** declares that his Government has commissioned him to present to the Conference propositions concerning the establishment of an international tribunal to discuss the legality of prizes in maritime warfare. This would be a high court of justice functioning as a court of appeal, while the international tribunals would deliberate in the first instance.

This proposition is closely connected with the work of the First Conference. Aiming at the pacific settlement of disputes, it comes under the work of the First Commission.

His Excellency Sir **Edward Fry** declares that he has heard with great satisfaction the proposition of his colleague from Germany. The British delegation has received instructions to the same effect and is pleased to be able to collaborate with the other delegations to extend the principle of arbitration.

His Excellency Mr. **Horace Porter** hastens to give his hearty support to the proposition submitted to the Conference by the first delegate of Germany.

He then reads the following letter, dated June 19 and addressed to the President by his Excellency Mr. J. H. CHOATE:

I have the honor to advise your Excellency that the United States of America reserves the right to present to the Conference by the intermediary of the First Commission or of any other more appropriate commission, the question "of reaching an agreement for the limitation of the employment of force in the recovery of ordinary public debts, having their origin in contracts"; likewise to submit all other propositions within the competence of the Conference and not mentioned in its program.

Please accept, Mr. President, assurances of my highest consideration.

(Signed) JOSEPH H. CHOATE.

The President declares that the propositions of the delegations of Germany, Great Britain and the United States of America will be presented in their order to the attention of the commissions, under the conditions of Article 9 of the Regulations. He explains in this respect that the propositions to be brought before the Conference are of twofold nature: some come directly within the province of the commissions as derived from the program; others follow from the questions on this program. The latter, according to Article 9 of the Regulations just adopted, must be delivered in writing to the President in order to be printed and [59] distributed before being brought to discussion. This is the procedure followed by the delegate of Great Britain in addressing the following letter to the President, in which he reserves the right to formulate new propositions later:

The delegates of Great Britain consider that the adoption of the program of work to be submitted to the deliberations of the commissions of the Conference should not exclude the possibility of presenting in the order of the day other subjects which might be submitted during the continuance of the Conference.

No observations arising on the application which he has just made of Article 9 of the Regulations, bearing upon the propositions to be discussed by the Con-

ference, the PRESIDENT takes note of this unanimous acquiescence and passes to the examination of the method to be followed in the organization of the commissions. According to the precedent of 1899 each one would have at its head a bureau composed of honorary presidents, president, and vice presidents. (*Assent.*)

The PRESIDENT proposes to compose these bureaus as follows:

First Commission

- Honorary Presidents:* His Excellency Mr. CAJETAN MÉREY VON KAPOS-MÉRE.
His Excellency Sir EDWARD FRY.
His Excellency Mr. RUY BARBOSA.
- President:* His Excellency Mr. LÉON BOURGEOIS.
- Vice Presidents:* Mr. KRIEGE.
His Excellency Mr. CLÉON RIZO RANGABÉ.
His Excellency Mr. GUIDO POMPILJ.
His Excellency Mr. GONZALO A. ESTEVA.

Second Commission

- Honorary Presidents:* His Excellency Baron MARSCHALL VON BIEBERSTEIN.
His Excellency Mr. HORACE PORTER.
His Excellency Marquis DE SOVERAL.
- President:* His Excellency Mr. BEERNAERT.
- Assistant President:* His Excellency Mr. T. M. C. ASSER.
- Vice Presidents:* His Excellency Mr. BRUN.
His Excellency SAMAD KHAN MOMTAS-ES-SALTANEH.
His Excellency Mr. BELDIMAN.
His Excellency Mr. CARLIN.

Third Commission

- Honorary Presidents:* His Excellency Mr. CHOATE.
His Excellency Mr. LOU TSENG-TSIANG.
His Excellency TURKHAN PASHA.
- President:* His Excellency Count TORNIELLI.
- Vice Presidents:* His Excellency Mr. HAMMARSKJÖLD.
His Excellency Mr. DOMINGO GANA.
His Excellency Mr. LUIS M. DRAGO.
Baron D'ESTOURNELLES DE CONSTANT.

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Fourth Commission

- Honorary Presidents:* His Excellency Mr. VILLA URRUTIA.
His Excellency Mr. KEIROKU TSUDZUKI.
- President:* His Excellency Mr. MARTENS.
- Vice Presidents:* His Excellency Sir ERNEST SATOW.
His Excellency Mr. MILOVAN MILOVANOVITCH.
Mr. HEINRICH LAMMASCH.
His Excellency Mr. HAGERUP.

All the delegates named above accept their nomination.

Applause greeted the names of the presidents, as well as that of his Excellency Mr. ASSER, the PRESIDENT having recalled the services rendered by them at the First Conference.

The PRESIDENT explains that his Excellency Mr. ASSER has been appointed as assistant to his Excellency Mr. BEERNAERT for the reason that the condition of the latter's health makes it uncertain whether or not he may be able to preside in person during the Conference.

The PRESIDENT invites the delegates to register to-morrow, from two to four in the afternoon, in the commissions which they themselves shall have chosen. The registration shall take place in the office of the secretary general. The technical delegates shall be designated by the heads of the delegations.

The PRESIDENT declares that in view of the numerous telegrams, letters and sympathetic manifestations coming from all parts of the world, a special commission should be appointed whose duty it would be to examine and sort these various communications and to decide upon the action to be taken in regard to them; he proposes as president of this commission, Mr. DE BEAUFORT, and as members, their Excellencies Messrs. URIAH M. ROSE, EYSCHEN, TCHARYKOW and BATLLE Y ORDOÑEZ. (*Unanimous assent.*)

The PRESIDENT explains that it is necessary to give to the public exact and authentic news concerning the work of the Conference. To this end the secretary's office will draw up bulletins which shall be communicated to the Press. The admission of the latter would be contrary to the precedent of 1899 as well as to the universally established usage for diplomatic assemblies. However, since Article 10 admits the public to the plenary meetings of the Conference, a certain number of tickets for the gallery may be reserved for the representatives of the Press.

The PRESIDENT asks the members of the Conference to observe secrecy on those of their deliberations which are not public.

We make no mystery of them, he says, but we must guard against the false comments which communication to the public of disjointed items of news would undoubtedly involve. It is therefore essential that the full publicity of our labors be deferred until they shall be concluded. Until then discretion is the indispensable rule. (*Unanimous assent.*)

The PRESIDENT, in concluding, reads a letter by which the Burgomaster and Aldermen of the City of The Hague invite the delegates to an entertainment to be given Tuesday, July 9, at the *Kurhaus* of Scheveningen.

The meeting adjourns at 4 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK.
PROZOR.

Annex

[61]

REGULATIONS

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ARTICLE 2

After the composition of its bureau, the Conference shall form commissions for the study of the questions included in its program.

The plenipotentiaries of the Powers are free to register in any of these commissions according to their own convenience and to choose the technical delegates who shall take part therein.

ARTICLE 3

The Conference appoints the president and vice president of each commission. The commissions appoint their secretary and their reporter.

ARTICLE 4

Each commission shall have the power to divide itself into subcommissions which shall choose their own bureaus.

ARTICLE 5

A drafting committee for coordinating the acts adopted by the Conference and preparing them in their final form shall likewise be appointed by the Conference at the beginning of its labors.

ARTICLE 6

The members of the delegations are authorized to take part in the deliberations of the plenary meetings of the Conference, as well as in the commissions of which they form a part. Members of one and the same delegation may mutually replace one another.

ARTICLE 7

Members of the Conference attending meetings of the commissions of which they are not members are not entitled to take part in the deliberations without special authorization by the presidents of the commissions.

ARTICLE 8

Each delegation has a right to only one vote.

The vote is taken by roll call according to the alphabetical order of the Powers represented.

[62]

ARTICLE 9

Every proposition of a resolution or *vau* to be discussed by the Conference must, as a general rule, be delivered in writing to the president in order to be printed and distributed before being brought to discussion.

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The minutes of the plenary meetings of the Conference and of the commissions give a brief summary of the deliberations.

They shall in due time be submitted in proof to the members of the Conference, and shall not be read at the beginning of the meetings.

Each delegate has the right to ask that his official declarations be inserted in full, according to the text handed by him to the secretary's office, and to make observations on the minutes.

The reports of the commissions and subcommissions shall be printed and distributed before being brought to discussion.

ARTICLE 12

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Addresses delivered in another language shall be summarized orally in French under the supervision of the secretary's office in conjunction with the speaker himself.

THIRD PLENARY MEETING

JULY 20, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 3 o'clock.

The **President** speaks as follows:

We have, first of all, to ratify the minutes of the second plenary meeting. You have examined them. If no one has remarks to make, I declare them adopted.

Next on the program for the day is the examination of the report of the Correspondence Commission. As the amount of this correspondence is considerable, and as several of the communications received by the president hold out a certain interest, I do not wish to await the end of our work to communicate them to you. I ask the vice president of the Conference, who is at the head of the Correspondence Commission and requests, kindly to read the report of this Commission.

Mr. de Beaufort takes the floor:

The Commission appointed to attend to the communications, etc., sent to the Conference, commenced its work by first examining those documents which seemed to be of greatest importance, and which contain the wishes expressed by numerous associations, educational institutions, or societies which endeavor to develop more and more sympathetic sentiments in favor of universal peace.

These telegrams, letters, petitions, books, pamphlets, etc., of which there are rather a large number, are naturally all inspired by the same principles. They are in general warm wishes for the success of the work of the Conference, enthusiastic greetings sent from several parts of the world, words of encouragement for the accomplishment of the high mission of the Conference, and means, more or less practical, offered to our consideration upon the questions whose study now occupies our attention.

Thus, for example, it may be stated that most of these communications contain petitions in favor of arbitration as the most effective means for the settlement of international disputes; some among them express the desire of seeing submitted to arbitration the difficulties which may arise between nations and [64] to give it an obligatory character; others deal with the declaration of war, the inviolability of private property, the amelioration of the condition of the wounded and, in general, all those who suffer from the inevitable misfortunes caused by war. There are also communications concerning the lightening of military burdens, and even those advocating disarmament.

The Commission, although it appreciates equally the humanitarian manifestations of which a sketch has just been given, finds it necessary to point out to the Conference especially —

The document presented by the *Conseil international des femmes*, to which are joined two million signatures affixed in twenty different countries;

Those remitted by Pastor RICHMOND as the mandatary of six religious associations of the United States;

Those which contain the resolutions adopted, either by the professors and students of twenty-three colleges of North America, or at a meeting which took place in Chicago, or by the Piatt County Society, representing in all the pacific opinions of over twenty-seven thousand persons; we received these resolutions through the intermediary of Mr. GEORGE FULK.

The Commission considers it its duty likewise to point out to the Conference the communications of several Churches of Germany, Austria-Hungary, France, the Netherlands and Switzerland (grouped in a single document), Great Britain and the United States. The diversity of Churches represented by these communications, as well as the number and importance of the signatures seen therein, give a very special value to the words used by their authors to express their *vœux* in favor of peace.

Although fearing that this enumeration becomes a little long, one cannot pass by in silence the manifestations of over fifteen thousand Swedish citizens, men and women, who met in several places in their country and adopted resolutions favorable to the work of the Conference;

Those sent to us by the International Peace Bureau established at Berne, coming from three societies of the United States;

Those brought to our attention by *l'Unione Lombarda* and the *Société Internationale de la Paix*; and

The communications sent by *l'Alliance universelle des femmes pour la Paix par l'éducation*, *La Ligue internationale de la Paix et de la Liberté*, and the *Vrije Gemeente d'Amsterdam*, among others.

In this report cannot be neglected the telegrams, which, since the opening of the Conference, have been sent auguring splendid results from it, from the *Société Internationale de la Paix* of the Republic of San Marino, the *Société japonaise de la Paix* at Tokio, the British Council of Peace Society of Great Britain, the Portuguese association *Paix et désarmement* of Lisbon, the Dutch members of the student body *Corda fratres* of Leiden, the *Délégation permanente des Sociétés de la Paix de France*, etc., etc.

As to the books and pamphlets received by the Conference, those of which there were a sufficient number have already been distributed among the delegates; the others are kept in the archives of the Secretariat, where the delegates may find them. There may also be found there an itemized list upon which are inscribed all the communications whose examination has constituted the work of this Commission.

The Commission has nearly finished its task. It remains still to classify the different communications which are received from individuals; but it is probable that certain of these shall be discarded as they concern subjects foreign to the Conference.

[65] The Commission is happy lastly to inform the Conference that an artist residing at The Hague, Miss HIRSCHMANN, has had the kindness to offer to this Assembly a portrait of its august initiator, His Majesty the Emperor of All the Russias. The Commission thanks Miss HIRSCHMANN for her generous offer, and considers that the said portrait should be placed in one of the halls of the Conference, until it can be given to the Carnegie Committee

in order that it may finally be placed in the Peace Palace, for the laying of whose corner-stone we shall soon meet.

The **President** thanks Mr. DE BEAUFORT for the interesting work he has just read, and also his assistants in the Commission; he adds that some of these communications, such as that of the International Women's Society, those of the Independent Churches of England, the communication covered with more than two million signatures of the American Peace Association, and the two communications of American universities and that of Oxford, were presented to him by special delegations, some of them composed of ladies, certain of whom had made long journeys to arrive at The Hague.

I consider it my duty, in the name of the Conference, he said, to express to them our particular gratitude, also to all the institutions, societies and unions whose messages were mentioned in the report we have just heard.

The great number of these messages, requests and communications of all kinds is certainly a manifest evidence of the interest, and, I make bold to say, the confidence inspired by our assembly. There are those who, going to the extreme in the appreciation of its powers and purpose, are often brought to attribute to it the character of the great judge of Governments and people, and the supreme dispenser of right and justice. This explains a certain series of requests which have been addressed to me, the object of which is entirely beyond the scope of our jurisdiction and powers. They concern existing conditions, contemporary political questions, as though we formed a superior international tribunal summoned to judge the suits between nations and Governments.

I permit myself to refer to this in the hope that the echo of my words will perhaps reach the ears of those who addressed themselves to the Conference, and make them understand that their appeal necessarily remains ineffective, that we are gathered together to study and establish the *principles* of international law, not to control its application to the international policy and the internal affairs of the various States.

Before closing I wish to mention a certain communication, or rather an interesting suggestion which has reached me. Mr. RICHARD FLEISCHER, editor of the *Deutsche Revue*, sent me a number of his journal, in which Professor OTFRIED NIPPOLD, of Berne, recommends to the Conference the creation at The Hague, near the tribunal of arbitration, of a central school of international law, which would aid in spreading judicious notions on that subject, and in teaching them to those who would later be called upon for their application.

This would be, I imagine, a course of law at an academy which would study and preserve its principles continually changed by the usage given them by the operation of the supreme tribunal of arbitration; something like the Asclepieion founded by Hippocrates on the Island of Cos for medical science.

I considered it my duty to refer to this interesting suggestion, because in my opinion it is pertinent and, were the idea carried out, capable of rendering great aid to the cause which we all serve. Perhaps the mention made of it here, which I trust meets the approval of the Conference, will inspire some generous benefactor with the idea of following the example of Mr. ANDREW CAR-

[66] NEGIE and to perpetuate his name by connecting it with an institution which will be a powerful assistance to the cause of peace and international justice, by contributing to spread its principles and to prepare for its worthy exponents.

The **PRESIDENT** recalls that the business on the agenda is the reading of the

report of Mr. LOUIS RENAULT¹ upon the 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, proposed by the Third Commission.²

Mr. Louis Renault reads his report.

The President expresses to Mr. LOUIS RENAULT the gratitude of the Conference for the extremely learned and conscientious work he has just disclosed. He then proposes to pass to the reading of the articles, and he requests those of the delegates who have remarks to make kindly to present them in writing, and file their declarations with the president. He hopes, however, that those articles which have already been the object of lengthy discussions, will not call forth new ones.

The Reporter reads the articles of the revised draft Convention proposed by the Third Commission.³

Articles 1, 2, 3, and 4 are adopted without discussion.

Upon Article 5, his Excellency Turkhan Pasha makes the following declaration:

I have the honor to renew here the declarations of which record was made by the Third Commission and which were inserted in the minutes of the meetings of July 2 and 16.

My Government has given its full and entire adhesion to the humanitarian principles laid down by the Geneva Convention of 1864; it has, like the other Powers, rendered respect to Switzerland by the recognition of the hospital flag formed by the interversion of the Federal colors, but it has believed it necessary, for certain reasons, to use the Red Crescent upon a white background for its military ambulances.

The Ottoman delegation has not asked, in this respect, a revision of the Convention of 1864, which is not within the competence of this high assembly. Neither has it insisted upon the insertion of a special clause in the draft Convention; but it must state once again that the representatives of the Governments gathered together at this Conference have been kind enough to accept the principle of the reciprocal recognition of the Red Cross and the Red Crescent as distinctive emblems of hospital ships and hospital attendants.

The President replies that the Conference makes record of the declaration of the first delegate of Turkey.

His Excellency Samad Khan Momtas-es-Saltaneh makes the declaration which follows:

The Imperial Government of Persia having already signed the Geneva Convention of 1906, with the reservation of Article 18, the Persian delegation will vote for the articles which we have before us with this reservation. We shall sign the present Convention, with the understanding that account will be taken of the declarations that I have had the honor to make to the Third Commission of the Conference concerning the respect due, upon condition of reciprocity, to the Lion and Red Sun upon a white background, placed by my Government upon its hospital ships and hospital attendants.

The President records this declaration which shall be inserted in the minutes.

His Excellency Sir Ernest Satow recalls that, in the meeting of the Third

¹ For the debates relative to this Convention, see vol. iii, minutes of the first and second meetings of the Third Commission, and of the first and second meetings of the second sub-commission.

² Annex A to these minutes.

³ Annex B to these minutes.

Commission of July 16, presided over by his Excellency the first delegate of Italy, Count **TORNIELLI** declared that the principle of reciprocal recognition of the distinctive emblems for hospital ships asked by the delegations of Turkey and Persia was accepted by the delegations. The delegation of Great Britain declares that it willingly upholds this declaration.

His Excellency General **Horace Porter** makes it known that the delegation of the United States of America supports the sentiments of his Excellency Mr. **SATOW**.

His Excellency Mr. **Mérey von Kapos-Mére** states that without having instructions from its Government, the delegation of Austria-Hungary adheres to the declaration of Great Britain and the United States of America.

His Excellency Mr. **Carlin** takes the floor and, following the instructions of his Government, declares that with respect to the declarations just made by the Ottoman and Persian delegations, the delegation of Switzerland refers back to the observations which it made, July 2, in the meeting of the Third Commission, second subcommission, and July 16 in the plenary meeting of the Third Commission.

It made known then and must state here that its Government notes the fact that the Geneva Convention of 1906 is not in question and cannot be discussed in the present Conference; that in consequence the reservations formulated in this place by the Ottoman and Persian delegations cannot have reference to maritime warfare and leave intact the question of the emblem of hospital service as it has been settled by the Conventions of 1864 and 1906 for war on land.

In taking note of the observations of the first delegate of Switzerland, the **President** orders their insertion in the minutes.

His Excellency **Samad Khan Momtas-es-Saltaneh** recalls that in so far as war on land is concerned his Government made the same reservation in signing the Geneva Convention of 1906.

Article 5 is adopted under these various reservations.

As to Article 6, His Excellency Sir **Edward Fry** states that in signing the Geneva Convention of 1906 his Government did so with the reservations of Articles 23, 27 and 28, because an act of legislation was necessary to allow it and that, without the consent of Parliament, no law can be passed in Great Britain. Now Articles 6 and 21 of the present Convention are based upon the above-named articles of the Convention of 1906. His Government, therefore, is obliged to make a temporary reservation to this article.

The **President** announces that this reservation will be inserted in the minutes.

Article 6 is adopted under this reservation.

Articles 7, 8, 9, 10 and 11 are adopted without observations.

[68] The British delegation reserves the privilege of pronouncing later upon Article 12.

His Excellency Sir **Edward Fry** remarks that the British Government cannot embrace the opinion expressed in the report as to the right of a belligerent war-ship to require the surrender of wounded, sick or ship-wrecked men on board a merchant vessel sailing under a neutral flag. In the absence of a special convention the British Government considers that the recognition of such a law cannot be based upon the existing principles of international law.

The **Reporter** makes a reservation of opposite import; he considers that the conclusions of his report are the expression of the existing positive law.

Article 12 is adopted under this reservation.

Articles 13, 14, 15, 16, 17, 18, 19, and 20 are adopted without reservation. Article 21 is adopted under the reservation of which the British delegation has already given notice at the reading of Article 6, and which may be found in the minutes.

Articles 22, 23, 24, 25, and 26 are adopted without observation.

The President is certain that after having taken into consideration this Convention, which is a work of patience and erudition, the Conference will express its gratitude to the Third Commission, to the Reporter, and above all to its president, his Excellency Count TORNIELLI.

The draft Convention in its entirety is next voted on, under the reservations mentioned above, and unanimously adopted.

Stating that this Convention is the first fruit of the labors of the Conference, the PRESIDENT extends his congratulations to the delegates.

The business on the agenda requiring the Conference to deliberate upon the organization of a Drafting Committee which will centralize all the drafts elaborated in the commissions, the PRESIDENT proposes to constitute this Committee of the presidents of the commissions and subcommissions, the secretaries and reporters as well as certain persons particularly recommended for this purpose by their labors and competence.

The Committee is thus composed:

His Excellency Mr. NELIDOW, president of the Conference.

Mr. W. H. DE BEAUFORT, vice president of the Conference.

First Commission { His Excellency Mr. LÉON BOURGEOIS.
Baron d'ESTOURNELLES DE CONSTANT.
Mr. GABRIEL MAURA Y GAMAZA, Count de la Mortera.
His Excellency Baron GUILLAUME.

Second Commission { His Excellency Mr. A. BEERNAERT.
His Excellency Mr. T. M. C. ASSER.
Colonel EUGÈNE BOREL.
Major General Baron WLADIMIR GIESL VON GIESLINGEN.

Third Commission { His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI
VERGANO.
His Excellency Mr. FRANCIS HAGERUP.
His Excellency Mr. J. VAN DEN HEUVEL.
Rear Admiral SIEGEL.
Mr. GEORGIOS STREIT.
Mr. LOUIS RENAULT.

[69]

Fourth Commission { His Excellency Mr. MARTENS.
Mr. FROMAGEOT.
The Reporter, when he has been appointed.

His Excellency Mr. TSUDZUKI.
His Excellency Mr. ROQUE SÁENZ PEÑA.
His Excellency Count de SELIR.
Mr. KRIEGE.

His Excellency Baron CARL VON MACCHIO.
 His Excellency the Right Honorable Lord REAY.
 His Excellency Mr. DAVID JAYNE HILL.
 Mr. GUIDO FUSINATO.
 His Excellency Mr. PROZOR.

His Excellency Mr. Léon Bourgeois asks that the same procedure be followed as to the reporter of the second subcommission of the First Commission, who has not yet been appointed.

The President assents to the request of the first delegate of France. He proposes a meeting of the Committee at an early date in order to discuss the method of work proper for it to adopt, and to divide it into subcommissions.

The PRESIDENT calls the attention of the members of the Conference to a matter of great importance already referred to by a circular communication from the secretariat. It concerns the complaint addressed to the PRESIDENT by the delegation of one of the Great Powers upon the subject of indiscreet communications to the press in regard to the deliberations of the Conference and especially certain documents, not meant for publicity, which appeared *in extenso* in the papers.

Reminding the delegates of the pledge taken by all of them in the preceding meeting, the PRESIDENT believes it incumbent upon him to call attention to the fact that the documents presented by the different delegations to the commissions constitute the common property of all the members of the Conference, and that no one among them is authorized to part with them without violating the property right of all the others.

Besides, detailed communications are regularly held with the press. The Conference makes no mystery of its work, but it does have a feeling of reciprocal delicacy which imposes discretion with regard to deliberations the sole purpose of which is the preparation of resolutions to be submitted later to the approval of the different Governments. (*General approval.*)

Before closing the meeting, the PRESIDENT gives notices of an invitation to visit the Exposition of Bruges which the Belgian Government extends to the members of the Conference. This excursion will take place July 29 and the details of the program will be immediately communicated to the delegates.

The meeting adjourns at 4:30 o'clock.

The President,
 NELIDOW.

Secretaries General,
 W. DOUDE VAN TROOSTWIJK.
 PROZOR.

Annex A

[70]

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

REPORT TO THE CONFERENCE¹

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 honor 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 endeavored 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 [71] Our labor has thereby been much lessened. We shall merely have to dis-

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 RÖELL), Russia (Colonel OVTCHINNIKOW), and Switzerland (his Excellency Mr. CARLIN).

² Vol. iii, Third Commission, annex 38.

³ *Ibid.*, annex 39.

cover 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 delegation¹ have likewise in view the *completion* rather than the *modification* of the Convention of 1899 by providing for cases not dealt with in the latter. Certain of the amendments proposed by the delegation of the Netherlands,² on the contrary, seem calculated to modify the principles of the 1899 Convention.

The Commission had first to decide the preliminary question whether the Convention of 1899 should be continued with amendments or whether a new Convention should be drawn up combining the provisions retained and the new ones adopted. The latter course was unhesitatingly decided upon. The supplementary texts are rather long and deal with matters too distinct to be inserted in the existing convention without great practical difficulty. In a matter of this kind, where rules to cover difficult situations are to be laid down, the text adopted should be clear, precise, and easy to consult.

The Convention of 1899 comprises fourteen articles; the project³ which we submit to you has twenty-six. The difference should not cause dismay, nor should it be feared that any very great changes have been made in the work of 1899, for it conserves its own features 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 belligerents, 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 belligerents 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 connection the committee in 1899 expressed its view as follows:

There was some thought of requiring neutral hospital ships to place

¹ Vol. iii, Third Commission, annexes 41 and 42.

² *Ibid.*, annex 40.

³ Annex B to these minutes.

themselves under the direct authority of one or other of the belligerents, but [72] 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.

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 favor 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 connection 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.

[73] 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 meters apart." 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 [74] 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 permitting a ship to fulfill 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 signaling.

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 [75] 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 as regards the pay of the members of the hospital staff temporarily detained by the enemy.¹ It is needless to add that, in naval as well as in land warfare, the official personnel only is 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 to harmonize with Article 1, paragraph 1, of the Geneva Convention.

Article 12 is new; it corresponds to an amendment presented by the German delegation² but makes the provision general. We do not think that the rule is new; if the formula is not written into the Convention of 1899, the spirit of that Convention is clear. It is an 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 virtue of the common law of nations, to visit them whatever their nationality. If it finds shipwrecked, 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

¹ Cf. Article 13 of the Convention of 1906.

² Third paragraph under Article 6.

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 [76] 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.¹ This case arose during the recent war, and was 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,² 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.

¹ Vol. iii, Third Commission, annex 41.

² *Ibid.*, annex 42.

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.

[77] 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.

Article 21 is new. It corresponds to Articles 27 and 28 of the Convention of 1906, and has given rise to no difficulty.

Article 22 is new. It presents no difficulties. In the case of military operations taking place at the same time on land and sea, the new Convention must be applied to the forces 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 the 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 of 1899 as between those Powers which shall have signed and ratified it. Where two Powers 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 which we have been guided by our predecessors of 1899 and 1906. We nevertheless consider it 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.

Annex B

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
[78] States specially and solely with a view to assist the wounded, sick

¹ [This article is identical with the corresponding article of the 1899 Convention.]

Third Commission.

Text proposed to the Conference by the Project of Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6, 1906

ARTICLE 1¹

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

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 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.

[79] The Governments undertake not

¹ [This article is identical with the corresponding article of the 1899 Convention.]

² [Identical with Article 4 of 1899.]

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 2¹

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 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 4²

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

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 meter 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 meter 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.

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.

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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

[80]

¹ [Identical to this point with Article 5 of 1899.]

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 warship, 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 (*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.

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 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 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 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.

[81] The belligerents must guarantee to the said staff when it has fallen into their hands¹ 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

¹ [These articles are thus far identical.]

² [This article is identical with the corresponding article of the 1899 Convention.]

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 hands¹ 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.

ARTICLE 13 (*new*)

If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, measures must be taken that they do not again take part in the operations of the war.

ARTICLE 14²

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*)

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 their again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be [82] borne by the State to which the shipwrecked, sick, or wounded belong.

enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

ARTICLE 15¹

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 their 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 (*new*)

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 (*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, 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.

¹ [This article is identical with the corresponding article of the 1899 Convention.]

ARTICLE 11¹

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 18¹

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 military insignia, 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.

[83]

¹ [These articles are identical. Article 18 of the 1907 draft was subsequently modified in the General Drafting Committee. See *post*, p. 338 [344].

ARTICLE 22 (*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.

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 23¹

The present Convention shall be ratified as soon as possible.

The ratification 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 24¹

Non-signatory Powers which have accepted the Geneva Convention of July 6, 1906, 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 25 (*new*)

The present Convention, duly ratified, shall replace as between contracting States, the Convention of July 29, 1899.

The Convention of 1899 remains in force as between the Powers which signed it but which do not also ratify the present Convention.

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 [84] 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.

ARTICLE 26¹

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.

¹ [These articles, which follow the wording of the 1899 Convention, were redrafted in the General Drafting Committee, *post*, p. 338 [344].

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.

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

Done at The Hague . . . 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.

FOURTH PLENARY MEETING

AUGUST 17, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 3 o'clock.

The minutes of the plenary meeting of July 20 are adopted.

The **President**: Gentlemen, since the last meeting I have received from the delegation of Uruguay a notification to the effect that it adhered, in the name of its Government, to the Convention relative to the application of the Geneva Convention to maritime warfare.

The British delegation has notified me that it withdrew the reservation formulated by it in the preceding meeting upon Article 12 of the same Convention.

The Ottoman delegation has done likewise for Article 15, upon which it had renewed the reservations made in 1899 for Article 10 of the Convention of that date.

The Conference takes pleasure in recording the adhesion of the Government of Uruguay and of the withdrawal of the British and Ottoman reservations relating to the Convention voted upon in our preceding plenary meeting.

Our first business on the agenda is the examination of the report of the Second Commission on the amendments proposed to the regulations of 1899 respecting the laws and customs of war on land.¹ I regret that the eminent president of this Commission, his Excellency Mr. BEERNAERT, is not here to receive the expression of our gratitude for the conscientious work done on this subject under his able and experienced direction by the Commission and its reporter, to whom I must address our sincere thanks. As you have had occasion to study this report,² gentlemen, it seems to me useless to read it. We shall proceed to the reading of the articles which have been modified or added, and if any one has reservations or declarations to make on the subject of any of them, I ask him to formulate them and to have them communicated to me in writing, after which we shall vote upon the whole.

The floor is given to the Reporter, General Baron GIESL VON GIESLINGEN.

Major General Baron **Giesl von Gieslingen** reads the text of the amendments proposed to the Conference by the Second Commission and referring [86] to the Regulations respecting the laws and customs of war on land, annexed to the Convention of July 29, 1899.³

Articles 2, 5, 6, 14, 17, 22a, 23, 25, 27 are accepted without discussion.

¹ For the debates on the matter, see vol. iii, minutes of the first two meetings of the Second Commission and the first four meetings of its first subcommission.

² Annex A to these minutes.

³ Annex B to these minutes.

His Excellency Baron **Marschall von Bieberstein** makes the following declaration upon Article 44a:

The German delegation cannot accept Article 44a, and I permit myself to say several words in explanation of our negative vote. Article 22a, which has been inserted in the German proposal states:

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.

It is recognized that the words "to take part in the military operations" are liable to a different interpretation. But a specification seems to us impossible. In the effort to specify the acts which would be illegal according to Article 22a, as Article 44a endeavors to do, the risk is run of placing an excessive restraint upon the liberty of military acts or of arriving at an interpretation which, according to the adage "*qui dicit de uno, negat de altro*" would regard as permissible all acts not expressly forbidden by the Convention. We wish neither the one nor the other. In any case, we could not accept an interpretation which, put into practice, might weaken considerably the humane and civilizing design which inspired us in proposing Article 22a. It is for these reasons that we shall vote against Article 44a.

His Excellency Mr. **Mérey von Kapos-Mére**: The delegation of Austria-Hungary, having accepted the new Article 22a on condition that Article 44 of the Convention now in force be maintained as it is, can not consent to the Article 44a, proposed by the Second Commission.

His Excellency Mr. **Tcharykow**: The delegation of Montenegro has the honor to declare that having accepted the new Article 22a, 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 44a.

His Excellency Mr. **Martens**: The delegation of Russia has the honor to declare that having accepted the new Article 22a, 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 44a.

His Excellency Mr. **Beldiman**: The delegation of Roumania has the honor to declare that having accepted the new Article 22a, 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 44a.

His Excellency Mr. **Tsudzuki**: The delegation of Japan reserves its decision on the new Article 44a until it knows what Powers have accepted it and what majority it obtained.

General Major **Vinaroff**: The delegation of Bulgaria has the honor to declare that having accepted the new Article 22a, 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 44a.

The **President**: The Conference records the reservations just expressed.

The **Reporter** resumes the reading of Articles 52 and 53 which are [87] adopted without observation.

Upon the new article, relative to the indemnification for the violation of the Regulations respecting the laws and customs of war on land:

His Excellency Sir **Edward Fry**: The British delegation expects immediate

instructions from its Government on this subject and reserves the privilege of stating its opinion upon the question until later.

His Excellency Réchid Bey: The Ottoman delegation makes reservations on the subject of the provisions of the new article to be inserted in the amendments to the Regulations of 1899 respecting the laws and customs of war on land.

Vote is then taken on the whole of the amendments to the Regulations respecting the laws and customs of war on land, annexed to the Convention of July 29, 1899, which under the reservations mentioned above, are unanimously adopted.

Voting for, without reservations: United States of America, Argentine Republic, Belgium, Bolivia, Brazil, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Greece, Guatemala, Haiti, Italy, Luxemburg, Mexico, Nicaragua, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Salvador, Serbia, Siam, Sweden, Switzerland, Uruguay, Venezuela.

Voting for, with reservations: Germany, Austria-Hungary, Bulgaria, Great Britain, Japan, Montenegro, Roumania, Russia, and Turkey.

The President: According to the order of the day, we have now to vote on the renewal of the Declaration of 1899 prohibiting the launching of projectiles and explosives from balloons.¹

Upon the invitation of the **PRESIDENT**, the **Reporter** reads the draft of the renewal of the Declaration of July 29, 1899, prohibiting the launching of projectiles and explosives from balloons.²

His Excellency Mr. Léon Bourgeois: The French delegation cannot support the proposal for the renewal of the Declaration relating to balloons.

It considers that the humanitarian object is fully attained by the general provision of the Regulations of 1899 on bombardment, especially since, upon our proposal, the words "by any means whatever" have been added to the prohibition laid down in Article 25 of these Regulations.

The President: You have before you a British amendment.³ It relates to the duration of the renewal which, instead of being five years, is extended to the meeting of the next Conference.

His Excellency Sir Edward Fry: The British delegation has the honor to propose the following amendment:

In the first paragraph, substitute for the words "*for a term of five years*" the words "*to the close of the Third Peace Conference.*"

[88] **The President:** I propose that the Conference vote upon the amendment presented by the British delegation.

His Excellency Mr. Martens: The delegation of Russia intends to reserve its vote upon this amendment.

His Excellency Mr. Tsudzuki: Owing to the lack of unanimity between the great military Powers, the delegation of Japan sees no advantage to be gained by pledging itself to several Powers, while with regard to others it would be forced to continue to study and improve this means of warfare. It will therefore abstain from voting on the question.

The President: I put to vote the amendment of the British delegation.

¹ For the debates on the question, see vol. iii, minutes of the second meeting of the Second Commission and those of the fifth meeting of the first subcommission.

² Annex C to these minutes.

³ Annex D to these minutes.

The vote is taken.

Voting for: United States of America, Belgium, Bolivia, Brazil, Bulgaria, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Great Britain, Greece, Guatemala, Haiti, Luxemburg, Nicaragua, Norway, Panama, Paraguay, Netherlands, Portugal, Salvador, Serbia, Siam, Switzerland, Turkey, Uruguay.

Voting against: Germany, Argentine Republic, Austria-Hungary, Italy, Montenegro, Persia, Roumania, Russia.

Not voting: Chile, Spain, France, Japan, Mexico, Peru, Sweden, Venezuela.

The PRESIDENT: The result of the vote is as follows: 28 yeas, 8 nays and 8 not voting.

We shall now proceed to vote on the renewal of the Declaration of 1899 as it is presented by the delegation of Belgium.

Voting for: United States of America, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, China, Cuba, Denmark, Dominican Republic, Ecuador, Great Britain, Greece, Guatemala, Haiti, Italy, Luxemburg, Nicaragua, Norway, Panama, Paraguay, Netherlands, Portugal, Salvador, Serbia, Siam, Switzerland, Turkey, Uruguay.

Voting against: Germany, Argentine Republic, Spain, France, Montenegro, Persia, Roumania, Russia.

Not voting: Chile, Colombia, Japan, Mexico, Peru, Sweden and Venezuela.

The result of the vote is as follows: 29 yeas, 8 nays and 7 not voting.

The PRESIDENT: The first delegate of Great Britain requests the floor in order to make a declaration regarding the adhesion of the British Government to the Declarations of 1899 concerning the use of asphyxiating and deleterious gases and the use of bullets which expand or flatten easily in the human body.¹

His Excellency Sir EDWARD FRY is given the floor.

His Excellency Sir Edward Fry: In 1899, the Government of Her Britannic Majesty could not consent to adhere to the Declaration concerning the prohibition of the use of projectiles, the sole object of which is the diffusion of asphyxiating and deleterious gases, and to the Declaration concerning the 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.

I am authorized to announce that my Government — animated with the desire of giving, in so far as possible, a character of unanimity to these engagements — accepts the said Declarations in their entirety.

The President: The Conference accepts with the greatest pleasure the declarations made by his Excellency Sir EDWARD FRY, in the name of the British delegation.

The PRESIDENT: We shall now pass to the report of the Third Commission which, directed by the indefatigable zeal and tact of his Excellency Count TORNIELLI, has again reached the termination of an important subject on our program, that relative to the bombardment by naval forces of undefended towns, villages and dwellings.²

¹ See vol. iii, the minutes of the fifth meeting of the first subcommission of the Second Commission containing the declarations of the British and Portuguese delegations concerning the adhesion of their Governments to the Declarations in question.

² Annex E to these minutes. For the debates on the question, see vol. iii, minutes of the third meeting of the Third Commission and those of the fourth meeting of its first subcommission.

The Regulations recently drawn up on this subject will be read to you, article by article, by the reporter, Mr. GEORGIOS STREIT, to whom I am happy to offer our thanks; those who have reservations or declarations to make will kindly formulate them. After this the Regulations in their entirety will be voted upon.¹

Mr. Georgios Streit reads the articles of the draft of the Regulations concerning the bombardment by naval forces in time of war, drawn up by the Third Commission.

ARTICLE 1

His Excellency Baron Marschall von Bieberstein: The German delegation makes reservations concerning the second paragraph of Article 1.

His Excellency Sir Edward Fry: The British delegation makes reservations concerning the second paragraph of Article 1.

His Excellency Mr. Léon Bourgeois: The French delegation makes reservations concerning the second paragraph of Article 1.

His Excellency Mr. Lou Tseng-tsiang: The delegation of China makes reservations concerning the second paragraph of Article 1.

His Excellency Mr. Tsudzuki: The delegation of Japan cannot accept the second paragraph of Article 1 for reasons which are indicated in the report of the Third Commission and which express the opinion of the minority of this Commission.

[90] His Excellency Mr. de Villa Urrutia: The delegation of Spain makes reservations concerning the second paragraph of Article 1.

The President: The reservations just expressed shall be recorded.

ARTICLE 2

His Excellency Mr. J. N. Léger: The delegation of Haiti accepts the first two paragraphs of Article 2 but renews reservations concerning the third paragraph. Indeed it seems to it a very stringent rule that the presence, even unexpected, in an undefended port of war-ships which the enemy might believe necessary to destroy, suffices to expose the town and its inhabitants to the effects of a bombardment without previous warning and a period of grace.

The President: This reservation shall be recorded.

ARTICLE 3

His Excellency Mr. Domingo Gana: The delegation of Chile makes reservations on the subject of Article 3.

The President: This reservation shall be recorded.

The other articles give rise to no remarks.

The PRESIDENT: We shall now proceed to the vote on the whole of the Regulations.

Voting for, without reservations: United States of America, Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Greece, Guatemala, Italy, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

Voting for, with reservations: Germany, China, Spain, France, Great Britain, Haiti and Japan.

¹ Annex F to these minutes.

The result of the vote is as follows: 44 ayes, of which 7 are accompanied by reservations.

The **President**: The first delegate of Great Britain has the floor.

His Excellency Sir **Edward Fry**: Mr. President, I have the honor 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:

[91] 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 labor 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 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 [92] the hope of the return of this golden age under the form of the reign of universal peace.

*Ultima Cumaeci venit iam carminis aetas;
Magnus ab integro saeculorum 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 program for the construction of new ships of war and the expenditure which this program would entail. This exchange of information would facilitate an exchange of views between the Governments 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 honor 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. (*Repeated applause.*)

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 [93] that there is no intention on the part of the nations to abandon his endeavors, 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 *vanu* of the First Conference, will perhaps be allowed to express the confident belief 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 also received a communication on the same subject from the delegates of the Argentine Republic and Chile.

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 honor 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.

[94] The PRESIDENT: 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 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 program 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 diffi-

¹ Annexes G and H to these minutes. [The original Spanish text appears in *Tratados, Convenciones*, etc. (Argentine Republic), vol. vii, pp. 277, 293. For English versions, see *British and Foreign State Papers*, vol. 95, p. 762; vol. 96, p. 311; and *Foreign Relations of the United States*, 1902, p. 21.]

culties 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 labors 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 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 honor of reading to you. The majority of the Powers of Europe had other preoccupations. Scarcely had the Conference terminated its labors 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.

[95] It was in consideration of these circumstances, gentlemen, that the Russian Government this time refrained from placing the limitation of armaments upon the program 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 endeavors, 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 favor 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 honor 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. (*Unanimous applause.*)

The unanimity of your acclamations appears to make it unnecessary to proceed to a vote. (*Repeated applause.*)

The meeting adjourns at 4:15 o'clock.

The President,
NELIDOW.

Secretaries General,

W. DOUDE VAN TROOSTWIJK.
PROZOR.

Annex A

[96]

AMENDMENTS TO THE REGULATIONS OF 1899 RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

Renewal of the Declaration of July 29, 1899, Prohibiting the Launching of Projectiles and Explosives from Balloons

REPORT TO THE CONFERENCE ¹

In conformity with the duty assigned to it, the first subcommission of the

¹This 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.

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, prohibiting 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 honor 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 [97] 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.¹

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 program 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 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,² Japan,³ Netherlands,⁴ and Austria-Hungary⁵ relative to Articles 1; 4, 6, 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.

¹ Vol. iii, Second Commission, annexes 2-15.

² *Ibid.*, annex 2.

³ *Ibid.*, annex 10.

⁴ *Ibid.*, annexes 4, 9.

⁵ *Ibid.*, annex 7.

I

AMENDMENTS TO THE REGULATIONS RESPECTING THE
LAWS AND CUSTOMS OF WAR ON LANDARTICLE 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 seems 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*²

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 confined "only while the circumstances which necessitate the measure continue to exist."

This addition was adopted unanimously by the subcommission and the Commission.

[98] ARTICLE 6. *Spanish and Japanese Amendments*³

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 favor of non-commissioned officers, that prisoners of war can only be employed as laborers *according to their rank*⁴ 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."

ARTICLE 14. *Japanese and Cuban Amendments*⁵

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.

¹ Vol. iii, Second Commission, annex 2.

² *Ibid.*, annex 5.

³ *Ibid.*, annexes 6, 10.

⁴ [This phrase, which appeared in the 1899 Regulations, was omitted in the Spanish amendment.]

⁵ Vol. iii, Second Commission, annexes 5, 10.

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*¹

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, would 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 [99] 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 Vol. iii, Second Commission, annex 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 22d and 23d 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 [100] 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 favoring in principle a Netherland amendment of an opposite tendency on the same subject. This amendment was worded thus:

ARTICLE 44 *a*

It is forbidden to force the population of occupied territory to give

¹ Vol. iii, Second Commission, annexes 2, 3, 4, 14.

information concerning their own army or the means of defense 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 Netherland 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*, [101] 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 defense."

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 9, 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.

[102]

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."

¹ Vol. iii, Second Commission, annex 2.

² *Ibid.*, annex 15.

³ *Ibid.*, annexes 7, 8.

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 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 of 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 program 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 program 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.

¹ Vol. iii, Second Commission, annex 36.

[103]

ARTICLE 53

*Danish Amendment*¹

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 enemy² 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.

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 program of the first subcommission, there was added a new proposition by the German delegation:³

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

¹ Vol. iii, Second Commission, annex 12.

² [See Mr. Renault's report on the Final Act, *post*, p. 575 [582].

³ Vol. iii, Second Commission, annex 13.

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 [104] 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.

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

II

DECLARATIONS OF 1899. RENEWAL OF THE DECLARATION PROHIBITING THE DISCHARGE OF 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 1899²:

The contracting Powers agree, for a term of five years, to forbid the discharge 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.

¹ [See Mr. Renault's report on the Final Act, *post*, p. 575 [581].

² Vol. iii, Second Commission, annex 18.

Besides, the subcommission had before it two subsidiary amendments proposed by the delegations of Russia and Italy in case 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 discharge of projectiles or explosives from balloons against undefended [105] 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 by wording it as follows:

It is forbidden to attack or bombard, by artillery or by discharging 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 in operations of war, must be *dirigible* and *manned by a military crew*. It was thus worded:

1

It is forbidden to discharge 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 centered on the text proposed by the delegation of Belgium. The delegations of Austria-Hungary, China, Great Britain, Greece, Portugal, and Turkey declared themselves in favor of it, while the French delegation felt obliged to withhold its support.

This delegation said that in its opinion the humanitarian provisions advocated by the Belgian delegation were already contained in Articles 25 and 27 of the Regulations of 1899 on the laws and customs of war on land, which forbid "to attack or bombard towns, villages, dwellings or buildings that are not defended," and require that in sieges and bombardments all necessary steps must be taken to spare as far as possible the localities and edifices that it is particularly desired to protect. It is because of the essential idea that it is necessary above all to assure their protection without having any question as to the mode of discharging projectiles enter into the matter, that the French delegation thought it could not support a renewal of the Declaration of 1899.

The Belgian proposal was carried by 29 votes, 2 of these being conditional on 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 discharge projectiles from non-dirigible balloons, and further, that there was no connection 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 it¹ was not to be taken as filling a gap in the old Article 25, as the prohibitions [106] already contained in that article apply generally to discharging 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."

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 discharging 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 discharging 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 opinion 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 1899.²

¹ [The second article of the Italian proposal.]

² [Regarding the action of the Conference on this Declaration, see Mr. Renault's report on the Final Act, *post*, p. 577 [583].]

The Convention of 1899 and the Regulations respecting 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 sub-commission 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 program, 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 [107] a man immediately *hors de combat*,”¹ 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.

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.

Annex B

Text of Regulations respecting the laws and customs of war on land, annexed to the Convention of July 29, 1899

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.

Amendments proposed to the Conference by the Second Commission

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.*

¹ Vol. iii, Second Commission, annex 17.

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 labor of prisoners of war according to their rank and aptitude. The tasks shall not be excessive and shall have no connection 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.

[108] 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.

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 labor of prisoners of war according to their rank and aptitude, *officers excepted.* The tasks shall not be excessive and shall have no connection 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.*

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. *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. 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, 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.

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.

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 defense, has surrendered at discretion;

(d) To declare that no quarter [109] 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;

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 defense, 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 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.

(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

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 defense.

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.

Railway plant, land telegraphs, [110] 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 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 RESPECTING 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.

Annex C

Declaration of 1899 concerning the discharge of projectiles and explosives from balloons

The contracting Powers agree to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

Draft of Declaration presented by the delegation of Belgium

The contracting Powers agree, for a term of five years, to forbid the discharge 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 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 only have effect in regard to the notifying Power.

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 Powers 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.

Annex D

[111]

PROPOSAL OF THE DELEGATION OF GREAT BRITAIN

Amendment to the Text Approved by the Second Commission for the Renewal of the Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons

In the first paragraph substitute for the words "for a term of five years" the words "until the meeting of the Third Peace Conference."

Annex E

REGULATIONS CONCERNING BOMBARDMENT BY NAVAL FORCES IN TIME OF WAR

REPORT TO THE CONFERENCE¹

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 [112] 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 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 bom-

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 DER 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).

[The project submitted with this report was adopted by the Conference, August 17, 1907. Save some changes in style, it is identical with Articles 1-7 of the Convention as signed.]

bardment 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, 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.¹ 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 subcommission² 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,³ 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 coordination of the texts into one project [113] 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 by the delegation of Belgium,⁴ and with one amendment⁴ 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.

¹Vol. iii, Third Commission, annexes 1-5.

²Thus 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).

³Vol. iii, Third Commission, annex 6.

⁴*Ibid.*, annex B of the third meeting.

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 honor 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 the Netherlands,¹ 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 defense of a coast and the defense of a town situated near the [114] coast. The defense of the coast might necessitate firing on the instruments themselves of such defense, but a right of bombarding the town which the defense 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 harbor. It seemed to the majority of the Commission (22

¹ Vol. iii, Third Commission, annexes 1 and 4.

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 favor 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 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 neighborhood, 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 LCAZE, 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 to say at the beginning of the discussion that [116] 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

¹ Vol. iii, Third Commission, annex 7.

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.

[117]

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

¹ Vol. iii, Third Commission, annex 2.

² *Ibid.*, annexes 1 and 4.

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 subcom-[118] mission 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 obligation. It was with this understanding that the principle of the proposal made by his Excellency the first delegate of Roumania and amended by Rear Admiral SIEGEL was accepted by the Commission, which charged the committee of examination to find a formula embodying with the rule laid down in Article 6 an exception for cases where the military situation does not permit of a previous warning.

Finally, Article 7 is merely a repetition of Article 28 of the Regulations on land warfare. The transposition of the word "even," proposed by Mr. RENAULT, is only a change in phrasing.

Such, gentlemen, is the project which is to-day presented by the Third Commission for the approval of the Conference.

By ordaining the rules which the Third Commission has the honor to recommend, this high assembly would usefully complete the work commenced in 1899 and would, in this serious and difficult problem bequeathed to it by the First Peace Conference, make a substantial contribution to the codification of international law in time of war.

Annex F

REGULATIONS CONCERNING BOMBARDMENT BY NAVAL FORCES IN TIME OF WAR¹

CHAPTER I.—*The bombardment of undefended ports, towns, villages, etc.*

ARTICLE 1

It is forbidden to bombard by naval forces undefended ports, towns, villages, dwellings or buildings.

A place cannot be bombarded for the sole reason that automatic submarine contact mines are anchored off the harbor.

[119]

ARTICLE 2

However, there are not included in this prohibition 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 harbor, which 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

¹ [This text submitted to the Conference differs from Articles 1-7 of the Convention as signed only in a few matters of style. See the report of the General Drafting Committee, *post*, p. 576 [582].

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.

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 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 visible signs, which shall consist of large stiff rectangular panels divided diagonally into two colored 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.

Annex G

[120]

CONVENTION BETWEEN CHILE AND THE ARGENTINE REPUBLIC, RESPECTING THE LIMITATION OF NAVAL ARMAMENTS

Don JOSÉ FRANCISCO VERGARA DONOSO, the Minister for Foreign Affairs of Chile, and Don JOSÉ ANTONIO TERRY, Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic, having met together in the Ministry for Foreign Affairs of Chile, have agreed to include in the following convention the various decisions arrived at for the limitation of the naval armaments of the two republics; decisions which have been taken owing to the initiative and to the good offices of His Britannic Majesty's Government, represented in Chile by its Envoy Extraordinary and Minister Plenipotentiary, Mr. GERARD A. LOWTHER, and in the Argentine Republic by its Envoy Extraordinary and Minister Plenipotentiary, Sir W. A. BARRINGTON.

ARTICLE 1

With the view of removing all motive for uneasiness or resentment in either country, the Governments of Chile and of the Argentine Republic desist from acquiring the vessels of war which they have in construction, and from henceforth making new acquisitions.

Both Governments agree, moreover, to reduce their respective fleets, for which object they will continue to exert themselves until they arrive at an understanding which shall establish a just balance (of strength) between the said fleets. This reduction shall take place within one year, counting from the date of exchange of ratifications of the present convention.

ARTICLE 2

The two Governments bind themselves not to increase, without previous notice, their naval armaments during five years; the one intending to increase them shall give the other eighteen months' notice. It is understood that all armaments for the fortification of the coasts and ports are excluded from this agreement, and any floating machine destined exclusively for the defense of these, such as submarines, etc., can be acquired.

ARTICLE 3

The two signatory Parties shall not be at liberty to part with any vessels, in consequence of this convention, in favor of countries having questions pending with one or the other.

ARTICLE 4

In order to facilitate the transfer of pending contracts, both Governments bind themselves to prolong for two months the term stipulated for the delivery of the vessels in construction, for which purpose they will give the necessary instructions immediately this convention has been signed.

[121]

ARTICLE 5

The ratifications of this convention shall be exchanged within the period of sixty days, or less if possible, and the exchange shall take place in this city of Santiago.

In witness whereof the undersigned have signed and put their seals to two copies of this convention in the city of Santiago, May 28, 1902.

J. F. VERGARA DONOSO.

J. A. TERRY.

Annex H

PROTOCOL OF THE CONVENTION OF MAY 28, 1902, BETWEEN
CHILE AND THE ARGENTINE REPUBLIC ON THE
LIMITATION OF NAVAL ARMAMENTS

His Excellency Don CARLOS CONCHA, Envoy Extraordinary and Minister Plenipotentiary of Chile, and his Excellency Dr. LUIS M. DRAGO, Minister for Foreign Affairs, having met together in the Department of Foreign Affairs in Buenos Aires, on January 9, 1903, with the view of giving effect to the just balance which both countries have decided to establish between their respective fleets, in conformity with the treaty on naval armaments signed on May 28, 1902, with the notes exchanged on the same day between the Chilean Ministry and the Minister Plenipotentiary of the Argentine Republic, and, with the protocol which was signed on July 10, 1902, relating to the same matter, and, after having exchanged their respective powers, which were found in due form, have agreed to the following arrangement:

ARTICLE 1

The Republic of Chile and the Argentine Republic shall hereafter, and in the shortest time possible, sell the vessels of war now building for them, for the former in the shipyards of Messrs. VICKERS and Messrs. ARMSTRONG (England) and for the latter in those of Ansaldo (Italy), according to the stipulations set forth in paragraph 1 of Article 1 and in Article 3 of the agreement of May 28, 1902.

In the event of its not being possible from any cause to carry out the sale immediately, the high signatory Parties may continue the building of the said ships, until they are completed, but in no case shall they be added to the respective fleets—not even with the previous notice of eighteen months required for the increase of naval armaments by Article 2 of the above-quoted agreement.

ARTICLE 2

Both the high signatory Parties mutually agree immediately to put the [122] vessels at present building at the disposal and at the orders of His Britan-

nic Majesty, the arbitrator appointed by the treaty of May 28, 1902, informing him that they have agreed that the vessels shall not leave the yards where they actually are except only in case both high Parties jointly request it, either because their sale has been effected or in virtue of a subsequent agreement.

ARTICLE 3

The two high signatory Parties shall immediately communicate to the ship-builders the fact that the vessels have been placed, by common consent of both Governments, at the disposal of the arbitrator designated in the treaty of May 28, 1902, without whose express order they may not be delivered to any nation or individual.

ARTICLE 4

In order to establish the just balance between the two fleets, the Republic of Chile shall proceed to disarm the battle-ship *Capitán Prat* and the Argentine Republic to disarm its battle-ships *Garibaldi* and *Pueyrredon*.

ARTICLE 5

In order that the vessels may be considered disarmed, in accordance with the foregoing article, they must be moored in a basin or port, having on board only the necessary crew to attend to the preservation of the material which cannot be removed, and they must have landed—

All coal;

All powder and ammunition;

Artillery of small caliber, torpedo tubes and torpedoes, electric search-lights, boats.

All stores of whatever kind.

For their better preservation it is permissible to roof in the decks.

ARTICLE 6

The vessels mentioned in Article 4, which both Governments agree to disarm, shall remain in that state, and may not be rearmed without the previous notice of eighteen months which the Government who wishes to do so is obliged to give to the other Government, except in case of a subsequent agreement or of their alienation.

ARTICLE 7

Both Governments shall request the arbitrator appointed by the treaties of May 28, 1902, for the purpose of arranging difficulties to which questions on naval armaments may give rise, to accept the duties resulting from the present agreement, for which purpose an authenticated copy shall be sent to him.

In witness whereof the respective plenipotentiaries sign and seal the present protocol in duplicate at Buenos Aires, January 12, 1903.

CÁRLOS CONCHA.
LUIS M. DRAGO.

FIFTH PLENARY MEETING

SEPTEMBER 7, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 11:10 o'clock.

The minutes of the fourth plenary meeting are read and approved.

The **President**: Gentlemen, you are not unaware that upon the occasion of the festival of Her Majesty the Queen of the Netherlands, I considered it my duty to be the interpreter of the unanimous sentiments of the Conference in transmitting our congratulations to Her Majesty. I have the honor to read you the telegram she has deigned to address to me:

I greatly appreciate the congratulations and wishes of your Excellency, and beg you kindly to transmit my sincere thanks to the delegates at the Conference.

WILHELMINA.

(*Applause.*)

I have already had occasion in one of your commissions to communicate to you the resolution in virtue of which Her Majesty the Queen has been so kind as to place at our disposal, for the duration of the Conference, the large Hall of the Knights. We tender to Her Majesty our deep gratitude for all the facilities which she has given us and for the warm hospitality she has so generously accorded us ever since our first meeting. (*Applause.*)

Since the last meeting I have received from his Excellency the first delegate of Great Britain the following letter which I have the honor to read to you:

August 22, 1907.

MR. PRESIDENT AND DEAR COLLEAGUE: I have the honor to inform your Excellency that my Government has just authorized me to accept the principle of indemnification for violation of the Hague Regulations respecting the laws and customs of war on land, as it is set forth in the proposal [124] of the delegation of Germany¹ and that, consequently, the reservation made by me on this subject at the last plenary meeting is no longer of value. Accept, etc.

[Signed] Sir EDWARD FRY.

The Conference takes note of this communication.

Among the communications which I have received since our last meeting, I must mention a letter addressed to me by the President of the Council of Ministers of Roumania, his Excellency Mr. DÉMÈTRE STURDZA, for the purpose of transmitting to me a plan for an Academy of International Law to be erected at The Hague.

You will remember, gentlemen, that in our third meeting I had the honor

¹ Vol. iii, Second Commission, annex 13.

to call your attention to a suggestion made on this subject by the editor of a German review. It led the eminent Roumanian statesman, imbued with the idea of the development of the law of nations, to prepare a plan which I am depositing in the archives of the Conference. Some day, perhaps, it may serve to facilitate the realization of this idea, were it destined to materialize, at a time when the pacific institutions which the Conference wishes to organize at The Hague will have been sufficiently developed to create a continuity of international law and a judicial practice which it would be necessary to codify.

Here is the letter of His Excellency Mr. STURDZA.

EXCELLENCY: Following with increasing interest, since its beginning, the work of the Hague Conference, my attention has been particularly drawn to its organization, in order that this great international institution, founded by the generous initiative of His Majesty, EMPEROR NICHOLAS II, might, in a rapid and efficacious manner, "extend the dominion of law and strengthen the sentiment of international justice."

That my letter may not be too long, I beg your Excellency to allow me to set forth briefly the proposal which I submit for your consideration.

I am encouraged in taking this step by the fact that the proposition gives definite form to an idea which was expressed by your Excellency, as president of the Second Peace Conference, in your address opening that illustrious gathering.

The Peace Conference pursues a great object, that of bringing about the pacific settlement of international disputes.

To this end, in 1899, a Permanent International Court of Arbitration was established, for the purpose of adjudging the disputes which would be submitted to it. The Conference now seeks to give to arbitral justice a still greater development. This would be the time, then, to create between the international tribunal and the Conference a bond which cannot be other than scientific, in order that practice and theory may march hand in hand and mutually aid each other. There should be established, therefore, at The Hague a fully developed institute of international law, whose direction would be entrusted to the Peace Conference, whose practical execution would be entrusted to the Permanent Administrative Council established in 1899, and whose scientific development would be entrusted to an academy of international law, which would, in a methodical way, maintain the science on a level with the principles enunciated by the Conference and practice on a level with the progress inaugurated.

[125] In submitting this proposal to your Excellency, through the intermediary of the first delegate of Roumania, his Excellency Mr. ALEXANDRE BELDIMAN, I take the liberty of requesting you to give it your powerful support. As this proposition is only the necessary and indispensable complement of the institution of the Conference itself, I hope that your Excellency will find the means of putting it into execution.

I beg your Excellency, etc.

I permit myself to express to his Excellency the gratitude of the Conference, for the work in which he has taken such a deep interest, and I am filing his plan¹ in the archives of the Conference.

The PRESIDENT: The business on the agenda is the reading of the report of the Second Commission upon the opening of hostilities.² You have before you

¹ Annex A to these minutes.

² For the debates on the matter, see vol. iii, minutes of the first and third meetings of the Second Commission and those of the first three meetings of its second subcommission.

the text of the report; ¹ I therefore consider it unnecessary to read it. Mr. LOUIS RENAULT will read the articles adopted by the Second Commission, ² and I ask the members of the Conference who might have reservations to make kindly to formulate them as the occasion presents itself during the reading.

The floor is given to Mr. LOUIS RENAULT.

Mr. Louis Renault next reads Articles 1 and 2, which are adopted without remarks.

The whole draft is unanimously adopted.

The President: The floor is given to Colonel BOREL.

Colonel Borel: With the authorization of the President, I have the honor to read you the draft arrangement drawn up by the Second Commission concerning the rights and duties of neutral States on land. ³

He then reads Articles 1 to 11 ⁴ which are adopted without remark.

The entire draft is unanimously approved.

Colonel BOREL: Gentlemen, I shall now have the honor of reading to you the draft of a new section to be added to the Regulations respecting the laws and customs of war on land, which concerns neutrals in the territory of the belligerent parties. ⁵

His Excellency Baron Marschall von Bieberstein: At the opening of the work of the Conference the German delegation filed a draft of regulations relating to the treatment of neutral persons in the territory of belligerents. ⁶ [126] This draft contained a codification almost complete of the rules to be applied by the belligerent States to the *ressortissants* of neutral States. In preparing this draft we were inspired by a twofold principle which has been accurately defined by our eminent reporter. The draft tended to end the uncertainty which now exists, and which has too often been the source of differences between belligerents and neutral States, by the adoption of precise rules. The draft was based on the idea that neutrals on belligerent territory should remain as far as possible outside of the war. They should not take part therein, and they will not suffer from its effects except in so far as this cannot be avoided.

The draft, which thus tended to create a *special situation* for persons who are bound to a neutral State by ties of nationality, was divided into three chapters, the first of which contained the definition of a neutral person and the second and third the provisions relative to the services rendered by neutral persons and the treatment of their property.

This draft was submitted in the second subcommission of the Second Commission to a thorough examination which has been continued even in this Commission. It has given rise to very interesting discussions, which, nevertheless, have shown since the beginning a complete divergence of opinion upon the principles.

The contrary principle of a complete assimilation of neutral subjects into the *ressortissants* of the belligerent State has been opposed to our principle providing for the creation of a special situation for neutral subjects.

¹ Annex B to these minutes.

² Annex C to these minutes.

³ Annexes D and E to these minutes. For the debates on the matter, see the minutes of the third, fourth and fifth meetings of the Second Commission and those of the fourth, fifth, sixth and seventh meetings of its second subcommission.

⁴ Annex E to these minutes.

⁵ Annexes F and G to these minutes. See *ibid.* and minutes of the sixth meeting of the Second Commission.

⁶ Vol. iii, Second Commission, annex 36.

The result of this work is presented to us to-day under the form of an "Arrangement concerning neutrals in belligerent territory," an arrangement which has met with the approval of the majority of the Commission.

I feel I must explain my reasons for the negative vote which I shall pronounce on the subject of nearly all of the articles of this arrangement.

It is true that the report still mentions three chapters. The first of these has retained its original form almost word for word. It defines neutral persons and the causes by which they forfeit their neutral character. The head has thus been preserved. But almost nothing remains of the body. The provisions of the second chapter, concerning services rendered by neutrals, have at least the merit of being complete. The same cannot be said of the third chapter which, according to the title, determines the rules governing neutral property, but which, in fact, *treats only of railroad material and vessels*.

We ask ourselves if the several provisions which remain of the second and third chapters can still justify the existence of the first chapter which defines the neutral person and forms, as it were, the preface, and has no *raison d'être* except in so far as the rights and duties of these persons are established by the provisions which follow.

We should have answered this question in the affirmative had the ensemble of Chapters II and III been acceptable to us, or, at least, had the objections to be raised concerned a detail of but slight importance.

Unfortunately, this is not the case.

One of the fundamental principles of our proposal, from which we cannot now depart, was this: *Neutral persons shall not be required to render war services in the armies of the belligerents*. Now Article 64 of the arrangement states: The parties shall not require of neutrals services connected with the war.

Nevertheless Article 65 states that the provision of Article 64, paragraph 1, is not applicable to persons belonging to the army of a belligerent State [127] *under the legislation of that State*.

We are therefore confronted with two stipulations, one stating that military services shall not be required of neutral subjects, the other recognizing it as lawful to force neutrals to carry arms under the law of the belligerent State.

We could not allow the application of this principle to a German *ressortissant*.

We therefore thought of making a reservation in respect to this article alone. However, after much reflection, that did not seem sufficient. In reality it would bring about a state of affairs contrary to the principle of reciprocity which governs the relations between sovereign States.

The result is that we cannot accept the chapter relative to the services rendered by neutrals. We have besides taken into consideration that seven great Powers have made reservations with regard to Article 67, and six among them also with regard to Article 68, so that a general agreement cannot be established upon these two principles. There remains, then, in the provisions concerning the rights and duties of neutrals, but Article 66, treating of railroad material.

Under these circumstances we have decided that the preface could not be maintained except in the form of a series of articles setting forth a principle without drawing therefrom any practical conclusion.

It is not without deep regret that we see the work of many weeks amount to so little.

We believe, nevertheless, that it is better to leave to the future the settle-

ment of the difficulties here stated, and prepare the way for an international understanding upon the important subject in question.

His Excellency Mr. **Drago**: The delegation of the Argentine Republic will abstain from voting on Articles 64, 66 and 68.

His Excellency Mr. **Beernaert**: As president of the Second Commission, I have not been able to take part in the discussion, the echo of which you have just heard, and I have no intention of so doing at present. But I must remark that the regulations for neutrals have given rise to a long and thorough discussion and it would certainly be deplorable if all this work were to be lost.

The spirit of conciliation which the members of this assembly have ever shown leads me to hope that it is not impossible to find a basis for agreement at the price of several concessions.

The **Reporter** reads Article 61.

His Excellency Mr. **Hagerup**: I think I must recall the fact that the Second Commission had decided to replace the word "*ressortissants*" by that of "nationals."

The **Reporter** observes that this is a typographical error which will be corrected. He then reads Articles 62, 63, 64 and 65.

His Excellency Count **Tornielli**: The delegation of Italy makes reservations with regard to the second paragraph of Article 65.

His Excellency Mr. **Hammarskjöld**: The delegation of Sweden makes the same reservations as that of Italy.

His Excellency Mr. **Léon Bourgeois**: The delegation of the French Republic makes the same reservations.

His Excellency Mr. **Martens**: The delegation of Russia makes the same reservations.

[128] His Excellency Mr. **Rangabé**: The delegation of Greece makes the same reservations.

His Excellency Mr. **Carlin**: The delegation of Switzerland makes the same reservations.

Mr. **Sanguily**: The delegation of Cuba makes the same reservations.

His Excellency Mr. **Grouitch**: The delegation of Serbia makes the same reservations.

His Excellency Mr. **Mérey von Kapos-Mére**: The delegation of Austria-Hungary makes the same reservations.

His Excellency Mr. **Ruy Barbosa**: The delegation of Brazil makes the same reservations.

His Excellency Mr. **Tcharykow**, delegate of Montenegro, makes the same reservations.

His Excellency **Samad Khan Momtas-es-Saltaneh**: The delegation of Persia makes the same reservations.

His Excellency Baron **Marschall von Bieberstein**: I see that reservations are made upon all sides to the second paragraph of Article 65. I propose, under these conditions, to refer it to the Second Commission, which may perhaps find a basis of agreement.

His Excellency Count **Tornielli**: I second the proposal of his Excellency the first delegate of Germany.

The **President**: I shall consult the Conference upon the reference of Article 64 to the Second Commission.

His Excellency Mr. **Léon Bourgeois**: I should like to know if the reference will apply only to Article 65 or to Articles 65 *et seq.*

Articles 65, 66, 67, and 68 being closely related, it would be preferable to refer them all to the Commission.

His Excellency Mr. **Beernaert**: I second the motion of his Excellency the first delegate of France; I agree with him that it would be more difficult to come to an agreement on Article 65 taken alone.

His Excellency Baron **Marschall von Bieberstein**: I propose that the entire draft be referred to the Second Commission.

The **Reporter**: I deem it necessary to call to mind that Article 65, paragraph 2, was stricken out by the Commission, then adopted again by it by a majority of 12 votes against 9 and 13 abstentions.

The question around which the discussion revolved was very important; it has given rise to two doctrines. The committee of examination did not wish to sanction one of them. I am now convinced that the 12 votes made in favor of Article 65 do not represent the true majority and that the best solution is the suppression of the second paragraph of this article.

His Excellency Mr. **Mérey von Kapos-Mére**: I second the proposal of the reporter.

His Excellency Mr. **van den Heuvel**: The assembly is confronted with two proposals which differ greatly: The proposal made by the honorable reporter to eliminate the second paragraph of Article 65, and the proposal of the first delegate of Germany, seconded and enlarged by the first delegate of France, providing for the reference of the entire draft to the Second Commission. These two proposals have been inspired by the divergence of the numerous reservations just expressed.

[129] There seem to me to be two reasons for the rejection of the proposal of our reporter. The first is that his proposal will in no way improve the situation and will only create another as difficult. In its present form the maintenance of the second paragraph of Article 65 calls forth reservations. Suppress this second paragraph, and you will find yourselves in presence of reservations just as numerous, although of opposite import. We will not have taken a step. The second reason seems to me decisive. We all desire to reach an agreement. The means of conciliation are not exhausted and it is not now the time to discuss them in detail.

Consequently, I hope the assembly will be good enough, without pronouncing itself upon the question, to do away with the proposal of the honorable reporter, and, in accordance with the suggestion of the first delegate of Germany, to refer the entire report to the Commission. It would be regrettable if we were obliged to confine ourselves to a declaration or to a document containing mere chapter heads rather than a real collection of regulating provisions.

Let us seek a basis of agreement by common accord.

His Excellency Mr. **Martens**: The delegation of Russia has made reservations upon Article 65, paragraph 2. It intends to make them on Articles 67 and 68. The reservations made on all sides lead me to believe that under these conditions the practical object held in view by the Convention no longer exists and that it is preferable to second the proposal of the delegation of Germany.

His Excellency Lord **Reay**: The British delegation supports the proposal of his Excellency the first delegate of Germany.

His Excellency **Turkhan Pasha**: The Ottoman delegation makes reservations with regard to Articles 67 and 68.

The **Reporter**: In view of the remarks of his Excellency Mr. VAN DEN HEUVEL, I will not insist upon the proposal I made concerning the elimination of Article 65, paragraph 2.

The **President**: The reservations to which this paragraph has given rise, the welcome that the German proposal has received by a great number of the delegates, are so many reasons for referring all the articles of the draft to the Commission. They have been the subject of long and thorough debates, of which the object was to find a basis of understanding and conciliation. This end not having been attained, I put to vote the proposal of his Excellency Baron MARSCHALL VON BIEBERSTEIN, concerning the reference of Chapter III to a new study.

His Excellency Mr. **Beernaert**: I should like to know if the reference concerns the entire draft or only Articles 65 to 68.

His Excellency Baron **Marschall von Bieberstein**: It would be preferable to return the entire draft, but if this suggestion is destined to meet with opposition, I make motion for the return of Articles 65 *et seq.* only.

His Excellency Count **Tornielli**: I consider it preferable to refer the entire draft, in order to make the necessary arrangement of Article 65 and those which precede it.

The reference of the entire draft is voted for by all the delegations, with the exception of those of the United States of America, Brazil and Cuba.

The meeting adjourns at noon.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK.
PROZOR.

Annex A

[130]

ANNEX TO THE LETTER OF HIS EXCELLENCY MR. DÉMÈTRE STURDZA, DATED JULY 21/AUGUST 3, 1907

Having in view the necessity of developing in a systematic manner international law and its practical application to international relations, the Second Peace Conference sitting at The Hague decides to create an Academy of International Law and to establish it upon the following bases:

ARTICLE 1

An Academy of International Law is founded at The Hague.

ARTICLE 2

The members of this Academy will be chosen from among the most eminent scholars, university professors, and jurists of all countries, men whose ability is

recognized in the various branches of international law, such as private international law, the law of war, comparative commercial law, commercial systems and economic relations, colonial systems, the history of international law.

The courses offered by the Academy of International Law at The Hague will be given in German, English, French and Italian, without discrimination.

ARTICLE 3

The number of members of the Academy of International Law at The Hague will not exceed six. These members will be appointed for a period ofby the Second Peace Conference of 1907.

The annual courses of the Academy of International Law will be held during the months of May, June, and July. They will begin on May 1, 1908.

ARTICLE 4

The expenses of the Academy of International Law at The Hague will be met by contributions from those of the States represented at the Second Peace Conference of 1907 which shall adhere to the resolution for the proposal of this Academy.

Each State which adheres will declare the sum which it will bind itself to contribute, which will range from 2,000 to 4,000, 6,000, 8,000, to 10,000 francs.

ARTICLE 5

The Permanent Administrative Council of The Hague, constituted by the 28th article of the Convention for the settlement of international disputes of 1899, is entrusted with the internal administration and with the funds of the Academy of International Law at The Hague, and it will fix the compensation to be paid to the members of that international institution.

[131]

ARTICLE 6

In case this Academy will develop so as to require special headquarters to be given to it, the Permanent Administrative Council at The Hague will call upon the governments of the adhering States to furnish the necessary funds.

ARTICLE 7

Each State adhering to the creation of the Academy of International Law at The Hague has the right to designate for attendance upon the courses of the institution, diplomats, army officers, persons serving in the higher executive departments of the State, and scholars.

The number of attendants at the courses of the Academy will be in proportion to the contributions of each State, namely, 2, 4, 6, 8 or 10.

Annex B

OPENING OF HOSTILITIES

REPORT TO THE CONFERENCE¹

The Russian program 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 program; 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.

[132] 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 favor 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 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.

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 GÜNDELL, Brigadier General DAVIS, Major General Baron GIESL VON GIESLINGEN, 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.

² Vol. iii, Second Commission, annex 19.

³ *Ibid.*, annex 20.

⁴ *Ibid.*, annex 22.

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 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 judgment 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 sub-
[133] stantiated 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 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 judgment 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 [134] 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, 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 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: [135] "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

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

¹ Vol. iii, Second Commission, annex 21.

² *Ibid.*, annex 44.

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 [136] 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.

Annex C¹

DRAFT OF REGULATIONS RELATING TO THE OPENING OF HOSTILITIES²

We have the honor, therefore, to submit to the conference the two following propositions:

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 D

ARRANGEMENT CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL STATES ON LAND

REPORT TO THE CONFERENCE³

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 [137] attention to it in the subcommission which was instructed to prepare what afterwards became the Regulations of 1899; and although the Commission

¹ This project was adopted unanimously by the Conference, September 7. For its subsequent history in the Drafting Committee, see *post*, p. 575 [581].

² Text submitted to the Conference.

³ 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 GÜNDELL, General DAVIS, 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 Mr. TSUDZUKI, his Excellency Mr. EYSCHEN, his Excellency General Jonkheer DEN BEER POORTUGAEL, his Excellency SAMAD KHAN, MONTAS-ES-SALTANEH, his Excellency Mr. BELDIMAN, his Excellency Mr. CARLIN, and Colonel BOREL, reporter.

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 program 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,¹ on which were grafted various amendments presented by other delegations,² and also some points referred to it for examination by other commissions or subcommissions.³ 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 its provisions 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,⁴ 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 ap-

¹ Vol. iii, Second Commission, annex 24.

² *Ibid.*, annexes 25-31.

³ *Ibid.*, annex 32.

⁴ *Ibid.*, annex 30.

[138] plication 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,¹ giving the necessary explanation with each.

ARTICLE 1

The territory of neutral States is inviolable.

On the motion of the Belgian delegation² 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,³ 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;
- (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 [139] them to public service. Article 8, on the other hand, treats of public service

¹ Annex E to these minutes.

² Vol. iii, Second Commission, annex 30.

³ *Ibid.*, annex 25.

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.

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 [140] 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

¹ Vol. iii, Second Commission, annex 35.

² *Ibid.*, annex 24.

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 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.

This last clause — had it prevailed — would have been inconsistent with the provisions of Article 6, which differs from the French proposal² 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 [141] 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.*

¹ Vol. iii, Second Commission, annex 36.

² *Ibid.*, annex 24.

It will be noticed at once that the Commission separated the two sentences of this article,¹ 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 favor. 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 was on the motion of the Belgian delegation,² 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.

[142] 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

¹ Annex E to these minutes.

² Vol. iii, Second Commission, annex 30.

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,¹ 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.

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.

[143] 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

¹ Vol. iii, Second Commission, annex 29.

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,² 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,³ 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 favor of the fugitives a formal right to enter the territory of a neutral State and remain there at liberty. It asked⁴ that the right be reserved to the neutral State, either to exclude them or to deny 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.

[144] (4) This second sentence was inserted in Article 10 at the instance of

¹ Vol. iii, Second Commission, annex 24.

² *Ibid.*, annex 25.

³ *Ibid.*, annex 30.

⁴ *Ibid.*, annex 26.

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 judgment 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 delegation² 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 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

¹ Vol. iii, Second Commission, annex 30.

² *Ibid.*, annex 27.

[145] 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 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.

¹ Vol. iii, Second Commission, annex 27.

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.

[146] 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 fulfill 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 delegation² referred to us for examination by the Third Commission and drawn up as follows:

If, in order to prepare in due time for the defense 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.

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 defense that it considers expedient, and that the exercise of this right, which flows quite

¹ Vol. iii, Second Commission, annex 28.

² *Ibid.*, annex 31.

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 [147] 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 57a

Officers or other members of the armed forces of a belligerent, interned by a neutral State, cannot be set at liberty or authorized to reenter their country except with the consent of the adverse party and under the conditions stipulated by it.

ARTICLE 57b

A parole given to a neutral State by the persons mentioned in Article 57a 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 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 reenter 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

¹ Vol. iii, Second Commission, annex 32.

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.

[148] 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 E

DRAFT ARRANGEMENT RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL STATES ON LAND¹

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.

[149]

ARTICLE 3

Belligerents are likewise forbidden to:

(a) Erect on the territory of a neutral State a wireless telegraphy station

¹ Text submitted to the Conference.

This project received the unanimous approval of the Conference, September 7. Respecting a change in the order of Articles 10 and 11, see *post*, p. 339 [345].

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.

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 telegraph 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.

[150] 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 F

ARRANGEMENT ON NEUTRAL PERSONS IN THE TERRITORY
OF BELLIGERENTSFIRST REPORT TO THE CONFERENCE¹

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 delegation² 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 V³ 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.

[151]

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 proposition⁴ 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

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 GÜNDELL, 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.

² Vol. iii, Second Commission, annex 36.

³ Annex G hereafter.

⁴ Vol. iii, Second Commission, annex 36.

virtue of the juridical tie of nationality, 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 favor 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,² which spoke of "violation of neutrality," committed by a neutral, the wording proposed by the Swiss delegation,³ 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 unfavorable 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 favor 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.

[152] 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 favor 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

¹ [Westlake (2nd ed., vol. i, p. 193) 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 Vol. iii, Second Commission, annex 36.

³ *Ibid.*, annex 38.

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.

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. Ex-
[153] ception 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 Vol. iii, Second Commission, annex 37.

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 proposals¹ 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 delegation² 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 their 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 Britain³ and Belgium⁴ 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*,⁵ 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 draft⁶ contained, besides Articles 70 to 72 [154] (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 Vol. iii, Second Commission, annex 36.

² *Ibid.*, annex 42.

³ *Ibid.*, annex 45.

⁴ *Ibid.*, annex 46.

⁵ [This article 22*a* became the last paragraph of Article 23.]

⁶ Vol. iii, Second Commission, annex 36.

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 delegations 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 favor 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 [155] difficulties of execution. Thus, to repeat the expressions 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 not to favor 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 [156] favor 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 proposed²:

(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

¹ Ten delegations did not respond when called upon.

² Vol. iii, Second Commission, annex 47.

hostile territory, like the private property of the *ressortissants* of the hostile State.

(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.

[157] With reference to Article 70 of the German proposal,¹ which in part became Article 69 of the project of the committee, the delegation of Luxembourg² had proposed an amendment as follows: "This permission [to expropriate or make use of, for military purpose, movable property of neutrals in the country of the belligerent which 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 Luxembourg followed it with a subsidiary amendment³ to complete the same Article 70 by the following provisions:

The maintenance of pacific relations, more especially of the commercial

¹ Vol. iii, Second Commission, annex 36.

² *Ibid.*, annex 39.

³ *Ibid.*, annex 40.

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.

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 subcommission¹ 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 [158] 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

¹ Report of General Baron GIESL VON GIESLINGEN, vol. iii, Second Commission, annex to the second meeting.

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 favor 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 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 practiced everywhere in times of peace and whose application cannot, it seems, cause any difficulty.

[159]

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.

¹ Vol. iii, Second Commission, annex 41.

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.

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 favor 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 G

[160]

FIRST DRAFT OF A NEW SECTION TO BE ADDED TO THE
REGULATIONS CONCERNING THE LAWS AND CUS-
TOMS OF WAR ON LAND¹

SECTION V.—NEUTRALS IN THE TERRITORIES OF THE BELLIGERENT PARTIES

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.

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 favor 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.

ARTICLE 63

The following acts shall not be considered as committed in favor 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.

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 possible, be paid for in cash; if not, a receipt shall be given and payment effected as soon as possible.

[161]

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.

¹ Text submitted to the Conference.

Nor does it apply to persons belonging to the army of a belligerent State under the legislation of that State.

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 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.

ARTICLE 67

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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.

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.

SIXTH PLENARY MEETING

SEPTEMBER 21, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 11:15 o'clock.

The minutes of the fifth plenary meeting are adopted.

The President:

GENTLEMEN: Before taking up the business on the agenda, I must discharge an agreeable duty by bringing to your knowledge a communication, as important as it is flattering to the Convention, which was addressed to me by two of our most distinguished colleagues. Three days ago the first delegates of the Kingdom of Italy and of the Argentine Republic transmitted to me in a joint letter the text of an arbitration treaty signed that day between these two countries in one of the halls where we hold our meetings, "under the shield of the Conference" as it is expressed in this letter, of which the following is the text:

MR. PRESIDENT: Italy and the Argentine Republic, two States whose frequent and fruitful relations are united by the ties of strong friendship and perfect mutual confidence, have just signed at The Hague a Convention whose clauses testify to the favor in which the principle of arbitration is held by the two nations.

The obligation of arbitration includes all controversies with the exception of questions of a constitutional nature. By this Convention the two Governments contract engagements which have no limitations either in questions concerning the choice of judges or the necessity of establishing the compromise.

In placing their stipulation under the shield of the Conference, the delegates of the two contracting States are happy to put in your hands, Mr. President, the text of an international act in which the principles proclaimed by the Conference will find henceforth their widest application.

Accept, etc.

[163] The PRESIDENT reads the treaty¹ and then speaks as follows:

GENTLEMEN: There is no need for me to hold out to you the immense diplomatic value of this document. Its provisions, as well as the wording employed in defining it in the letter of their Excellencies Count TORNIELLI and Mr. SÁENZ PEÑA, enable one to appreciate its great significance from the point of view of the principles which form the subject and the basis of our deliberations, namely: diplomatic understanding and arbitration as means for the settlement of international disputes.

Therefore, as you have stated, arbitration finds therein its widest application, and the treaty thus presents an encouraging model to the Powers who wish to put into practice the rules that we endeavor to establish in principle.

Its official communication to us constitutes on the other hand a solemn

¹ Annex A to these minutes.

homage paid to our labors and a manifestation of sympathy to which we can only reply by offering to the eminent statesmen who have negotiated and concluded the Italo-Argentine treaty the sincere thanks and warmest congratulations of the Conference. (*Loud applause.*)

The business on the agenda is the examination of the supplemental report of the Second Commission upon the arrangement concerning neutral persons in belligerent territory.¹

The reporter, Colonel BOREL, has the floor.

Colonel Borel: Before reading the definitive proposals of the Second Commission, permit me to make myself the spokesman of its sentiments in expressing the sincere regret which it has felt in being obliged to eliminate four articles whose preparation was the fruit of long and conscientious effort. This has been done, nevertheless; and the decision, reached without opposition — which proves how the Commission has risen to the situation — its decision, I say, has not been dictated solely by the very pressing considerations mentioned in the supplementary report now in your hands, but it has been inspired by the interest which we have always had in the question whose examination was entrusted to us. To admit that the Conference of 1907 is not able to regulate everything relating to neutrals is not to say that this important question should be considered as henceforth abandoned; it is rather to state that its subsequent solution, for the time being, should be sought and prepared in another way and by other means. And this is the purpose of the second of the *vœux* proposed to you for communication to the high Powers you have the honor to represent here. If the Governments would be good enough to take this *vœu* into consideration, they could remove the difficulties and the obstacles which to-day have checked and vanquished our goodwill; and, in doing this, they will find in the deliberations of these last weeks a collection of references, memoranda and information, the usefulness of which cannot be disputed. This is why it can be said without presumption that even with regard to the limited draft upon which you have to vote to-day, the work of the Commission will not be useless to the noble cause which has gathered us here, and you will permit me, Gentlemen, to make this statement at a time when the Second Commission presents itself before you for the last time.

[164] The REPORTER then reads the definitive proposals of the Commission.²

ARTICLE 1

The nationals of a State which is not taking part in the war shall be considered as neutrals.

ARTICLE 2

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 favor 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.

¹ Annex B to these minutes. For the debates on the matter, see vol. iii, minutes of the sixth meeting of the Second Commission.

² Annex C to these minutes.

ARTICLE 3

The following acts shall not be considered as committed in favor 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.

ARTICLE 4

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.

The President: These articles having already been examined in the preceding meeting, I will confine myself to asking if any one has remarks to make upon them.

His Excellency Mr. Drago: The delegation of the Argentine Republic will abstain from voting on Article 4.

The President: With the exception of this reservation, all the articles are then considered as unanimously adopted and their place in the Final Act will be determined by the drafting committee.

The Reporter then reads the two following *vœux*:

1. 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 Powers and neutral States;

[165] 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.

The two *vœux* are adopted without remarks.

The business on the agenda is the report of the First Commission upon a draft Convention relative to the establishment of an International Prize Court.¹

Mr. Louis Renault reads a page of his report which he expresses the general spirit of the draft.

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

¹ Annex D to these minutes. For the debates on the question, see vol. ii, minutes of the first two meetings of the First Commission, as well as those of the second subcommission and the committee of examination of this subcommission.

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 also designate 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 favor among the Governments. One of the most authoritative, after having pointed out the principal objection that might be advanced, concluded: "However ideal it may seem at first sight, the international prize tribunal appears to us to be something which cannot be realized. In any case, Great Britain is not ready to agree to its creation. English authors do not discuss it; they do not even mention it.

Therefore, in this matter, Governments have realized what writers have not dared to hope for, and it is proper to render homage to the initiative taken by Germany¹ and Great Britain.² They have resolutely renounced ancient errors and proposed the institution of an international prize tribunal. To be sure, they would not organize it in the same way; their ideas differ on several important points. At the outset an agreement seemed quite difficult, we may say, almost impossible, to some of us. Nevertheless, thanks to genuine good-will and to a keen desire for an agreement, a single project has resulted from these divergent proposals. It would be a vain task to seek the origin of each of the rules of this project in one or other of the original propositions. Those propositions have totally disappeared, to be welded into a single work which alone is now to be considered and which is a great honor for those who first negotiated for an agreement. May we be allowed to remark on the beneficent influence of this environment? How many years of diplomatic negotiations would have been necessary to arrive at an agreement upon so difficult a subject when starting from [166] positions so opposed! The Conference has changed years into weeks, thanks to the intimacy which it begets among men and among ideas as well, and to the sentiment of justice that it tends to make predominant over particular interests.

The project which we submit to your approval is certainly imperfect in spite of our prolonged efforts. Nevertheless, we feel that it constitutes a considerable progress of the idea of justice in international relations and that it does honor to a Peace Conference. A superficial view may cause one to say that organizing a prize jurisdiction is working solely with regard to war. Let us say emphatically that it is also distinctly a work of peace, introducing law into a subject hitherto left to arbitrariness and violence. If there are disputes in which the traditional reserves respecting vital interests and national honor especially arise, it is when there are disputes on the correctness of decisions of prize tribunals, which examine into the validity of captures effected by officers of the navy and into the legality of the enactments in virtue of which the prizes have been taken. We are convinced that, if unfortunately a naval war takes place, not only will the private interests that have hitherto been left without effective protection find assistance in the new jurisdiction, but that the very existence of this jurisdic-

¹ Vol. ii, First Commission, annex 88.

² *Ibid.*, annex 89.

tion will have a restraining influence on Governments and courts by rendering them more careful to respect the principles of international law and equity. We also think that many of the diplomatic difficulties of a nature sometimes to bring about conflict, as has been the case in the past, will be thus swept away and that 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 international relations, to have created this first permanent judicial organism, which, in a limited but singularly important field, provides for the needs of the community of States. Could this 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.

His Excellency Mr. **Asser**: The delegation of the Netherlands, recognizing the great importance and incontestable usefulness of the institution of an international jurisdiction in the matter of prizes, declares that it accepts the draft Convention submitted to the Conference. (*Applause.*)

His Excellency Mr. **Esteva**: The delegation of Mexico, conformably with the instructions of its Government, and in accordance with its own convictions, declared in the committee of examination of the second subcommission of the First Commission that it would vote against the draft Convention for the establishment of a Prize Court based upon a principle contrary to the equality of nations.

Afterwards in view of the modifications made to the draft, and particularly with respect to Article 16, the delegation of Mexico, desirous of contributing to the work of conciliation of the Conference, asked for new instructions from its Government, and declared to the Commission that in the expectation of these instructions, it would abstain from voting and would give its final vote in the plenary meeting of the Conference.

The delegation of Mexico has already received new instructions from its Government to the effect that it vote favorably, in view of the circumstances mentioned. It therefore carries out these instructions.

But in voting in favor of a draft Convention relative to the establishment of a Prize Court in its present form, the delegation of Mexico wishes to declare to the Conference that, in voting thus, it still maintains its point of [167] view, manifested many times in the committee of examination, as well as the declaration it made there against the plan of a new court of international arbitration, really permanent, which, like the Prize Court, has as a basis a principle contrary to the equality of States.

His Excellency Mr. **Beldiman**: In adhering by its vote to the Convention relating to the establishment of an International Prize Court, which we consider as a very considerable progress in one of the most difficult matters of international law, the delegation of Roumania calls attention to the declarations it had the honor to present in the meeting on September 10 of the First Commission on the subject of the essential distinction which exists between the new institution to-day submitted to the Conference, and the *fundamental principles which govern international arbitration.*

Mr. **Henriquez i Carvajal**: Although it expresses its sympathy with the draft Convention establishing an International Prize Court, the delegation of the Dominican Republic reserves its vote upon the said Convention in its entirety until it receives definitive instructions from its Government.

Mr. Gil Fortoul: The delegation of the United States of Venezuela deems it necessary to renew in plenary session the declarations it had the honor to make in the meeting on September 10 of the First Commission, on the subject of the proposed constitution of the International Prize Court, and it will abstain from voting on this Convention in its entirety.

His Excellency **Samad Khan Momtas-es-Saltaneh:** After the beginning of the discussion relative to the creation of a Prize Court, the imperial delegation of Persia did not hesitate to express, on July 11, at the third meeting of the First Commission, the favorable sentiments of its Government to the principle of this institution.

At the meeting of September 10 of the same Commission I was obliged to abstain from voting on the draft Convention presented to us, as I was awaiting new instructions from my Government, to which, as I have already said, I had warmly recommended the draft.

I am happy to be able to-day to give a favorable vote on this draft, under reservation of Article 15.

We are well aware of the immense progress that the creation of the International Prize Court will constitute in one of the most difficult matters of international law.

Indeed to submit the national prize courts, into which the belligerents are summoned to validate their own acts, to the eminent control of an international court is a precious guarantee of justice and equity for all.

However, I believe it my duty to add that we vote on this draft considering it as entirely independent and distinct from the various proposals relative to the creation of a permanent court charged with the judgment of disputes of a legal nature which may arise between States, and that adhesion to the prize court does not counteract either now or for the future our point of view as to an arbitral court in which all States have an absolutely equal position.

Mr. Corragioni d'Orelli declares, in the name of the delegation of Siam, that the instructions he had hoped to receive for the plenary meeting of to-day, which should enable him to give a definitive vote on the draft with which we are now dealing, have not yet reached him.

[168] It is therefore solely for this reason — and he desires that his abstention be interpreted in no other way — that the delegation will not take part in the vote, but it hopes to be able to announce later the adhesion of its Government to the project.

His Excellency **Turkhan Pasha:** The Ottoman delegation reserves its adhesion, as this question requires a special study on the part of its Government.

His Excellency **Mr. Pierre Hudicourt:** The delegation of Haiti, with the sole object of contributing to the progress of international justice, accepts the Convention relative to the establishment of an International Prize Court, but makes the following formal reservations:

1. With regard to the last part of section 2 of Article 4, worded as follows: "subject, however, to the reservation that the Power to which he belongs may forbid him to bring the case before the Court, but may itself undertake the proceedings in his place";

2. With regard to Article 15, which has not adopted for the constitution

of the court the principle of absolute equality among all the sovereign Powers convoked in that capacity and represented at the Conference.

His Excellency Mr. Ruy Barbosa: The delegation of Brazil which has in all other respects approved the principle of the constitution of the International Prize Court, will vote against the project of this court on account of the evident and indisputable motives of injustice against our country, which have been pointed out time and time again without any refutation being made either in the committee of examination or in the First Commission.

The Reporter reads Articles 1 to 57 of the project of the establishment of the International Prize Court.¹

On the subject of Article 15 thus worded:

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 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.

The delegates of China, Cuba, Ecuador, Chile, Colombia, Uruguay, and of Salvador make reservations.

The President has these reservations recorded.

The PRESIDENT puts the entire project to vote.

44 countries take part in the vote.

Voting for: Germany, the United States of America, Argentine Republic, Austria-Hungary, Belgium, Bolivia, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Salvador, Serbia, Sweden, Switzerland and Uruguay.

Voting against: Brazil.

[169] *Not voting:* Dominican Republic, Japan, Russia, Siam, Turkey, Venezuela.

Reservations made with regard to Article 15: Chile, China, Colombia, Cuba, Ecuador, Guatemala, Haiti, Persia, Salvador, Uruguay.

The delegate of Haiti also makes a reservation with regard to section 2 of Article 4.

The President has these various reservations recorded and announces that the entire project is adopted by 37 votes (10 of which are accompanied by reservations) against 1, with 6 abstentions.

The PRESIDENT: The Convention upon which we have just voted, despite several reservations formulated, constitutes an immense progress in international law. It is a work which is remarkable for the completeness of the whole as well as for the study of all the details of the subject. It will be an honor to the Conference. It now remains only for us to express our sincere gratitude to the members of the committee of examination and above all to its eminent Reporter, Mr. RENAULT, the principal agent of our labors. (*Applause.*)

His Excellency Sir Edward Fry proposes to make the present draft the subject of a special Convention.

¹ Annex E to these minutes.

His Excellency Baron **Marschall von Bieberstein** seconds this proposal.

His Excellency General **Porter** also supports this proposal.

The **President** consults the assembly upon the proposal of his Excellency Sir **EDWARD FRY**, and it is adopted by general assent. The drafting committee of the Final Act is charged with drawing it up in due form.

The **PRESIDENT** calls attention to the fact that the business on the agenda is the examination of a *væu* relative to the meeting of a Third Peace Conference,¹ and he expresses himself as follows:

GENTLEMEN: The rather slow and sometimes uncertain progress of our labors, as well as the impossibility for the Conference to solve certain of the questions which have been submitted to it or which have been brought up in the course of our deliberations—have inspired some of our colleagues with the idea of considering, from now on, the advisability of calling a new Conference and the necessity of preparing in advance the detailed program and the mode of operation and organization. An exchange of views which took place upon this suggestion has resulted in the drafting of a recommendation to be submitted to our Governments in the form of a *væu*. You have had occasion to take it into consideration and I hope that you will accord it your unanimous approval.— This *væu* is worded as follows:

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 [170] to the necessity of preparing the program 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 program 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 with the task of proposing a system of organization and procedure for the Conference itself.

His Excellency **Mr. Beldiman:** In adhering to the *væu* proposed to us relative to the meeting of a Third Peace Conference, the delegation of Roumania deems it its duty to express, in the name of the Royal Government, the sentiment that one cannot look forward to a future cosmopolitan assembly without, at the same time, rendering the homage due to the august initiator of the First and Second Conferences, His Majesty the Emperor of All the Russias. (*Applause.*)

Inspired with a general and profound sentiment of the solidarity which more and more animates the civilized world in its progress towards the high ideal of international justice, His Majesty took, nine years ago, the noble and generous initiative of invoking the First Conference and assigned to it the great task of converging "into a single powerful force the efforts of all States . . . by a solemn avowal of the principles of equality and law, upon which reposes the security of States and the welfare of peoples."²

¹ Annex F to these minutes.

² Circular of Count **MOURAVIEFF**, dated August 12/24, 1898.

It is to the same august initiative that we are indebted for the present assembly, convoked to give a new development "to the humanitarian principles which served as a basis for the work of the great international reunion of 1899."¹

If we are now to deal with the question of recommending to our Governments the reunion of a third Conference, this motion, in our opinion, cannot prejudice for the future this same august initiative, which we should like to consider as acquired when the time shall have arrived, and which we ardently desire.

I hope then that I am the interpreter of our unanimous sentiments in saying that at the time when the motion is submitted to our approval, the thoughts of all the members of the Second Conference go back with profound gratitude to the august initiator of the great humanitarian work inaugurated in 1899. (*Loud applause.*)

His Excellency Mr. **Mérey von Kapos-Mére**: For my part I am equally of the opinion that, at the time when we express the desire to see convoked a Third Peace Conference, sentiments of duty and of gratitude turn our thoughts towards His Majesty the Emperor of All the Russias, the august initiator of these international assemblies.

I therefore desire to declare, in the name of the delegation of Austria-Hungary, that in voting affirmatively upon the *vœu* proposed to us, we consider the initiative of Russia as definitely acquired in this matter.

At the same time, I make bold to express the hope that when the reunion of the Third Peace Conference shall have been definitely decided upon, Her Majesty the Queen of the Netherlands will graciously accord to us the same generous hospitality she has deigned to offer us upon two occasions. (*Repeated applause.*)

[171] His Excellency Baron **Marschall von Bieberstein** approves of the words of the first delegate of Austria-Hungary.

His Excellency Mr. **Léon Bourgeois**: The delegation of the French Republic joins heartily in the testimony of gratitude which the delegates of Roumania, Austria-Hungary and Germany have made to His Majesty the Emperor of Russia.

Permit me to add that in still another capacity I wish to express these sentiments in the name of the members of the Conference of 1899.

In the absence of our eminent colleague, Mr. **BEERNAERT**, and owing to the fact that Mr. **MARTENS** is not at liberty to express his ideas on this subject, I find myself the only one present of the former presidents of 1899. My old colleagues will permit me to say that the veterans of the First Conference can measure better than any one else the ground gained since May 18, 1899, and can realize the gratitude which the friends of justice and of peace should feel towards the promoter of the Hague Conferences. (*Applause.*)

His Excellency Sir **Edward Fry** desires to join, in the name of the British delegation, in the sentiments of gratitude towards His Majesty the Emperor of Russia for his initiative and towards Her Majesty the Queen of the Netherlands for her gracious hospitality.

His Excellency General **Horace Porter**: The delegation of the United

¹ Circular of Count **LAMSDORFF**, dated March 16, 1906.

States of America hastens to express its sentiments of profound gratitude towards the august sovereign to whose initiative the world owes the great humanitarian work inaugurated in 1899.

His Excellency Count **Tornielli** approves of the words of his Excellency the first delegate of Austria-Hungary.

His Excellency Mr. **Lou Tseng-tsiang** expresses himself in the same sense.

His Excellency Mr. **Ruy Barbosa**: The delegation of Brazil hastens to adhere to this act of gratitude and of justice, the more gladly as it liquidates at the same time a special debt of gratitude on our part towards the sovereign to whom my country owed the honor of being invited to the First Peace Conference.

His Excellency Mr. **de Villa Urrutia** approves of the homage rendered by his Excellency the first delegate of Austria-Hungary to His Majesty the Emperor of Russia for his generous initiative and to Her Majesty the Queen of the Netherlands for her gracious hospitality.

His Excellency Mr. **Concha**: In the name of the Chilean delegation, I have the honor to unite in the manifestation of the honorable representatives of Roumania and Austria-Hungary, a manifestation which constitutes the accomplishment of a duty as just as it is appropriate towards His Majesty the Emperor of Russia.

His Excellency the Marquis **de Soveral** states that he enthusiastically approves of this manifestation of admiration and of gratitude towards His Majesty the Emperor of Russia, the initiator of the two Peace Conferences.

His Excellency **Turkhan Pasha** concurs with the sentiments pronounced by His Excellency Mr. **MÉREY VON KAPOŠ-MÉRE**.

His Excellency Mr. **Sáenz Peña**: The Argentine Republic approves of the *vœu* concerning Their Majesties the Emperor of Russia and the Queen of the Netherlands.

[172] His Excellency Mr. **de Quesada**: In the name of the delegation of Cuba, I have the honor to concur with all my heart in the sentiment of gratitude and of justice which has been expressed by their Excellencies the first delegates of Roumania and of Austria-Hungary.

Mr. **Pérez Triana**: In the name of the Republic of Colombia I make the same *vœu* as their Excellencies the first delegates of Roumania and of Austria-Hungary.

Mr. **Matheu**, in the name of the Republic of Salvador, makes an identical declaration, as also

His Excellency Mr. **Machain**, in the name of the Republic of Paraguay.

His Excellency Mr. **Rangabé** approves of the words of their Excellencies, Messrs. **BELDIMAN** and **MÉREY VON KAPOŠ-MÉRE**, likewise

His Excellency Mr. **Rendón**, in the name of the delegation of Ecuador.

His Excellency **Samad Khan Momtas-es-Saltaneh** states that he is happy to approve of this manifestation of admiration and of gratitude towards the august initiator of the Peace Conference, and he concurs with enthusiasm in the sentiments of gratitude of the high assembly towards His Majesty the Emperor of Russia.

His Excellency Mr. **Tsudzuki**: The Japanese delegation wishes to declare that it joins with the greatest pleasure in the sentiments of gratitude to His Majesty the Emperor of All the Russias for the initiative taken in convoking the two Peace Conferences, and that it wishes to renew once again the sincere

homage which it has rendered upon many occasions to the august initiator of this great humanitarian movement. (*Applause.*)

His Excellency Mr. **Esteva** makes the following declaration: The delegation of Mexico unites in the manifestation of gratitude made by the Conference towards His Majesty the Emperor of Russia and Her Majesty the Queen of the Netherlands.

His Excellency Mr. **van den Heuvel**: The delegation of Belgium wishes to join in the general and formal homage rendered to the august initiator of the Peace Conferences.

Mr. **Corragioni d'Orelli**, in the name of the delegation of Siam, adheres to the words of their Excellencies the first delegates of Roumania and of Austria-Hungary.

Mr. **Batlle y Ordoñez**, in the name of the delegation of Uruguay, makes the same declaration.

His Excellency Count **de Villers** concurs in the sentiments of their Excellencies Messrs. **BELDIMAN** and **MÉREY VON KAPOS-MÉRE**.

Mr. **Fortoul**: The Venezuelan delegation has the honor to approve of this manifestation of gratitude towards His Majesty the Emperor of Russia and towards Her Majesty the Queen of the Netherlands.

Mr. **Belisario Porras**: The delegation of Panama supports the proposals of homage and of gratitude presented by his Excellency Mr. **MÉREY VON KAPOS-MÉRE**, in honor of His Majesty the Emperor of Russia and of Her Majesty the Queen of the Netherlands.

Mr. **José Tible Machado**, in the name of the delegation of Guatemala, adheres to the words of their Excellencies the first delegates of Roumania and of Austria-Hungary.

[173] His Excellency General **Sava Grouitch**, in the name of the delegation of Serbia, makes an identical declaration, as also

His Excellency Mr. **Vrban Vinaroff**, in the name of the delegation of Bulgaria, and

His Excellency Mr. **Brun**, in the name of the delegation of Denmark.

The **President** puts to vote the *vœu* relative to the reunion of a third Peace Conference.¹

It is unanimously adopted.

His Excellency Mr. **Claudio Pinilla**, in casting his vote, in the name of the delegation of Bolivia, declares his adhesion to the sentiments of their Excellencies the first delegates of Roumania and of Austria-Hungary.

The **President**, as first delegate of Russia, wishes to express his gratitude for the royal homage just rendered to his august sovereign and to his double initiative as promoter of the first two Peace Conferences.

He joins in the gratitude expressed to Her Majesty the Queen of the Netherlands and in the *vœu* formulated by the Conference to the effect that it may again receive her gracious hospitality. (*Applause.*)

The meeting adjourns at 12:30 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK,
PROZOR.

¹ Annex F to these minutes.

Annex A

[174]

GENERAL TREATY OF ARBITRATION BETWEEN THE
ARGENTINE REPUBLIC AND ITALY

His Excellency the President of the Argentine Republic and His Majesty the King of Italy, inspired by the principles of the Convention for the pacific settlement of international disputes concluded at The Hague, July 29, 1899, and desirous, conformably to the spirit of Article 19 of the said convention, of consecrating, by means of a general agreement the principle of obligatory arbitration in their reciprocal relations, have decided to conclude a convention to this end, and have therefore appointed as their plenipotentiaries their plenipotentiary delegates to the Second Peace Conference, viz.:

His Excellency the President of the Argentine Republic:

His Excellency ROQUE SÁENZ PEÑA, formerly Minister of Foreign Affairs, his Envoy Extraordinary and Minister Plenipotentiary near His Majesty the King of Italy and near the Swiss Confederation, member of the Permanent Court of Arbitration;

His Excellency LUIS MARIA DRAGO, formerly Minister of Foreign Affairs, deputy in the national congress, member of the Permanent Court of Arbitration;

His Excellency CARLOS RODRÍGUEZ LARRETA, formerly Minister of Foreign Affairs, member of the Permanent Court of Arbitration;

His Majesty the King of Italy:

His Excellency Count GIUSEPPE TORNIELLI BRUSATI DI VERGANO, Senator of the Kingdom, his Ambassador near the President of the French Republic, member of the Permanent Court of Arbitration;

His Excellency GUIDO POMPILJ, deputy in the national parliament, his Assistant Secretary of State for Foreign Affairs;

The Honorable GUIDO FUSINATO, Deputy in the National Parliament, member of the Council of State;

Who, after having communicated their respective full powers, which were found to be in due and proper form, have agreed as follows:

ARTICLE 1

The high contracting Parties bind themselves to submit to arbitral judgment all controversies, of whatever nature, which may arise between them and which it shall not have been possible to resolve diplomatically, with the exception of those affecting constitutional provisions in force in one or the other State.

In controversies of which the judicial authorities may have jurisdiction according to the territorial law, the contracting Parties shall have the right of not submitting the case to arbitral judgment until after the national judiciary shall have definitively given judgment.

[175] The following controversies shall in every case be submitted for arbitral judgment:

1. Those relative to the interpretation and the application of conventions concluded or to be concluded between the contracting Parties;

2. Those relative to the interpretation and the application of a principle of international law.

The question whether or not a given controversy constitutes one of those provided for in the foregoing Sections 1 and 2, will likewise be submitted to arbitration.

Differences relative to the nationality of individuals are expressly withheld from arbitration.

ARTICLE 2

In each case the high contracting Parties will sign a special *compromis* which shall fix the object of the case, and, if there is need, the seat of the tribunal, the language which it shall use and those whose use shall be allowed before it, the amount that each party must deposit in advance for expenses, the procedure and the dates for the constitution of the tribunal and for the exchange of the memorials and documents, and in general all the conditions upon which they may agree.

In the absence of a *compromis*, the arbitrators, appointed in accordance with the rules established in Articles 3 and 4 of the present treaty, shall pass full judgment on the claims that may be submitted to them.

Moreover and in the absence of a special agreement, the provisions established in the Convention for the pacific settlement of international disputes signed at The Hague, July 29, 1899, shall be applied with the modifications and additions contained in the following articles.

ARTICLE 3

Unless otherwise stipulated the tribunal shall be composed of three members. The two parties shall each nominate one, chosen preferably from the list of members of the Permanent Court established by the said Convention of The Hague and they shall agree on the choice of the third arbitrator. If agreement on this point is not possible, the parties will have recourse to a third Power, in order that it may make the designation, and in default of agreement also on this point, a request shall be made of Her Majesty the Queen of the Netherlands or her successors.

The third arbitrator shall be chosen from the list of the members of the said Permanent Court. He shall not be a national of either party, nor have domicile or residence in their territories.

The same person cannot act as third arbitrator in two consecutive cases.

ARTICLE 4

When the parties do not agree upon the constitution of the tribunal, the arbitral functions shall be conferred upon a single arbitrator, who, unless otherwise stipulated, shall be named according to the rules established in the preceding article for the nomination of the third arbitrator.

ARTICLE 5

The arbitral judgment is pronounced by a majority of votes; and any mention of the dissent of one arbitrator is excluded.

The judgment is signed by the president and by the secretary, or by the single arbitrator.

[176]

ARTICLE 6

The arbitral judgment decides the case definitely and without appeal.

Nevertheless, the tribunal or the arbitrator who has pronounced the judgment can, before it is executed, hear an application for revision in the following cases:

1. If judgment has been based upon false or erroneous documents.
2. If the judgment is vitiated, in whole or in part, by an error in fact resulting from the acts or documents of the case.

ARTICLE 7

Every difference which may arise between the parties respecting the interpretation or the execution of the judgment, shall be submitted to the same tribunal or arbitrator who has pronounced it.

ARTICLE 8

The present treaty is drawn up in the Italian, Spanish and French languages. The high contracting Parties declare that, in case of doubt, they will consider the French text as the correct one.

ARTICLE 9

The present treaty shall be ratified and the ratifications shall be exchanged at Rome as soon as possible.

It shall be in force for ten years from the date of exchange of ratifications. If it is not denounced six months before the date of expiration, it shall be understood as renewed for a new period of ten years, and so on.

In faith of which the plenipotentiaries have subscribed to the present treaty and have fixed thereto their seals.

Signed and sealed at The Hague, in duplicate, in the hall of the sessions of the Second Peace Conference, September 18, 1907.

(L. S.) ROQUE SÁENZ PEÑA.

(L. S.) G. TORNIELLI.

(L. S.) LUIS M. DRAGO.

(L. S.) G. POMPILJ.

(L. S.) C. RODRÍGUEZ LARRETA.

(L. S.) G. FUSINATO.

Annex B

ARRANGEMENT CONCERNING NEUTRAL PERSONS IN THE TERRITORY OF BELLIGERENTS

SUPPLEMENTAL REPORT TO THE CONFERENCE¹

MR. PRESIDENT AND GENTLEMEN: In the meeting of September 7, after voting without opposition the draft presented by the Second Commission on the rights and duties of neutral States, the Conference entered upon an examination [177] of the same Commission's draft relative to neutral persons in the territory of belligerents, and it had already voted the first three articles when on motion of his Excellency the senior delegate of Germany it decided to recommit the project to the Commission for further study. In taking this deci-

¹ This report was made by the Second Commission through Colonel BOREL, the reporter of the second subcommission.

sion 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 exacting 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 recommendation 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.

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.

[178] 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 unfavorable circumstances which have so appreciably diminished the immediate result, our labors 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 cannot better conclude the present report than by proposing that the Conference give formal expression to the *vœux* which appear below.

Annex C

[179]

DEFINITIVE PROPOSALS OF THE SECOND COMMISSION RESPECTING THE TREATMENT OF NEUTRAL PERSONS IN THE TERRITORY OF BELLIGERENT PARTIES¹

1

The nationals of a State which is not taking part in the war are considered as neutrals.

¹ [These four articles became, with a few minor changes, Articles 16 to 19 of Convention V.]

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 favor 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 favor 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.

VŒUX¹

The Conference expresses the *vœux*:

1. 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 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 [These *vœux* were adopted by the Conference without remark in the plenary session of September 21. *Ante*, p. 164 [164-165]. For their subsequent history in the General Drafting Committee, see *post*, p. 574 [580]. Cf. their wording in the Final Act, *vœux* nos. 2 and 3, *post*, p. 689 [700].

Annex D

[180]

DRAFT CONVENTION RELATIVE TO THE CREATION OF AN
INTERNATIONAL PRIZE COURTREPORT TO THE CONFERENCE¹

Although the question of the establishment of an international prize jurisdiction had not been mentioned in the Russian program, no objection was raised when during the second plenary meeting their Excellencies Baron MARSHALL VON BIEBERSTEIN and Sir EDWARD 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;²

2. A proposal of the English delegation for a draft Convention relative to a Permanent International Court of Appeals.³

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,⁴ 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 [181] other delegates made known their personal views on the subject. The sub-

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. ESTEVA, POMPILJ, RANGABÉ, and KRIEGE, presidents, and Mr. MAURA, secretary; then, as having been designated by the second subcommission in its meeting of July 11, his Excellency Sir EDWARD FRY (Great Britain), his Excellency Baron MARSHALL VON BIEBERSTEIN (Germany), Mr. LOUIS RENAULT (France), reporter, their Excellencies Mr. CHOATE (United States), Count TORNIELLI (Italy), Mr. HAGERUP (Norway), Marquis DE SOVERAL (Portugal), Mr. LOEFF (Netherlands), and Mr. HAMMARSKJÖLD (Sweden). The report has been supplemented on some points to cover various observations made in the Commission (meeting of September 10).

² Vol. ii, First Commission, annex 88.

³ *Ibid.*, annex 89.

⁴ *Ibid.*, annex 90.

commission, 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. Other 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.¹ This proposition was discussed in the meetings of August 12, 17 and 22, and after passing two readings and being amended in several respects it was adopted by the Commission in the form of the project now submitted to you.²

We have of course no idea here of attempting a treatise on the theory or history of this subject; our main endeavor 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 judicially"; and probably for quite as long a time complaints have been made of the way in which such judgments are given. It is easy to understand why this is so.

The intervention of an adjudication, even that of the captor, constitutes in the case of an enemy ship a superiority of naval warfare over land warfare where the acts of the military authority are followed by no judicial investigation but produce their effect of themselves. The right of capture maintained with regard to enemy private property on sea requires, in order that its effect be final, a confirmation by judicial authority, and there seems to be here a concession on the part of the belligerent which has perhaps not been inspired by the single consideration of self-interest. But the situation is quite different when the seizure is of a neutral vessel. The captor then relies upon a real or a pretended violation of neutrality. A question of fact or of law has to be settled. It concerns the subjects of countries with which the belligerent continues in peaceful relations; it has its origin in acts committed on the high seas where no State can invoke a general right of legislation and jurisdiction. How shall this question be settled? An adjudication seems in this case to be a necessity rather than a concession, as in the preceding case. To whom shall the jurisdiction belong? As a matter of fact it is assumed by the captor. For a long time there was hardly any distinction made between neutrals and enemies; all cases of seizure were incidents of war which could be controlled only by the authorities of the very State to which the captor belonged. The neutral, it was said, is judged less as a neutral than as an enemy since by his acts he has lost the benefits of neutrality and cannot claim the protection of his Government. Not only is the neutral dragged before the courts of the captor, but he is also almost always subjected to rules of proof or of procedure derogatory of the common law. Rationally, as a violation of neutrality ought no more to be presumed than a crime, the captor should play the rôle [182] of claimant in order to have the seizure validated and confiscation of the ship or cargo decreed as a consequence. Most often it is quite otherwise,—

¹ Vol. ii, First Commission, annex 91.

² *Ibid.*, annex 93.

the one whose property has been seized is the claimant and has the burden of proving the illegality of the capture.

HÜBNER seems to have been the first to have criticized such a practice. He invoked the principle of the freedom of the sea and the rule that one cannot be judge in his own cause. To the argument that the neutral has no right, in the premises, to the benefits of neutrality, it was easy to answer that the very question to be decided is thus prejudged. The guaranties held out by the jurisdiction of the captor are diminished by the circumstances that agreement does not always prevail among nations on the rules applicable in naval warfare, that this jurisdiction will naturally apply the rules decreed by its own sovereign, and that these rules will not always be in harmony with international law.¹

It has doubtless been claimed that prize courts really have an international character, and eminent magistrates have made on this subject declarations that have been most reassuring from a theoretical standpoint. They have asserted their independence of arbitrary orders and "their right to ignore instructions contrary to the law of nations and to consult only that universal law to which all civilized princes and States recognize that they are subject and to which none of them can pretend to be superior."² As a matter of fact the instructions and orders of a Government are presumed by the courts which it constitutes to conform to the law of nations, and we find no case where a prize court has refused to apply an order of its Government on the ground that it was contrary to the law of nations.

Indeed, if one goes to the bottom of things one finds that the prize courts are really national courts passing judgments 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?

Again, individuals have frequently complained to their Government of adverse judgments 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.

[183] How correct this state of affairs?

GALIANI 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

¹ Hübner, *De la saisie des bâtimens neutres*, vol. ii, p. 21 (The Hague, 1759).

² Sir James Mackintosh.

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 also designate 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 favor among the Governments. One of the most authoritative, after having pointed out the principal 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 be realized. In any case Great Britain is not ready to agree to its creation. English authors do not discuss it; they do not even mention it."¹

Therefore, in this matter Governments have realized what writers have not dared to hope for, and it is proper to render homage to the initiative taken by Germany and Great Britain. They have resolutely renounced ancient errors and have proposed the institution of an International Prize Tribunal. To be sure, they would not organize it in the same way, their ideas differ on several important points; and at the outset an agreement seemed quite difficult, we may say almost impossible, to some of us. Nevertheless, thanks to genuine good-will and to a keen desire for an agreement, a single project has resulted from these divergent proposals. It would be a vain task to seek the origin of each of the rules of this project in one or other of the original propositions. Those propositions have totally disappeared, to be welded into a single work which alone is now to be considered and which is a great honor for those who first negotiated for an agreement. May we be allowed to remark on the beneficent influence of this environment? How many years of diplomatic negotiations would have been necessary to arrive at an agreement upon so difficult a subject when starting from positions so opposed! The Conference has changed years into weeks, thanks to the intimacy [184] which it begets among men and among ideas as well, and to the sentiment of justice that it tends to make predominant over particular interests.

¹ *Le droit de la guerre maritime d'après les doctrines anglaises contemporaines*, by Charles Dupuis, sec. 289. Paris, 1899. A highly esteemed German author, after having mentioned the work of the Institute of International Law, added: "*Eine Aussicht auf Verwirklichung bieten aber diese und frühere auf dasselbe Ziel gerichtete Bestrebungen für absehbare Zeit nicht.*" Perels, *Das internationale öffentliche Seerecht der Gegenwart*, 2nd ed., 1903, p. 302.

The project which we submit to your approval is certainly imperfect in spite of our prolonged efforts. Nevertheless, we feel that it constitutes a considerable progress of the idea of justice in international relations and that it does honor to a Peace Conference. A superficial view may cause one to say that organizing a prize jurisdiction is working solely with regard to war. Let us say emphatically that it is also distinctly a work of peace, introducing law into a subject hitherto left to arbitrariness and violence. If there are disputes in which the traditional reserves respecting vital interests and national honor especially arise, it is when there are disputes on the correctness of decisions of prize tribunals, which examine into the validity of captures effected by officers of the navy and into the legality of the enactments in virtue of which the prizes have been taken. We are convinced that, if unfortunately a naval war takes place, not only will the private interests that have hitherto been left without effective protection find assistance in the new jurisdiction, but that the very existence of this jurisdiction will have a restraining influence on Governments and courts by rendering them more careful to respect the principles of international law and equity. We also think that many of the diplomatic difficulties of a nature sometimes to bring about conflict, as has been the case in the past, will be thus swept away and that 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 international relations, to have created this first permanent judicial organism, which, in a limited but singularly important field, provides for the needs of the community of States. Could this 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.

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.

[185] 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 prize judiciary and hearings as it chooses; it is when these have reached a final decision that the 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 from leading to interminable delays.

The legislation of every country which in the exercise of its sovereignty prescribes the organization of its own prize jurisdiction is likewise competent to decide whether the judgments there rendered are to be executed or not. It can therefore leave the definitive judgment to receive its execution in spite of the appeal, or, on the contrary, it may permit 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 that their judgments must be pronounced in public or notified to parties concerned who are neutrals or enemies. This is indispensable in order that the parties may receive due notice and in order that the period within which they may appear before the International Court may begin to run against them.

ARTICLE 2

Jurisdiction in matters of prize is exercised in the first instance by the prize courts of the belligerent captor.

The judgments of these courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

[186] In what cases may the judgments of the national courts be brought before the International Court?

A fundamental distinction is necessary.

1. When the judgment of the national court affects the property of a *neutral* Power or individual there is always a right of appeal. Clearly it is for neutrals especially that the 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 rights infringed by the judgment of a prize court. The case where a neutral State might desire to proceed in virtue of its right of sovereignty is dealt with farther on (Article 4, section 1).

2. When the judgment of the national court affects *enemy property* there is only an appeal in three special cases.

The first case is that of enemy cargo on board a neutral ship. It concerns for instance the respect to be shown for the principle "the neutral flag covers enemy's goods" in the Declaration of Paris, and it is not only the enemy whose goods are on the neutral ship 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 waters. The right which is in this case first ignored is the right of the neutral Power; if that Power has made the capture the subject of a diplomatic claim, this claim must be allowed to follow its normal course. The question will be settled directly between the neutral State and the belligerent State to which the captor belongs. But it is possible that the neutral Government may not care to intervene diplomatically. It can leave the national tribunal to decide and if not satisfied with the judgment it may appear before the International Court as provided in Article 4, section 1; this is not a case in which the enemy individual is permitted to prosecute an appeal before the International Court.¹

Finally, an appeal to the International Court is allowed when the enemy individual alleges that the capture has been effected in violation of a provision of a Convention in force between the belligerent Powers. The International Court is therefore thus called 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.

[187]

ARTICLE 3

The judgments of national prize courts may be brought before the International Prize Court—

- (1) When the judgment of the national prize courts affects the property of a neutral Power or individual;
- (2) When the judgment 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;

¹ [Cf. Article 4, section 2.]

(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 judgment of the national court can be based on the ground that the judgment 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 judgment 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 its sovereignty. This is when it is alleged that the capture of an enemy ship has taken place in its own territorial waters. 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.

The statement of the cases in which a neutral Power may appear before the International Court is to be understood as restrictive.

2. A neutral individual may in principle always appeal when the judgment of the national tribunals injuriously affects his property. It is to be borne in mind, however, that, as has been explained above, the Power to which he belongs has the right, either to forbid him access to the Court, or itself to act there in his stead and place. Precaution has 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 subject or citizen of an enemy Power, though not in all cases, when the judgment of the national courts concerns enemy property.² The case of a vessel captured in neutral waters is excepted; in which case the Power whose neutrality has thus been violated alone has the right to appeal to the International Court.

The cases where an appeal is admissible and the persons qualified to bring it

¹ See Article 29, paragraph 3.

² Cf. Article 3, section 2.

have just been indicated. When an appeal has actually been brought, the International Court alone is competent to pass on the question whether this appeal is or is not to be received. It does not seem necessary to say this expressly; the principle being that a tribunal is naturally the judge of its own competence, as is recognized in the Hague Convention of July 29, 1899, for the pacific settlement of international disputes (Article 48). If, in Article 29, paragraph 1, our project provides that the national court in which a notice of appeal has been entered is to transmit the record of the case to the International Bureau *without considering the question whether the appeal was entered in due time*, it is because otherwise, as we are there dealing with a mere physical certification, that court might do 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 cases have a power of decision which should not belong to it. It should *always* transmit the record, since the International Court is the sole judge of what is to be done with the case. Such is the explanation given by the reporter to the First Commission¹ in response to a request for explanation from his Excellency Mr. ASSER. This explanation met with no 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 judgment 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 judgment 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 judgment of the national court injuriously affects his property in the cases referred to in Article 3, No. 2, except that mentioned in paragraph *b*.

[189] 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 judgment given. The other persons in interest, underwriters, bailees, etc., although injured by the judgment, could not attack it before the International Court. A neutral Power is the only party that can appeal directly against a judgment when it has not appeared in the proceedings wherein this judgment 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

¹ Meeting of September 10.

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 appeal to safeguard his own personal interest, unless his own Government prevents him. These 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.

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.

The national prize courts should decide in the first instance and we have desired to leave them to function according to their own rules. This is what has been clearly laid down in Article 2. Nevertheless, it was necessary to reconcile this principle with the necessity of preventing a prize case from lasting [190] indefinitely. This result has been obtained by means of two distinct rules.

1. Cases within the jurisdiction of the International Court cannot be dealt with by the national tribunals in more than two instances. It is for the legislation of the belligerent captor to decide, on the one hand, whether there shall be one or two instances, and, on the other, in case there may be two, whether both must be taken or whether the appeal will be permitted from the judgment in the first instance. Opinions on this point may differ.

2. The limitation to two instances was not sufficient to avoid the risk of cases lasting too long. Even with only one trial the case might remain undecided for an indefinite time. So it was proposed to rule, although in principle the international appeal presupposes a final judgment against which it is brought, that the case may be carried direct to the International Court if a final judgment has not been rendered by the national courts within two years from the date of capture. This can be done whether there has been no judgment at all or

¹ See Article 4, section 2.

whether after a judgment in the first instance the appeal court has not come to a decision within the prescribed period.

The period of two years has been chosen because it is necessary to take into account the very different circumstances in which a prize case may be brought before a court and which may lead to delay. Nevertheless, it is to be hoped that prize courts will use "due 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 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 judgment has been given in first instance or only after an appeal.

If the national courts fail to give final judgment within two years from the date 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 cannot be overlooked. It has often claimed the attention of those who have given thought to 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 that the International Prize Court, like the national courts, should apply international law. It would be a regular function of the International Court to revise the decisions of the national courts which had wrongly applied or interpreted international law. International courts and national courts would decide in accordance with the same rules, which it would be supposed ought merely to be interpreted more authoritatively and impartially by the former courts than by the latter. But this is far from being the case. Upon many points, of which some are of great importance, the law of maritime warfare is still uncertain, and 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 [191] 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 deficiencies 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 judgment *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 judgment 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 execute 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 more wisdom by belligerents and national judges, may lead them to make a more serious and conscientious investigation, and thus prevent the adoption of regulations and the rendering of decisions which are too arbitrary. The judges of the International Court will not be obliged to give two judgments contrary to each other by applying successively to two neutral vessels seized under the same conditions different regulations established by the two belligerents. To sum up, the situation created for the new Prize Court will greatly resemble the condition which long existed in the courts of countries where the laws, chiefly customary, were still rudimentary. These courts made law at the same time that they applied it, and their decisions constituted *precedents*, which became an important source of law. The essential thing is to have judges who inspire perfect confidence. If we were to wait until the system of international law is complete, before having judges to apply it, the event would be a prospective one which even the youngest of us could hardly expect to see. A scientific society, such as the Institute of International Law, was able, by devoting twelve years to the work, to prepare a set of international regulations on maritime prizes in which the organization and the procedure of the International Court hold only a limited place. The community of civilized nations is more difficult to set in movement than an association of juriconsults; it must be influenced by other considerations or even other prejudices, the reconciliation of which is not so easy as that of legal opinions. Let us therefore agree that [192] a court composed of eminent judges shall be entrusted with the task of supplying the deficiencies of positive law until the codification of international law regularly pursued by the Governments shall simplify their task.

The ideas which have just been set forth will be applicable to questions relating to the order and mode of proof. In most countries arbitrary rules exist regarding the order of proof. To use a technical expression, upon whom does the burden of proof rest? To be logical, one would have to say that it is the captor's place to prove the legality of the seizure that he has made. This is especially true when a violation of neutrality is charged against a neutral vessel. Such a violation should not be presumed. And yet the captured party is frequently required to plead the nullity of the capture, and consequently its illegality, so that in case of doubt it is he who, as plaintiff, loses the suit. This is not 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 proof, regarding which more or less arbitrary rules exist. How shall

nationality, ownership, and domicile be proved? Is it to be only by means of the ship's papers, or also by means of 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 failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unreasonable. For instance, there may be provisions in the law which are too strict with regard to the time allowed for taking an appeal or which enable a relinquishment of the claim to be too easily presumed, etc.

There is a case in which the International Court necessarily applies simply the law of the captor, namely, the case in which the appeal is grounded on the fact that the national court has not observed a legal provision enacted by the belligerent captor. This is one of the 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 sentiment of justice which animates the authors of the project, as well as of the confidence which they 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 between the belligerent captor and a Power which is itself or whose subject or citizen 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 judgment 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 such enactment.

The Court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

What judgments may the Court render?

Three hypotheses are to be provided for.

[193] The Court affirms the judgment 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 has been sold or destroyed, as may happen in many cases, especially if the final judgment of the national court has been executed without regard to the non-

¹ Article 3, No. 2 *c*, *in fine*.

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 this 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 judgment 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 the place of judges they have all their powers and enjoy the same advantages.

[194] These magistrates are appointed by the contracting Powers in the proportion which will be indicated further on. It has not been thought possible to suggest to the Powers the classes from which they ought to select the men, who will have, as has been seen above, a very difficult task to perform, and who ought to present the most positive proofs of learning and independence. We have employed only a very general form, which is 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 a period within which it must be made. The beginning of this period is defined by the special provision of Article 52, regarding ratification. As the Convention is to take effect six months after ratification, there seems to be a slight contradiction in requiring within the same period an appointment which will be made in execution of the Convention. This is only a precautionary measure that

is indispensable to permit of the Convention actually becoming effective on the expiration of the time prescribed.

ARTICLE 10

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.

The appointment is made for a period of six years. This means that they cannot be 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 notified to the Administrative Council established by the Convention of July 29, 1899; this Council 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, the same method of appointment shall be followed. The new judge is appointed for a term of six years, not for the remainder of the term of his predecessor. The personnel of the Court will not be changed suddenly, but only gradually.

ARTICLE 11

The judges and deputy judges are appointed for a period of six years, reckoned from the date on which their appointment shall have been notified to the Administrative Council established by the Convention 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.

The judges are naturally all equal in rank. It is necessary, however, as in every judicial body, to establish an order of precedence and this should be free from any hierarchical 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 [195] 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.

[196] 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 embarrassment we may of course conceive of various combinations having the merit of being very ingenious, but they have also the defect of not being acceptable to States whose concurrence is indispensable in founding the new institution. It is requisite that the States which consider themselves treated less favorably in the allotment of the judges should understand that the Powers that are to have the advantage in the designation of judges are actually those which are making the greatest sacrifice in cooperating to institute an international jurisdiction. They are those which will most often be belligerents, and are therefore those which are consenting that the decrees of their prize courts shall be revised by the International Court and that the latter shall in this way be called upon to pass on the conduct of their naval officers.

Will not the commercial interests of a small neutral State be more effectively safeguarded by the working of the new Court than if that State had to rely entirely on the impartiality of the prize court of the captor, or on the result of a diplomatic claim? The reply is not doubtful. The different legal systems will be represented in the Court and it will not be possible to say that this or that political influence will preponderate. Moreover, it is to be presumed that the

judges chosen will, with the sole aim of doing strict justice to all, rid themselves of any narrow national attitude; they would destroy their usefulness if it were otherwise.

If it is remarked that war is made not only by the great Powers, that it may be made by a Power less favored than they with respect to the allotment of the members of the Court, it is proper to reply that the case has been provided for and the essential right of every State in this matter has been safeguarded, viz., that of not seeing the judgments of its prize courts invalidated by a court in which it is not represented. According to Article 16, a belligerent Power may always ask that the judge or deputy judge appointed by it should take part in the settlement of all cases arising from the war. Therein lies a guarantee the importance of which should not be underestimated.

After these general considerations, let us briefly describe the plan which the First Commission proposes to you.

All the Powers appoint magistrates of the International Court, but these magistrates are not summoned to sit in the same way. Eight Powers seem to have a preponderating interest through their navies, the tonnage of their merchant marine, or the importance 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 these Powers are therefore always summoned to sit. It is not without interest to note that if these eight Powers are here on the same footing, they are, nevertheless, far from equal in 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 [197] the first three years, the judge of another the last two years. The endeavor has been made to make an acceptable classification while taking into account the different factors to be dealt with. That the division may be criticized on this or that point, is possible, and criticism has already been voiced 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 in the 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 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 18). 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 favorable 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. [198] 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 of fact the award is made by the umpire. This is unsatisfactory. The situation here is different. With the quorum required for the Court, the vote of one judge will not be so important a factor in the case just referred to. Moreover, it is to be presumed that a judge appointed to act, not in a specific case, but during a definite period, will feel a professional pride which will prevent his considering himself the advocate of the Power which appointed him. Without doubt, he will not lay aside his nationality entirely, but his nationality will not be the only influence exerted upon his judgment.

A final observation must be made in reference to the advisability of having a judge appointed by the Power interested in the case. It will keep out of the award reasons which might, without intention on the part of the drafters, be a source of legitimate irritation. There are different ways of being right and of condemning a litigant, and the 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 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.

To avoid all suspicion of partiality, certain restrictions have been laid down. If a person has taken part in the decision rendered by the national prize courts, or has figured in the case as advocate or counsel for a party, naturally he should not sit as a judge in the Court.

Another restriction of a general nature is necessary. The judges should constitute a court and not merely appear on the same list, as is the case with the members of the Permanent Court of Arbitration established by the Convention of July 29, 1899. If the members of the latter Court, who act as arbitrators only on occasion, have, without impropriety, been able to act as agents or counsel before a tribunal of arbitration whose members at times are hardly known to them by name, it would be different with permanent judges, who cannot leave their seat in the court one day and resume their place among their colleagues the next.

ARTICLE 17

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.

[199] No judge or deputy judge can, during his tenure of office, appear as agent or advocate before the International Prize Court nor act for one of the parties in any capacity whatever.

Prize cases at times involve technical details, for the explanation of which the presence of a seaman would seem to be useful. Moreover, it may often be of the utmost importance to the State whose cruisers have made the seizures, the regularity of which is being attacked before the International Court, to have the acts of the commanders of these cruisers explained with knowledge and authority. Hence, in one of the original propositions it was stated that the International Court should be composed of five members, viz., two admirals and three members of the Permanent Court of Arbitration at The Hague. The award, in reality, would be made by the latter, as the votes of the admirals would frequently cancel each other. The opinion that prevailed is recorded in Article 10, providing 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 the Court. It goes without saying that the naval officer designated by a belligerent cannot participate in the hearing of any cases except those in which this belligerent is a party.

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 provided 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

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.

[200] 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 traveling expenses and in addition the sum of one hundred Dutch florins a day during the session. Traveling 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.

Judges may not receive from their own or any other Government any remuneration *as members of the Court*, but this shall not exclude the possibility of their receiving remuneration in some other capacity. The Powers may, by the terms of Article 10, paragraph 1, designate as judges: magistrates, officials, or professors, who naturally receive remuneration for their services in these capacities.

ARTICLE 20

The judges on the International Prize Court are entitled to traveling allowances in accordance with the regulations in force in their own country, and in addition receive, while the Court is sitting or while they are carrying out duties conferred 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 in Article 47, and are paid through the International Bureau established by the Convention of July 29, 1899.

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.

There could be no difficulty regarding the seat of the Court. Compare Article 36 of the Convention of July 29, 1899.

ARTICLE 21

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.

The Convention of July 29, 1899 (Article 28), organized a Permanent Administrative Council composed of the diplomatic representatives of the signatory Powers accredited to The Hague, and the Minister of Foreign Affairs of the Netherlands, who was to be president. This Council was given a certain number of duties of a purely administrative nature. We propose to utilize this machinery already created and to charge the Council with the same duties with respect to the Prize Court. It should be noted — a thing that goes without saying — that the Administrative Council shall not necessarily be composed of the same members in both cases, because the Powers signatory to the two diplomatic acts, by virtue of which the Council will operate, may not be identical.

[201]

ARTICLE 22

The Administrative Council fulfills, with regard to the International Prize Court, the same functions as to the Permanent Court of Arbitration, but only representatives of contracting Powers will be members of it.

The project likewise utilizes the International Bureau, which has been in operation 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 manner 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 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 International Bureau acts as registrar.

The necessary secretaries to assist the registrar, translators and shorthand writers 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 defense 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.

[202] 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 practicing before a similar court, or lastly, a professor of law at one of the higher teaching centers 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 cannot 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

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 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 before the International Prize Court*

The object of this part is to determine the manner of appeal to the International Court 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 writing presented to the national tribunal which has passed upon the case, in accordance with the form that is customary in the country: ordinarily it [203] will be received by the registrar or the secretary; (2) by means of a declaration addressed to the International Bureau; the latter acting as

registry to the Court has naturally been recognized as competent to receive a declaration to be laid before the Court. In order to facilitate appeal, it is even permissible to advise the International Bureau by telegraph.

The period in which appeal shall be taken is 120 days from the date on which the decision is considered as known to the parties, whether it has been rendered in their presence or 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 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).

What procedure will then follow?

The record in the case must be placed at the disposal of the International Bureau, which acts as an office of registry.

If the notice has been given to the national tribunal, it forwards the record to the International Bureau without delay. It can have no control over the declaration of appeal and must forward the record, even if it believes that the period for appeal has expired or that appeal is not admissible. The Court alone is competent to decide, as has been explained above.

If the notice of appeal has been given to the International Bureau, the national tribunal is advised by the Bureau and forwards the record.

It has already been seen that the project, while recognizing the right of individuals to address the International Court, reserves to the neutral Power under whose jurisdiction 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 [204] 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 period of two years.

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 his entering it before it 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 party should be immediately notified.

ARTICLE 32

If the appeal is entered in time, a certified copy of the notice of appeal is forthwith officially transmitted by the Court to the respondent.

Several parties may be interested in a prize case, for example the owner of the vessel and the various owners of the cargo. Supposing a judgment has been rendered and one of the parties appeals at the beginning of the period of one hundred and twenty days; the Court should not take jurisdiction of the [205] case at once, but should await the expiration of the period, so that, if other parties exercise their right of appeal, the matter may be taken up at the same time with regard to all. We have just considered the most usual case, that of a decision of a national court from which an appeal is taken; the same provision is applicable where no final decision has been given within two years, and direct recourse is taken.

Finally, every time that recourse is had by a neutral individual, the Court should suspend proceedings until the Power whose subject this individual is, shall have indicated whether it intends to avail itself of its right to intervene and conduct or oppose the appeal. If the Power, after due notice, remains silent the Court shall determine whether it is proper to continue. The party's right cannot be indefinitely delayed by the mere fact that the 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 concerned who are entitled to appeal, or if, in the case referred to in Article 29, paragraph 3, the Government who has received notice of an appeal has not announced its decision, the Court will await before dealing with the case the expiration of the period laid down in Articles 28 or 30.

We now come to procedure, and the rules in regard to this matter are based upon the Convention of July 29, 1899 (Articles 39 *et seq.*).

As is the case in arbitral procedure, the procedure before the International Court comprises two distinct phases: the written pleadings and oral discussions.

ARTICLE 34

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.

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 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 [206] 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 party fails to comply with some step within the period fixed by the Court, the case proceeds without that party, and the Court gives judgment in accordance with the material at its disposal.

[207] Every precaution should be taken to inform the parties regularly of what may be decided in their absence.

ARTICLE 41

The Court officially notifies to the parties decrees or decisions made in their absence.

The Court is left entirely free to determine the value of the various matters of evidence furnished to enable it to reach a decision. There is no legal system of evidence in this regard.

ARTICLE 42

The International Prize Court determines without restraint the value to be given to all the facts, evidence, and oral statements.

It goes without saying that the deliberations of the Court are held in secret. It should be remembered that the assessors may be present.

It was thought necessary to add that the deliberations should *remain secret*. Although it may be that there are different rules prevailing in the countries represented at the Conference as regards the secrecy of deliberations of the judiciary, this secrecy seemed indispensable here because of the nature of the cases. Here are judges of many nationalities who should decide according to their beliefs and consciences; it should not be possible to fasten the opinions delivered upon the nationalities of their authors. The authority of the decision would suffer and the personal situation of the judges might be embarrassing.

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 of judges is even and equally divided, the vote of the junior judge in the order of precedence laid down in Article 12, paragraph 1, is not counted.

If the question as to whether the arbitral decision should set forth the grounds therefor were open to discussion no doubt could arise in the case of the decisions of the International Court, because it is essential that every judicial decision should contain within itself its own justification.

The provision of Article 52 of the Convention of July 29, 1899, states that the arbitral decision "is drawn up in writing and signed by each member of the tribunal." It seemed a simple matter to introduce this rule into the subject we are considering. Nevertheless, difficulties arose. It was urged that judges might object to signing a decision to which they were opposed. That did not seem to be decisive since the judges would be asked only to affirm by their signatures the existence of the decision in the preparation of which they had participated and that professional duty should be superior to the expression of individual opinions. However, it was deemed preferable to content ourselves with saying that the decision should mention the names of the judges who participated in its preparation. It is signed by the president, who has the authority, with the registrar, to attest what has taken place, and who, by signing, does not in the least indicate that the decision is in accord with his personal opinion.

[208] 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 judgment 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.¹

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 of the case, together with copies of the various decisions arrived at and of the minutes of 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

¹ Cf. Articles 53 and 54 of the Convention of 1899.

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 judgment 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).

[209]

ARTICLE 46

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 judgment of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to an amount fixed by the Court, for the purpose of guaranteeing eventual fulfillment 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.

The general expenses of the International Prize Court are naturally borne by the signatory Powers. They comprise, aside from the expenses of administration, the sums allowed to the judges as well as those given to the secretaries, stenographers, and translators. How shall these expenses be divided among the Powers? At first we thought of adopting here the division accepted by the Universal Postal Union, as has been done in the case of various unions. After consideration, a more equitable system was adopted. Each Power should contribute to the expenses in proportion to the extent in which it participates in naming judges. Therefore a Power which has a judge who may be called upon to sit every year, shall bear one-fifteenth of the expenses; the Power whose judge is obliged to sit but two years shall bear one-third of the amount charged against the preceding Power. The designation of deputy judges does not involve any contribution.

It should be noted that the expenses of the Powers will be noticeably decreased by the contribution of one one-hundredth exacted from each defeated party (Article 46, paragraph 2).

The International Bureau, under the control of the Administrative Council, shall take charge of the sums paid by the Governments as well as those paid

by the parties. It will of course be necessary for the Governments to advance the necessary sums to pay the salaries due to the judges, as well as other general expenses of the Court. The Administrative Council shall perform the duty of addressing the Powers and fixing the amount which seems to it reasonable to demand. We cannot properly speak of a budget, since we hope that the Court will rarely be in session. However, upon the establishment of the new institution some funds will be necessary, since the Court should meet for the purpose of drawing up a set of rules for its own Government (Article 49, paragraph 2). The Administrative Council, when notified of the meeting, shall determine the probable expense which it will involve, and shall notify the Powers. The same method will be followed as is followed at present with regard to the Permanent Court of Arbitration. Later, the same method will be used in the case of a maritime war.

ARTICLE 47

The general expenses of the International Prize Court are borne by the signatory Powers in proportion to their share in the composition of the Court as laid down in Article 15 and in the annexed table. The appointment of deputy judges does not involve any contribution.

The Administrative Council applies to the Powers for the funds requisite for the working of the Court.

[210] At the institution of a suit there are certain measures to be taken which do not require that the entire Court should be called together. At first the order and the time for the presentation of the cases by each party, as well as for communicating evidence presented 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 46, 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; [211] 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 the belligerents both be contracting Powers or will it be sufficient for one of them to be a contracting Power?

Applying the rule already adopted in several Conventions, especially in the Convention of July 29, 1899, respecting the laws and customs of war on land (Article 2) and in the Geneva Convention of July 6, 1906 (Article 24), it is natural to say that a Convention drawn up with a view to the existence of war presupposes, in order that it may be applicable, that both belligerents have accepted it. We might, however, call attention to a marked difference between the Convention here proposed and the two Conventions above mentioned. The latter two deal with the relations between belligerents; and from that very fact it is necessary that the belligerents both be bound by the Convention which governs their action. This draft is intended especially to determine the relations of each belligerent with neutrals; it is the latter who are principally safeguarded against the decisions of the courts of the captor. Is it not sufficient then that one belligerent and the neutral Powers be signatories of the Convention in order that the latter Powers and their nationals shall have the right to avail themselves thereof? After consideration, we thought it would be unjust, in this case, to require the belligerent captor to conform to the provisions of the Convention. We should not blind ourselves to the fact that the uncertainty of international law allows

to belligerents powers which may be restricted by the establishment of an International Court. Could a belligerent properly be so fettered when his adversary would not be bound to the same extent? We do not think it is possible to do this; that is our reason for proposing that the Convention shall not apply as a matter of *law* unless the belligerents are both contracting Powers. It will be the office of neutral Powers to ask the belligerent which has not adhered to give them the protection of the international tribunal by its adhesion.

But we believe, at the same time, that if a contracting belligerent wishes to accept the jurisdiction of the International Prize Court, although its adversary has not adhered to the Convention, nothing should prevent it from so doing. It might be good policy on its part.

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. We refer only to neutral Powers; as to individuals the [212] provision applies to the *ressortissants* of neutral Powers and even to the *ressortissants* of the opposing Power, in cases where the subjects of the enemy may appeal to the International Court, and supposing that the Convention applies, although signed by only one belligerent.

Finally, we must say a few words of the rather complicated cases where the rights of successors in interest are under consideration (Article 5). This is the rule which upon principle seems to be required: the successor in interest (pledgee or bailee, underwriter or insurer) can have no greater rights than the owner from whom he derives his interest, 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 State, recourse is not open to his successor in interest, even though the latter be the *ressortissant* 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

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 adjusted. 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 nine deputy judges actually in office.

[213] 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 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 *procès-verbal* 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.

So long as ratifications have not been deposited, as provided in paragraph 2 of the preceding article, Powers may sign the Convention, and as to them it shall date from the time of the first signature.

When the deposit of ratifications necessary to make the Convention applicable has taken place, the situation becomes fixed in the sense that the Powers which have not participated in this deposit can only become adhering Powers. In the case of a Power which has signed before the deposit but has not ratified until subsequent thereto, it will be considered only as an adhering Power. For this reason the last part of paragraph 3 of Article 53 speaks of documents authorizing adhesion. These documents may be full powers for ordinary adhesions and ratifications for the States which signed before the deposit of ratifications.

Adhesion is always permissible also by means of a notice addressed to the Netherland Government. Upon receiving the first adhesion the Minister of Foreign Affairs shall begin a *procès-verbal* of adhesions in which adhesions shall be entered as they appear. Adhesion is equivalent to a Convention concluded by the adhering Power with all the Powers which have already become contracting

Powers. It presupposes therefore the conditions necessary for the validity of an international convention — that is, full powers. We are not dealing with the question of the ratification of an adhesion; the adhering country, by adhering, must be definitively bound.

The adhesion should be communicated to all Powers. It is required as to contracting Powers; as to others, it will be of value in that the adhesion of one Power may lead others to follow its example.

ARTICLE 53

The Powers referred to in the first paragraph of the preceding article are entitled to sign the present Convention up to the deposit of the ratifications contemplated in paragraph 2 of the same article.

[214] After this deposit, they can at any time adhere to it, purely and simply, by making known their intention in a notice addressed to the Netherland Government.

When the first adhesion is made, the Minister of Foreign Affairs of the Netherlands shall begin a *procès-verbal* in which he shall enter the adhesions as they appear. The documents authorizing adhesions shall be attached to the said *procès-verbal*.

After each adhesion, the above-named Minister shall transmit a certified copy of the *procès-verbal* to all the Powers referred to in paragraph 1 of the preceding article.

When shall the Convention become effective?

Six months after the deposit of ratifications referred to in Article 52, paragraphs 1 and 2.

We have remarked above with regard to Article 10 that during this same period the appointment of the judges should be made, which is carrying out the Convention before it goes into effect.

Some decisions of prize courts may be rendered within six months of the ratification. 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.

[215] 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 connection 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 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 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.

We have already considered the case where the Convention becomes effective, or exists only for part of the Powers contemplated by the distribution of judges provided for in Article 15 and the list thereto attached. We must adapt the provisions governing a unanimous participation herein to the situation which will then exist.

The list of judges and deputy judges is drawn up to correspond with the contracting parties. If this list gives for each year of the six-year period almost the same number, we need only to apply it as it stands. For example, there may be eleven or twelve judges, eleven or twelve deputy judges, each year. But a different situation may arise. Thus, the first year, there may be thirteen judges, the second ten, the third nine, and the fourth twelve. Strictly speaking, the Court

could operate in this way, since in each year there is the minimum number. It is better, however, to have the Court composed each year of judges in obviously the same number; thus, in the example which we have just given, 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 the judges for the year with the highest number. In the case of judges who sit in turn, their selection for one year rather than for another, would not be a serious matter.

[216] The Administrative Council, to whom notice of the appointment of judges and deputy judges (Article 11) is sent, has the power to prepare the list and make the allotment of which we have just spoken. If there is some doubt as to who, of two judges, shall be assigned from one year 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 deputy judges would be greater than that of judges. In such a case, one or more of the deputy judges named by Powers which do not appoint judges, would sit as judges, so that the number of magistrates called upon to act each year would be approximately the same. Selection by lot will determine which of the deputy judges shall be called upon to act temporarily as judge.

The list thus decided upon by the Administrative Council shall be communicated to all of the contracting Powers. It shall be subject to revision when any change occurs in the number of the latter on account of adhesions or denunciations.

A change resulting from adhesions shall not be effective until after the 1st of January next succeeding the date the adhesion becomes effective. The adhering Power cannot require that a judge be given to it sooner, unless it should be a belligerent. Then the general principle applies, as stated above and applied to the contracting Powers which, according to their standing on the list, have no judge sitting upon the Court (Article 16).

Finally, in consideration of the fact that a certain number of Powers might not join 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 [217] 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 judicial mode of redress is substituted for a more or less pressing demand through the diplomatic channel, which has been, up to the present, the only method of remedying the injustice, sometimes excessive, of the prize courts.

The draft carefully defines decisions which should be subject to appeal and the persons who may make such appeals (Articles 3 to 5).

The Court applies the contractual or customary laws of nations, and when there are no such rules, the general principles of justice and equity (Article 7). We have tried to set forth above the high character thus given to the new Court and the beneficial results which are to be expected from it.

The Court is *permanent* in a sense which it is important to understand. The expression cannot of course be taken literally. The judges who may have the honor to be appointed will not be required to live permanently at The Hague, even during a war, but, when appeals have been taken from the decisions of national prize courts, the new institution will act of its own volition. The judges will meet, and will have but to follow the rules outlined for them by the draft Convention. Nothing is left to the will of the interested parties. This is a vital difference from the so-called Permanent Court of the Convention of 1899. That Court in fact cannot organize itself as an arbitral tribunal except at the will of the liti- [218] gant parties, which must agree upon their judges, as well as upon the drawing up of a *compromis* — a twofold source of delay, if not of diffi-

culties. The draft provides every facility for the rapid conduct of the case. The Court has the power to authorize a delegation to take care of the preliminary matters, so that the Court need not meet until the written pleadings have been concluded.¹

The procedure is regulated in such a way that the parties have every facility for presenting their claims and the Court every means of enlightenment.

We think we have created a beneficial instrument of justice. May you also so consider it! It only remains for us to hope that it may exist as a visible proof of the sentiments which have inspired the Peace Conference of 1907, and that no occasion will arise for it to act.

The First Commission consequently proposes to the Conference the adoption of the following draft:

Annex E

DRAFT CONVENTION RELATIVE TO THE CREATION OF AN INTERNATIONAL PRIZE COURT ²

PART I.—*General provisions*

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 2

Jurisdiction in matters of prize is exercised in the first instance by the prize courts of the belligerent captor.

The judgments of these courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

ARTICLE 3

The judgments of national prize courts may be brought before the International Prize Court—

- (1) When the judgment of the national prize courts affects the property of a neutral Power or individual;
- [219] (2) When the judgment 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.

¹ Cf. Articles 34, 35 and 48.

² Text submitted to the Conference.

The appeal against the judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law.

ARTICLE 4

An appeal may be brought :

(1) By a neutral Power, if the judgment 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 judgment 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 judgment 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 judgment has been given in first instance or only after an appeal.

If the national courts fail to give final judgment within two years from the date of capture, the case may be carried direct to the International Court.

ARTICLE 7

If the 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 subject or citizen is a party to the proceedings, the Court is governed by the provisions of the said treaty.

[220] 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 judgment in accordance with the general principles of justice and equity.

The above provisions likewise 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 such enactment.

The Court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

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 pronounces the capture to be null, the Court can only be asked to decide as to the damages.

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*

ARTICLE 10

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 11

The judges and deputy judges are appointed for a period of six years, reckoned from the date on which their appointment shall have been notified to the Administrative Council established by the Convention 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 of the notification of their appointment [221] (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 seats 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 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 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.

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.

ARTICLE 17

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 or deputy judge can, during his tenure of office, appear as agent or advocate before the International Prize Court nor act for one of the parties in any capacity whatever.

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.

[222]

ARTICLE 19

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.

ARTICLE 20

The judges on the International Prize Court are entitled to traveling allowances in accordance with the regulations in force in their own country, and in

addition receive, while the Court is sitting or while they are carrying out duties conferred 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 in Article 47, and are paid through the International Bureau established by the Convention of July 29, 1899.

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 21

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 22

The Administrative Council fulfills, with regard to the International Prize Court, the same functions as to the Permanent Court of Arbitration, but only representatives of contracting Powers will be members of it.

ARTICLE 23

The International Bureau acts as registry to the International Prize Court 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 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 [223] court of appeal or a high court of one of the signatory States, or a lawyer practicing before a similar court, or lastly, a professor of law at one of the higher teaching centers 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 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 before the International Prize Court*

ARTICLE 28

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).

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.

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.

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 his entering it before had ceased to operate, the Court can, after hearing 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 forthwith officially transmitted by the Court to the respondent.

ARTICLE 33

If, in addition to the parties who are before the Court, there are other parties concerned who are entitled to appeal, or if, in the case referred to in Article 29, paragraph 3, the Government who has received notice of an appeal has not announced its decision, the Court will await before dealing with the case the expiration of the period laid down in Articles 28 and 30.

ARTICLE 34

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 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.

[225]

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 judgment in accordance with the material at its disposal.

ARTICLE 41

The Court officially notifies to the parties decrees or decisions made in their absence.

ARTICLE 42

The International Prize Court determines without restraint the value to be given to all the facts, evidence, and oral statements.

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 of judges is even and equally divided, the vote of the junior judge in the order of precedence laid down in Article 12, paragraph 1, is not counted.

ARTICLE 44

The judgment 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.

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 of the case, together with copies of the various decisions arrived 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 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 judgment of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to an amount fixed by the Court, for the purpose of guaranteeing eventual fulfillment 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.

[226]

ARTICLE 47

The general expenses of the International Prize Court are borne by the signatory Powers in proportion to their share in the composition of the Court as laid down in Article 15 and in the annexed table. The appointment of deputy judges does not involve any contribution.

The Administrative Council applies to the Powers for the funds requisite for the working of the Court.

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 signatory 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 signatory 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 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.

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.

[227] A *procès-verbal* 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.

ARTICLE 53

The Powers referred to in the first paragraph of the preceding article are

entitled to sign the present Convention up to the deposit of the ratifications contemplated in paragraph 2 of the same article.

After this deposit, they can at any time adhere to it, purely and simply, by making known their intention in a notice addressed to the Netherland Government.

When the first adhesion is made, the Minister of Foreign Affairs of the Netherlands shall begin a *procès-verbal* in which he shall enter the adhesions as they appear. The documents authorizing adhesions shall be attached to the said *procès-verbal*.

After each adhesion, the above-named Minister shall transmit a certified copy of the *procès-verbal* to all the Powers referred to in paragraph 1 of the preceding article.

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.

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 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. The times allotted by the said table to judges who are summoned [228] 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 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.

Done at The Hague, one thousand nine hundred and seven, 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 contracting Powers.

[Here follow signatures.]

[229]

Distribution of Judges and Deputy Judges by Countries for each Year of the Period of Six Years

JUDGES		DEPUTY JUDGES		JUDGES		DEPUTY JUDGES	
<i>First Year</i>				<i>Second Year</i>			
1	Argentina	Paraguay		Argentina	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		

Distribution of Judges, etc. (continued)

JUDGES	DEPUTY JUDGES	JUDGES	DEPUTY JUDGES
<i>Third Year</i>		<i>Fourth Year</i>	
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
<i>Fifth Year</i>		<i>Sixth Year</i>	
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

Annex F

[230]

VÆU RELATING TO THE MEETING OF A THIRD PEACE CONFERENCE

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 program 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 program 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 with the task of proposing a system of organization and procedure for the Conference itself.

SEVENTH PLENARY MEETING

SEPTEMBER 27, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 3 o'clock.

The minutes of the sixth plenary meeting are adopted.

The **President**: The first delegate of the Netherlands has the floor.

His Excellency Mr. de Beaufort: When Her Majesty the Queen, my august sovereign, learned of the wish expressed by his Excellency the first delegate of Austria-Hungary at the last meeting of the Conference, in which the President of the Conference and a number of the other delegates concurred, she hastened to state that, joining with all her heart in the sentiments of gratitude to the august initiator of the Conference, His Majesty the Emperor of All the Russias, she had felt the keenest satisfaction on hearing the hope expressed in the Conference that, when it should meet for the third time, it might find the same hospitable welcome at The Hague. The Government of the Netherlands is not only disposed to offer to the Third Conference the same hospitality which it has happily been able to extend to the present Conference; but it desires also to state that it will always consider it a precious privilege and a great honor to the Netherlands to see in its royal capital the prosecution of the great work of peace and justice, in which the civilized States of the whole world are cooperating, at the instance of His Majesty the Emperor of All the Russias. (*Applause.*)

The **President**: Gentlemen, the order of the day calls for consideration of the ten reports presented by the Fourth Commission and a vote on the conclusions set forth in most of these reports.¹

The task that devolved upon this Commission did not cover a clearly defined subject, as was the case with the other Commissions. When the work was distributed among the Commissions, a number of special points mentioned separately in the Russian program were assigned to the Fourth Commission and

[232] made up the *questionnaire*,² which served as a basis for its work. Although differing from one another, the questions included therein had a common bond; they all related to one of the most delicate subjects in international affairs: the relations between belligerents and those between belligerents and neutrals in naval warfare.

The particular difficulties inherent in the regulation of these questions proceed, in the first place, from the novelty of the subject, since there had never been any stipulations or agreements with regard to these matters. And then the Commission was confronted with absolutely different ways of looking at the same question: the belligerent's point of view differs from that of the neutral, the point

¹ Annex A to these minutes. For the debates, see vol. iii, minutes of the meetings of the Fourth Commission and its committee of examination.

² Vol. iii, Fourth Commission, annex 1.

of view of the maritime State from that of the continental Power. It was because of this divergence of outlook, gentlemen, since each delegation defended the interests and views of its Government, that there were at the outset such divergent and even contradictory opinions that it seemed at first sight absolutely impossible ever to reach an agreement. It required all the good will which was manifested on all sides, the sincere desire of reaching an agreement which prevailed in the Fourth Commission, the broad experience and perseverance of its president, his Excellency Mr. MARTENS, with the assistance of his able and devoted collaborators, to attain the results which have been achieved and which are to-day laid before you. It is true that all the questions have not been solved. There are some on which it has been impossible to come to an understanding. But much progress has been made on the road to agreement, and if you will consider the starting point and the point that has been reached, you will see how much ground has been traversed. It is, gentlemen, the glory of the Conference, the outcome of its beneficent action, that it has been able to bring about such *rapprochements*. A certain portion of public opinion, those who are not in close touch with the reality of our work and who judge it under the influence of sincere dreamers and conscientious theorizers with no responsibility for the effects which their action may produce, may criticize what we have done and contend that, inasmuch as we have busied ourselves with questions relating to war, we have not been working for peace. But in the eyes of all persons who are more intimately acquainted with the matters we have been called upon to consider, especially in the eyes of the Governments of which we are the agents and which are the guardians of the real interests of the countries that we represent, we have, I feel assured, done our whole duty, each of us by his own country and all of us with respect to the great problem which has gathered us here together—the problem of mitigating, so far as possible, the horrors of war and of creating in the relations between States closer ties and intercourse based, both in time of war and in time of peace, upon law and justice. From this twofold point of view the results accomplished by the Fourth Commission are of the kind that contribute most toward increasing the value of the work of the Conference. I therefore consider that I am performing an act of justice in tendering to the eminent President of the Fourth Commission, his Excellency Mr. MARTENS, and his collaborators, among whom I place at the head of the list the indefatigable and conscientious reporter, Mr. FROMAGEOT, the most sincere thanks of the Conference. (*Applause.*)

The reporter of the Fourth Commission has the floor.

Mr. Fromageot: In conformity with the division of its work adopted by the Conference, the Fourth Commission was charged with the study of the following questions, all pertaining to the regulating of the maritime law of nations in time of war:

1. Conversion of merchant ships into war-ships.¹
- [233] 2. Enemy private property at sea.²
3. Days of grace.³

¹ For the debates, see vol. iii, Fourth Commission, minutes of the second, fifth, seventh, and thirteenth meetings of the Commission, and of the first, second, fourth, ninth, tenth, thirteenth, and fifteenth meetings of the committee of examination.

² See *ibid.*, minutes of the second, third, fourth, sixth, seventh, twelfth, and thirteenth meetings of the Commission.

³ See *ibid.*, fifth, eighth, tenth, and thirteenth meetings of Commission; second, third, fourth, sixth, twelfth, thirteenth, and fifteenth of committee.

4. Contraband of war.¹
5. Blockade.²
6. Destruction of neutral prizes.³
7. Provisions relating to land warfare which would apply equally to naval warfare.⁴

Various other questions, more or less closely connected with these matters, were afterwards added:

- (a) Regulation of postal correspondence at sea in time of war.⁵
- (b) Treatment of the crews of captured vessels.⁶
- (c) Exemption from capture of fishing vessels and certain other ships.⁷

By reason of the interrelation between all these questions and in order to preserve the unity necessary for its work, the Fourth Commission, on the proposal of its president, did not, like the other Commissions, resolve itself into subcommittees. His Excellency Mr. MARTENS submitted to it a general *questionnaire* embracing all the questions to be studied. This *questionnaire*⁸ served as the basis of the discussions.

When the study of the *questionnaire* was completed, a committee of examination was constituted and given the task of drawing up the text of the resolutions to be proposed. A special subcommittee was charged with questions relating to contraband of war and the treatment of postal correspondence at sea in time of war, which pertains thereto.

Fifty-six proposals, amendments, or declarations, printed and distributed as annexes, were presented to the Commission, the committee of examination, and the subcommittee, and they devoted no less than thirty-two meetings to the study of the many delicate matters that had been entrusted to them.

The present report aims to give an account of these proceedings and has the honor of presenting, in the name of the Commission, five draft regulations, the definitive adoption of which is proposed unanimously as regards the majority of the points.

These five projects all tend to better guarantee the rights of neutral and peaceful commerce and, as far as possible, to subject naval warfare to the sway of conventional law.

Since the Declaration of Paris of 1856 nothing of the kind had ever been attempted, and at the beginning of the proceedings his Excellency Mr. MARTENS, our eminent president, did not fail to point out the great importance of the undertaking and the effort demanded by the ever-increasing needs of justice among all the peoples of the world. The effort has not been in vain. We have attained the first result. True, it is an imperfect one, but we must not overlook its value or its import. It is the first time that the age-long practices of belligerents in

¹ See vol. iii. Fourth Commission, eighth, ninth, tenth, and fourteenth meetings of Commission, and meetings of committee of examination on contraband.

² See *ibid.*, tenth and fourteenth meetings of Commission, and fifth meeting of committee of examination.

³ See *ibid.*, twelfth and thirteenth meetings of Commission, and eighth, ninth, eleventh, thirteenth, and fourteenth meetings of committee.

⁴ See *ibid.*, twelfth meeting of Commission, and fifteenth meeting of committee.

⁵ See *ibid.*, eighth meeting of Commission, and fourth and fifth meetings of committee on contraband.

⁶ See *ibid.*, seventh, thirteenth, and fourteenth meeting of Commission, and fifth meeting of committee.

⁷ See *ibid.*, eleventh, twelfth, and thirteenth meetings of Commission, and sixth, seventh, eighth, eleventh, twelfth, and thirteenth meetings of committee.

⁸ *Ibid.*, Fourth Commission, annex 1.

[234] these matters, springing from the vital, frequently imperative, and therefore divergent, needs of nations, have been put to the test of free discussion by all the civilized States. It is the first time that a common and genuine desire to reach an agreement has manifested itself with respect to these matters, in order to bring about the universal triumph of law and justice over arbitrariness and force.

If it has been impossible thus far to draw up complete regulations with regard to all of the ten subjects on the program of the Fourth Commission, let me hasten to say that the desire to reach an agreement is, in all good faith, far from being laid aside. The result now achieved is only the first stone of a monument that is universally awaited and desired. The respect for law, the spirit of equity and conciliation which continually inspired the work of the Commission are the best pledge that the future could have. (*Applause.*)

The **President**: The first delegate of Spain has the floor.

His Excellency Mr. de Villa Urrutia: The Spanish Government informed the French Government, by a note transmitted on May 16, 1857, to the Ambassador of France at Madrid, that, while it highly appreciated the value of the generous doctrine proclaimed by the Declaration of Paris and rejoiced at the international agreement respecting the freedom of enemy goods under a neutral flag and of neutral goods under an enemy flag, as well as with regard to the effectiveness of blockades, it could not at that time accept the abolition of privateering.

The Royal Government, which has never wished to make use of the right to issue letters of marque, which it expressly reserved in 1857, animated at the present time by the desire to contribute to the unification of international maritime law, has directed me to inform the Conference that it accepts the principle of the abolition of privateering and adheres to the Declaration of Paris in its entirety. (*Applause.*)

The **President**: The first delegate of Mexico has the floor.

His Excellency Mr. de la Barra: The delegation of Mexico, in voting in favor of the draft regulations on the conversion of merchant ships into war-ships, has the honor to declare, in the name of its Government, that it adheres to the Declaration of Paris of April 16, 1856, in its entirety.

Our Government will inform the French Government, through diplomatic channels, of its adhesion; but it has authorized us to communicate to the Conference the fact that, just as it accepted heretofore the last three articles of the Declaration of Paris, it now adheres to its first article abolishing privateering.

By renouncing its reservation, the Government of Mexico wishes to demonstrate how sincerely it joins in a practical manner in the great work accomplished here in common.

The project for which we are now about to vote sanctions the principle of confining conflicts to bodies acting under the orders and directions of belligerent States and affirms the rule — recalled by our eminent President — that war should be considered a relation between State and State. It harmonizes the possible necessities of national defense and the present tendencies of international law, that is to say, interest and justice.

Without losing sight of the realities of life, this project, which recognizes the right and duty of States to watch over the essential and permanent interests of their sovereignty, translates our common aspirations into an ideal of peace and justice. (*Applause.*)

[235] **The President:** The Conference makes official note of these declarations and expresses its great satisfaction at the adhesion of these States to the Declaration of Paris, as they are thus enabled to take part in the decisions of the Conference.

The **REPORTER** has the floor.

The **Reporter** reads the articles of the "draft Convention on the conversion of merchant ships into war-ships."¹

His Excellency General **Porter:** The delegation of the United States of America abstains from voting on this proposal for the reasons stated in the declaration which it had the honor to make at the meeting of the Fourth Commission, held on September 18.

His Excellency **Samad Khan Momtas-es-Saltaneh:** There are in the various projects mentioned in the order of business of this plenary meeting certain articles in favor of which we have already voted; there are others with regard to which we have abstained from voting, and still others upon which we were obliged to cast a negative vote in the Fourth Commission.

To-day, in a spirit of agreement and conciliation, we shall vote without reserve for all the projects which are laid before us.

The **President:** The Conference makes official note of this declaration.

The Conference proceeds to vote on the project as a whole:

Voting for: Germany, Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, Cuba, Denmark, Spain, France, Great Britain, Greece, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Norway, Panama, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Serbia, Siam, Sweden, Switzerland.

Not voting: United States of America, Colombia, Ecuador, Guatemala, Salvador, Uruguay, and Venezuela.

Also not voting: The delegations of China and of the Dominican Republic, whose Governments have not adhered to the Declaration of Paris of 1856; the Ottoman delegation which has not yet received the necessary instructions from its Government.

Not taking part in the vote: Nicaragua, Paraguay.

The project is therefore adopted by 32 votes, with 10 abstentions.

Mr. **Fromageot** reads Articles 1, 2, and 3 of the draft regulations on the status of enemy merchant ships at the outbreak of hostilities."²

His Excellency Baron **Marschall von Bieberstein:** The German delegation has the honor to state that it makes reservations with regard to Article 3 and to paragraph 2 of Article 4. It is of the opinion that these provisions establish a situation of inequality among the Powers by imposing financial burdens [236] upon those which, lacking naval stations in various quarters of the globe, are not able to bring seized vessels into port, but find themselves compelled to destroy them.

The **President:** The Conference makes official note of this declaration.

Mr. **Fromageot** reads Articles 4 and 5.

The Conference proceeds to vote on the project as a whole:

42 delegations take part therein.

Voting for, without reservations: Argentine Republic, Austria-Hungary,

¹ Annex B to these minutes.

² Annex C to these minutes.

Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Norway, Panama, Netherlands, Peru, Persia, Portugal, Roumania, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

Voting for, with reservations as to Article 3 and paragraph 2 of article 4: Germany, China, Montenegro, Russia.

Not voting: United States of America, which has not yet received final instructions from its Government.

Not taking part in the vote: Nicaragua, Paraguay.

The project as a whole is adopted by 41 votes, with 1 abstention.

Mr. Fromageot reads the "draft arrangement concerning postal correspondence at sea."¹

The Conference proceeds to a vote.

The draft is adopted unanimously, except for the Argentine Republic, which abstained.

Not voting: Nicaragua, Paraguay.

Mr. Fromageot reads the "draft regulations on the status of the crews of enemy merchant ships captured by a belligerent."²

The Conference proceeds to vote on the project as a whole, which is adopted unanimously by those voting.

Not taking part in the vote: Nicaragua, Paraguay.

[237] Mr. Fromageot reads the "draft arrangement relative to the exemption from capture of coastal fishing vessels and certain other ships in time of war."³

The Conference proceeds to vote on the project as a whole, which is adopted unanimously by those voting.

Not taking part in the vote: Nicaragua, Paraguay.

The President: We have still to vote on a "*vœu* relative to the laws and customs of naval warfare."

The REPORTER has the floor.

Jonkheer van Karnebeek: Gentlemen, as a final matter, a *vœu* is submitted to you relative to the application to naval warfare of the laws and customs of war on land. Before reading it to you, allow me to recall its origin to you in a few words.

As you will remember, the committee of examination of the Fourth Commission desired that a preliminary report should be made on the subject. After this report had been submitted, the committee was of the opinion that there was not sufficient time left in which to undertake and carry out with the care it deserved so vast a work; but, on the other hand, it was recognized that the principles inspiring the provisions of the 1899 Convention are, in general, applicable to naval warfare as well as to land warfare.

With this in mind, the committee formulated the *vœu* which is laid before you. The Commission fully concurred in it, and it is now for the Conference to pass upon it.

The *vœu*, whose wording has been slightly altered so that it may fit into the Final Act, reads as follows:

¹ Annex D to these minutes.

² Annex E to these minutes.

³ Annex F to these minutes.

The Conference utters the *vœu* that the preparation of special regulations relative to the laws and customs of naval war should figure in the program of the next Conference, and that in the meantime the Powers may apply, as far as possible, to naval warfare the principles of the 1899 Convention relative to war on land.

The President: Gentlemen, I do not believe that you will have an objection to accepting this *vœu*.

The *vœu* is accepted by acclamation.

The meeting adjourns at 4 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK,
PROZOR.

Annex A

[238]

GENERAL REPORT TO THE CONFERENCE UPON THE WORK OF THE FOURTH COMMISSION

In conformity with the distribution of work adopted by the Conference,¹ 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.

By reason of the connection between these questions and in order to preserve the unity necessary for its labors, the Fourth Commission, upon the proposal of its president, did not, like the others, subdivide itself into subcommissions.² His Excellency Mr. MARTENS submitted a general *questionnaire* embracing all the questions to be studied.³ This *questionnaire* served as a basis for the discussions.

When the *questionnaire* had been exhausted, a committee of examination⁴

¹ See second plenary meeting of the Conference, June 19, 1907, *ante*.

² Vol. iii, Fourth Commission, first meeting, June 24, 1907.

³ *Ibid.*, Fourth Commission, annex 1.

⁴ 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 (Argentina); his Excellency J. VAN DEN HEUVEL

was constituted to elaborate the text of the resolutions to be proposed. A [239] subcommittee¹ 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 honor 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 labors, 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 program 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; but we cannot hope to build it in a few months. The respect for law, the spirit of equity and conciliation, by which the labors 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 program of the Fourth Commission is "Conversion of merchant ships into war-ships."²

(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.

¹The 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.

²Russian program of April 3, 1906, number 3, paragraph 3 (see *ante, in initio*).

Our president, Mr. MARTENS, presented it in his *questionnaire*¹ in the following form:

[240] 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 victualing 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,⁵ Russia,⁶ Japan,⁷ and the United States of America.⁸

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-ships 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.

[241] The character and scope of this proposition were separately examined and have been made the subject of a special report.⁹ 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

¹ Vol. iii, Fourth Commission, annex 1.

² *Ibid.*, annex 2.

³ *Ibid.*, annex 4.

⁴ Declaration of Mr. LAMMASCH, see vol. iii, Fourth Commission, second meeting.

⁵ Vol. iii, Fourth Commission, annex 5.

⁶ *Ibid.*, annex 3.

⁷ *Ibid.*, annex 6.

⁸ *Ibid.*, annex 7.

⁹ See vol. iii, Fourth Commission, annex to the eighth meeting, July 24, 1907; see also seventh meeting of July 19, 1907, declaration of his Excellency Lord REAY, and eighth meeting of the Commission, July 24, 1907. In the terms of a declaration of his Excellency Lord REAY (thirteenth meeting of the Commission, September 18, 1907), the British delegation withdrew its proposition in regard to the definition of an "auxiliary vessel."

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.¹

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 pennant 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 declared² from the start that it was in favor 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 delegation³ 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.⁴

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.⁵ [242] The arguments in favor of this proposition were supported especially by the British 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.⁶

¹ See the analytical table drawn up to that effect (vol. iii, Fourth Commission, annex 8), in which the various propositions are summarized, with the exception of that of the United States of America, which was submitted afterwards.

² Declaration of his Excellency Mr. ESTEVA, fifth meeting of the Fourth Commission, July 12, 1907.

³ Declaration of his Excellency Mr. ESTEVA, seventh meeting of the Fourth Commission, July 19, 1907.

⁴ Observation of his Excellency Mr. MARTENS, president, second meeting of Fourth Commission, June 28, 1907.

⁵ Observations of Mr. LAMMASCH and of his Excellency Mr. MARTENS, president, fifth meeting of Fourth Commission, July 12, 1907.

⁶ Speech of his Excellency Lord REAY, fifth meeting of the Fourth Commission, July 12, 1907.

The delegation of the Netherlands,¹ 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,² 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,³ as well as the delegation of Russia⁴ and France,⁵ 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 Italy⁶ 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,⁷ 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.⁸

[243] 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.⁹ 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 conversion 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.¹⁰

¹ Observation of his Excellency General DEN BEER POORTUGAEL, vol. iii, fifth meeting of Fourth Commission, July 12, 1907.

² Speech of his Excellency Mr. BARBOSA, *ibid.*

³ Declarations of Admiral SIEGEL, *ibid.*

⁴ Declaration of Colonel OVTCHINNIKOW, *ibid.*

⁵ Declaration of Mr. LOUIS RENAULT, *ibid.*

⁶ Observation of his Excellency Count TORNIELLI, *ibid.*

⁷ Observation of Mr. FUSINATO, *ibid.*

⁸ See fifth meeting of Fourth Commission, July 12, 1907.

⁹ See Fourth Commission, first meeting of committee of examination, August 3, 1907.

¹⁰ *Ibid.* Voting for prohibition of conversion on the high seas, the nine following

Upon the proposal of various delegations — notably Italy, the Netherlands,¹ Sweden, and Belgium² — 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 connection with the question of the *place* of conversion. The committee decided,³ therefore, to leave this question *in statu quo* and, as proposed by the delegations of the Netherlands and Sweden,⁴ 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.⁵

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 1

[244] 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.

ARTICLE 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

States: United States of America, Belgium, Brazil, Great Britain, Italy, Japan, Norway, Netherlands, Sweden; *voting against*: Germany, Austria-Hungary, Argentine Republic, Chile, France, Russia, Serbia.

¹ Observation of Mr. VAN KARNEBEEK, vol. iii, Fourth Commission, ninth meeting of committee of examination, August 28, 1907.

² Observations of his Excellency Mr. HAMMARSKJÖLD and of his Excellency Mr. VAN DEN HEUVEL, tenth meeting of committee of examination, August 30, 1907.

³ See tenth meeting of committee of examination, August 30, 1907.

⁴ Observations of Mr. VAN KARNEBEEK (ninth meeting of committee of examination, August 28, 1907) and his Excellency Mr. HAMMARSKJÖLD, tenth meeting of committee of examination, August 30, 1907.

⁵ *Abstaining*: United States of America (as not having adhered to the Declaration of Paris, 1856), Brazil, Dominican Republic, Ecuador, Haiti, Turkey. See vol. iii, thirteenth meeting of Fourth Commission, Sept. 18, 1907.

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 connection with the State.

There had been a question¹ 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 counterbalances its rights as a belligerent.

Nevertheless the delegation of the United States of America² declared that it made reservations to 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 [245] 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. But it was understood³ 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.

¹ See vol. iii, Fourth Commission, tenth meeting of committee of examination, August 30, 1907.

² See twelfth meeting of committee of examination, September 6, 1907, declaration of Admiral SPERRY.

³ See tenth meeting of the committee of examination, August 30, 1907.

II

INVIOIABILITY 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 program; but a *vau* had been adopted¹ to refer it to a succeeding Conference for examination.

In conformity with this *vau*, the question was included in the Russian program² of April 6, 1906. In the *questionnaire*,³ 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,⁴ Austria-Hungary,⁵ Italy,⁶ the Netherlands,⁷ Brazil,⁸ Denmark,⁹ Belgium,¹⁰ and France¹¹ ten propositions, declarations or amendments, to the examination of which the Commission devoted no less than ten of its meetings,¹² in whole or in part.

In the meantime and during this long discussion, the Commission was happy to commend the declaration 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.¹³

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 *Proceedings* of the First Peace Conference (pt. i, pp. 45-49 [31-33], fifth plenary meeting, July 5, 1899).

² See *ante*, in *initio*.

³ Vol. iii, Fourth Commission, annex 1; *questionnaire*, question 3.

⁴ *Ibid.*, annex 10.

⁵ *Ibid.*, annex 17 and minutes of the second meeting of the Commission, June 28, 1907.

⁶ *Ibid.*, minutes of the second meeting of the Commission, June 28, 1907.

⁷ *Ibid.*, annexes 12, 15 and minutes of the fourth meeting of the Commission, July 10, 1907.

⁸ *Ibid.*, annex 11.

⁹ *Ibid.*, annex 13.

¹⁰ *Ibid.*, annex 14.

¹¹ *Ibid.*, annex 16.

¹² See vol. iii, Fourth Commission, minutes of second meeting, June 28, 1907; third meeting, July 5; fourth meeting, July 10; sixth meeting, July 17; seventh meeting, July 19; twelfth meeting, August 7.

¹³ See Fourth Commission, sixth meeting, July 17, 1907.

All the arguments in favor of inviolability were made with an eloquence and logical force which it would be difficult to surpass.

The American delegation¹ 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 1783 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 restricting fighting to the organized military forces of the belligerents and of 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 favor 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.

[247] The delegations of certain countries— notably Brazil,² Norway,³ Sweden,⁴ and Austria-Hungary⁵— 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 China⁶ 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 Sweden¹¹— did not conceal their doubts as to the present possibility of a unanimous agreement.

¹ Speech of his Excellency Mr. CHOATE (vol. iii, second meeting of the Fourth Commission, June 28, 1907) and of Mr. URIAH ROSE (third meeting, July 5, 1907).

² See speeches of his Excellency RUY BARBOSA (second meeting of the Fourth Commission, June 28, 1907; third meeting, July 5, 1907).

³ Declaration of his Excellency Mr. HAGERUP, third meeting, July 5, 1907.

⁴ Declaration of his Excellency Mr. HAMMARSKJÖLD, fourth meeting, July 10, 1907.

⁵ Declaration of his Excellency Baron VON MACCHIO, second meeting, June 28, 1907; sixth meeting, July 17, 1907.

⁶ Speech of his Excellency Mr. FOSTER, fourth meeting, July 10, 1907.

⁷ Speech of his Excellency Baron MARSCHALL VON BIEBERSTEIN, third meeting, July 5, 1907.

⁸ Observation of his Excellency Marquis DE SOVERAL, third meeting, July 5, 1907.

⁹ Declaration of his Excellency Mr. DE BEAUFORT, third meeting, July 5, 1907.

¹⁰ Declaration of his Excellency Mr. RIZO RANGABÉ, third meeting, July 5, 1907.

¹¹ Declaration of his Excellency Mr. HAMMARSKJÖLD, fourth meeting, July 10, 1907.

For reasons similar to those expressed in the German reservations, the delegation of Russia¹ remarked that, in the opinion of the Imperial Government, the question did 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,² 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,³ 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 Republic⁴ declared itself categorically in favor of the continuance of the right of capture. Colombia⁵ declared that, whatever theoretical considerations might be advanced in favor of the abolition of the right of capture, this right offered an element of national defense, 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.

[248] Italy,⁶ 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.

Brazil⁷ proposed that in connection 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.

Belgium⁸ 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.⁹

In the same spirit the Netherland delegation, after having proposed¹⁰ that every vessel carrying a passport proving that it will not be used as a war-ship

¹ Declaration of his Excellency Mr. TCHARYKOW, vol. iii, third meeting of the Fourth Commission, July 5, 1907.

² Observation of his Excellency Mr. NELIDOW, president of the Conference, second meeting, June 28, 1907.

³ Declaration of his Excellency Sir ERNEST SATOW, third meeting, July 5, 1907; of Sir EDWARD FRY, *ibid.*; of Sir ERNEST SATOW, sixth meeting, July 17, 1907.

⁴ Declaration of his Excellency Mr. LARRETA, third meeting, July 5, 1907; fourth meeting, July 10, 1907.

⁵ Speech of his Excellency Mr. TRIANA, third meeting, July 5, 1907.

⁶ Declaration of his Excellency Count TORNIELLI, second meeting, June 28, 1907.

⁷ See previously cited speeches of his Excellency Mr. RUY BARBOSA.

⁸ Speech of his Excellency Mr. BEERNAERT (fourth meeting, July 10, 1907); of his Excellency Mr. VAN DEN HEUVEL (*ibid.*).

⁹ See vol. iii, Fourth Commission, annex 14, previously cited.

¹⁰ Declaration of his Excellency Vice Admiral RÖELL (fourth meeting of the Fourth Commission, July 10, 1907).

be exempt from capture, declared that it supported, with the reservation of a few modifications, the project submitted by the delegation of Belgium.¹

Finally, the French delegation,² indicating its entire sympathy with the liberal spirit 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 paralyzing 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 *vacu* 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.³

[249] 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,⁴ the delegation of Brazil withdrew it.⁵

The Belgian proposition (substitution of sequestration for confiscation), after having received a majority when taken under consideration,⁶ could not, upon the discussion of the articles, obtain a support which was considered sufficient, and the royal delegation requested its withdrawal.⁷

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 *vacu* be adopted to the effect that henceforth, at the beginning

¹ See minutes, vol. iii, sixth meeting of the Fourth Commission, July 17, 1907.

² Speech of Mr. LOUIS RENAULT (third meeting, July 5, 1907).

³ Minutes, sixth meeting, 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 favor* 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*.

⁴ See vol. iii, minutes of the seventh meeting of Fourth Commission, July 19, 1907. Twenty-five States took part in the vote. Thirteen States voted *for*; twelve States voted *against*.

⁵ Declaration of his Excellency RUY BARBOSA (*ibid.*)

⁶ Minutes of seventh meeting, July 19, 1907. Twenty-eight States took part in the vote; twenty-three States voted *for*; three States voted *against*; two States *abstained*.

⁷ Minutes of seventh meeting, July 19, 1907. Thirty States took part in the vote on Article 1 of the proposition. Fourteen States voted *for*; nine States voted *against*; seven States *abstained*. See the declaration of withdrawal of his Excellency Mr. BEERNAERT (*ibid.*).

of hostilities, the Powers should declare of their own accord whether and under what conditions they had decided to renounce the right of capture.¹

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 delegation (abolition of sharing in the prize, and the State sharing in the losses by capture). This *vœu*,² in spite of an amendment proposed by the delegation of Austria-Hungary,³ likewise resulted in an indecisive vote and several abstentions.⁴

Such is the summary of the long discussion of one of the most important questions in the program of the Fourth Commission. I have endeavored 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.

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III

DAYS OF GRACE

The third question in the program 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."⁵

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."⁶

This question was submitted to the Commission for consideration by our president, Mr. MARTENS, in the following form:⁷

Is it good practice in war to seize and confiscate, upon the outbreak of

¹ Speech of his Excellency Mr. MARTENS, president (vol. iii, Fourth Commission, seventh meeting, July 19, 1907).

² Vol. iii, Fourth Commission, annex 16.

³ *Ibid.*, annex 17.

⁴ *Ibid.*, twelfth meeting, 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*.

⁵ See *ante*, in *initio*. Russian program of April 3, 1906, section 3, paragraph 5.

⁶ Report preceding the French decree of March 27, 1854 (PISTOYE and DUVERDY, *Traité des prises maritimes*, Paris, 1855, vol. ii, p. 467).

⁷ Vol. iii, Fourth Commission, annex 1, *questionnaire*, questions 4 and 5.

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 Russia¹ 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,² on the one hand, the necessity of safeguarding, in conformity with equity, commercial transactions entered into in good faith and in all confidence before the war, and, on the other hand, the practice universally followed since 1854.

[251] However equitable the principle of this measure may appear in itself, attention was nevertheless called to the fact³ 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,⁴ 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 defense which might soon be utilized?

For these reasons the French delegation⁵ 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,⁶ while declaring itself in favor of a compulsory

¹ Vol. iii, Fourth Commission, annex 18.

² Speech of Colonel OVTCHINNIKOW, minutes of the fifth meeting of the Fourth Commission, July 12, 1907.

³ Speech of Captain OTTLEY (see vol. iii, fifth meeting of the Fourth Commission, July 12, 1907); of his Excellency Mr. TSUDZUKI (*ibid.*); of Mr. LOUIS RENAULT (eighth meeting, July 24, 1907).

⁴ Speech of Mr. LOUIS RENAULT (eighth meeting, July 24, 1907; tenth meeting, July 31, 1907).

⁵ Vol. iii, Fourth Commission, annex 20.

⁶ *Ibid.*, annex 19.

rule, proposed an amendment making an exception in the case of vessels admitting of conversion into war-ships.

Finally, the Swedish delegation,¹ 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 ascertained² that there was unanimous agreement that the granting of days of grace be at least considered desirable, the Commission decided³ 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.⁴

Such were the circumstances under which the committee of examination entered upon its deliberations.⁵

Since it had been impossible to come to an agreement upon the principle [252] of obligation,⁶ the committee took as the basis of discussion the Swedish compromise proposition. This resulted in the following draft regulations.⁷ Except for certain reservations, it received a unanimous vote, with two abstentions⁸ 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,

¹ Vol. iii, Fourth Commission, annex 21; and remarks of his Excellency Mr. HAMMARSKJÖLD (tenth meeting, July 31, 1907).

² See remarks of General DE ROBILANT (fifth meeting, July 12, 1907); of his Excellency Mr. MARTENS, president (*ibid.*, and tenth meeting, July 31, 1907); and of his Excellency Mr. DE BEAUFORT (eighth meeting, July 24, 1907); and of his Excellency Mr. HAMMARSKJÖLD (tenth meeting, July 31, 1907).

³ Minutes, tenth meeting, July 31, 1907.

⁴ See remarks of Mr. KRIEGE, tenth meeting, July 31, 1907.

⁵ See vol. iii, minutes of committee of examination, second meeting, August 9, 1907; third meeting, August 12, 1907; fourth meeting, August 14, 1907.

⁶ Committee of examination, minutes, second meeting, 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*.

⁷ Adopted in committee of examination of Fourth Commission (vol. iii) by thirteen votes and two abstentions. Voting *for* the project as a whole: Germany (with reservation of 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 meeting of committee, September 13, 1907.

⁸ Thirteenth meeting 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.

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 point 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 hostilities 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 [253] 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 preferable¹ not to refer to municipal laws matters in relation to the right of requisition and the obligation to indemnify.

ARTICLE 3

[254] 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,² with respect to certain countries, the

¹ See vol. iii, Fourth Commission, minutes of the committee of examination, second meeting, August 9, 1907.

² Declarations of Mr. KRIEGE, vol. iii, Fourth Commission, fourth meeting of committee

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.¹

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 4, with one abstention;² and, on the second reading, a majority of 10 votes to 4, with one abstention.³

It goes without saying that the right to destroy depends, as was pointed [255] out by the delegation of Austria-Hungary⁴ 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 favored 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.⁵

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.

of examination, August 14, 1907; twelfth meeting of committee of examination, September 6, 1907; thirteenth meeting of Commission, September 18, 1907.

¹ Vol. iii, Fourth Commission, minutes of the committee of examination, third meeting, August 12, 1907.

² Minutes, committee of examination, fourth meeting, 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.

³ Minutes, committee of examination, twelfth meeting, 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.

⁴ Remark of his Excellency Baron VON MACCHIO, see vol. iii, Fourth Commission, fourth meeting of the committee of examination, August 14, 1907.

⁵ Minutes of the committee, fourth meeting, August 14, 1907.

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.¹

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,² after some little hesitation, came to the conclusion, upon the proposal of the British delegation,³ amended by the delegation of Sweden,⁴ 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.

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IV

CONTRABAND OF WAR

Contraband of war is one of the most delicate questions appearing in the program of the Conference⁵ 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 defense.

The *questionnaire* sets forth the three following questions⁶ 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 Vol. iii, Fourth Commission, minutes of the committee of examination, fourth meeting, August 14, 1907.

² See remarks of Mr. KRIEGE, twelfth meeting of committee, September 6, 1907, as well as the successive votes, both on the subject-matter and form of this provision, in the fourth meeting (August 14, 1907), twelfth meeting (September 6, 1907), and fifteenth meeting (September 13, 1907).

³ See fourth meeting of committee, September 14, 1907, and annexes 24 and 26.

⁴ See fifteenth meeting of committee, September 13, 1907.

⁵ Russian program of April 3, 1906, section 3, paragraph 6 (see *ante, in initio*); see also circular of the Government of the United States of America, signed by Mr. JOHN HAY and dated October 21, 1904.

⁶ See vol. iii, Fourth Commission, annex 1, questions 6, 7 and 8.

Five propositions were laid before the Commission upon this subject. They were presented by the delegations of Great Britain,¹ Germany,² France,³ Brazil,⁴ and the United States of America.⁵

The British proposition, submitted at the first meeting 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, what- [257] ever 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 preemption.

The Brazilian proposition, inspired by the resolutions adopted by the Institute of International Law in 1896, 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 preemption 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.

¹ See vol. iii, Fourth Commission, annex 27.

² *Ibid.*, annex 28.

³ *Ibid.*, annex 29.

⁴ *Ibid.*, annex 30.

⁵ *Ibid.*, annex 31.

The deliberations of the Commission¹ bore upon the general question of the abolition or continuance of contraband of war.²

The British delegation,³ 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 endeavoring 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 [258] 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,⁴ France,⁵ Russia,⁶ the United States of America,⁷ and Turkey⁸ declared themselves in favor 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 defense, 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,⁹ that treats as war-ships, with all the con-

¹ See vol. iii, eighth, ninth and tenth meetings of the Fourth Commission (July 24, 26 and 31, 1907).

² Remarks of his Excellency Mr. MARTENS, president, ninth meeting, July 26, 1907, and tenth meeting of the Fourth Commission, July 31, 1907.

³ Speeches of his Excellency Lord REAY, eighth meeting, July 24, 1907, and tenth meeting of the Fourth Commission, July 31, 1907.

⁴ Speeches of Mr. KRIEGER, see vol. iii, eighth meeting of the Fourth Commission, July 24, 1907, and of his Excellency Baron MARSCHALL VON BIEBERSTEIN, tenth meeting, July 31, 1907.

⁵ Speech of Mr. LOUIS RENAULT, ninth meeting of Commission, July 26, 1907.

⁶ Remark of his Excellency Mr. TCHARYKOW, ninth meeting, July 26, 1907.

⁷ Remark of Rear Admiral SPERRY, ninth meeting, July 26, 1907; of his Excellency Mr. CHOATE, tenth meeting, July 31, 1907.

⁸ Declaration of his Excellency RÉCHID BEY (ninth meeting, July 26, 1907), while declaring himself in favor of limiting as much as possible articles to be considered as contraband of war.

⁹ The British proposition relative to a definition of *auxiliary vessel* was afterwards with-

sequences 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.

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 favor of the British proposition. The Norwegian delegation⁵ 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.

[259] The delegations of Austria-Hungary⁶ and of Sweden⁷ were likewise favorable, 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 Brazil⁸ 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 Chile⁹ 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.

drawn. See declaration of his Excellency Lord REAY, vol. iii, thirteenth meeting of Fourth Commission, September 18, 1907.

¹ Declaration of his Excellency Mr. LARRETA, ninth meeting, 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 meeting, July 31, 1907.

⁵ Speech of his Excellency Mr. HAGERUP, ninth meeting, July 26, 1907.

⁶ Declaration of his Excellency Baron VON MACCHIO, see vol. iii, tenth meeting of the Fourth Commission, July 31, 1907.

⁷ Declaration of his Excellency Mr. HAMMARSKJÖLD, ninth meeting, July 26, 1907.

⁸ Speech of his Excellency Mr. RUY BARBOSA, ninth meeting, July 26, 1907.

⁹ Speech of his Excellency Mr. CÁRLOS CONCHA, tenth meeting, July 31, 1907.

Such were the circumstances under which a ballot was taken upon the abolition of contraband.¹

Out of 35 States which voted, the British proposition obtained 26 votes; 5 States voted against it; 4 States abstained from voting.

After this vote upon the general principle, the question was referred to the committee of examination² 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, endeavored to find a basis for a general agreement upon the regulation of contraband.³

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:⁴ (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 [260] animals suitable for use in war; (8) articles of camp equipment and their distinctive component parts; (9) armor 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 declared⁵ 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.

¹ See vol. iii, Fourth Commission, tenth meeting, 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 meeting, August 2, 1907), Great Britain, Greece, Italy, Mexico, Norway, Paraguay, Netherlands, Peru, Persia, Portugal, Salvador, Serbia, Siam, Sweden Switzerland; *voting against*: Germany, United States of America, France, Montenegro, Russia; *abstaining*: Japan, Panama, Roumania, Turkey.

² Remarks of his Excellency Mr. MARTENS, president, tenth meeting of Commission, July 31, 1907.

³ Remark of his Excellency Lord REAY, president, first meeting of subcommittee, August 12, 1907.

⁴ See second meeting of subcommittee, August 15, 1907.

⁵ Declaration of Rear Admiral SPERRY. See vol. iii, Fourth Commission, third meeting of subcommittee, August 21, 1907.

V

ON BLOCKADE

The questions raised by blockade did not appear expressly in the Russian program 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 program,¹ the *questionnaire* of the Fourth Commission had mentioned it in the form of the two following questions:²

Is it necessary to modify the terms of the Declaration of Paris of 1856³ 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?

There were laid before the Commission a proposition submitted by the delegation of Italy,⁴ and four amendments presented by the delegations of the United States of America,⁵ Brazil,⁶ Great Britain,⁷ and the Netherlands.⁸

[261] 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 out⁹ 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 amendment¹⁰ aimed to have the geographical limits of blockade specified; to lay down the rule that within those

¹ Russian program of April 3, 1906, section 3, paragraph 2. See *ante, in initio*.

² See vol. iii, Fourth Commission, annex 1, *questionnaire*, questions 9 and 10.

³ 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."

⁴ See vol. iii, Fourth Commission, annex 34.

⁵ *Ibid.*, annex 35.

⁶ *Ibid.*, annex 36.

⁷ *Ibid.*, annex 37.

⁸ *Ibid.*, annex 38.

⁹ Speech of his Excellency Mr. GUIDO FUSINATO, see vol. iii, tenth meeting of the Fourth Commission, July 31, 1907.

¹⁰ Speech of his Excellency RUY BARBOSA, eleventh meeting of Commission, August 2, 1907.

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 amendment¹ 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,² Austria-Hungary,³ Greece,⁴ Turkey,⁵ and the Argentine Republic,⁶ it being 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 president⁷ the opinion [262] 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 decided⁸ 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 proposition and its various amendments were brought before your committee of examination.

At the first deliberation the British delegation⁹—emphasizing the great divergence between the systems long followed in the matter of blockade by continental practice, on the one hand, and by Anglo-American practice, on the other; the fact that in its opinion the question of blockade was not specifically included in the program of the Conference; the absence of instructions and the lack of time in which to reach a compromise solution which would be acceptable to the interested Governments in so delicate and complicated a matter—proposed that discussion of this question be suspended and consideration of it postponed.

¹ Remarks of his Excellency Mr. DE BEAUFORT (vol. iii, eleventh meeting of Fourth Commission), and of Lieutenant Colonel VAN OORDT (*ibid.*).

² Declaration of his Excellency Baron MARSCHALL VON BIEBERSTEIN, tenth meeting of Fourth Commission, July 31, 1907.

³ Declaration of his Excellency Baron VON MACCHIO (*ibid.*).

⁴ Declaration of Mr. STREIT (*ibid.*).

⁵ Except for certain modifications in the wording, conformably in this respect to the British proposition; declaration of his Excellency MEHEMED PASHA, eleventh meeting of Commission, August 2, 1907.

⁶ Declaration of his Excellency Mr. LARRETA (*ibid.*).

⁷ Remarks of his Excellency Mr. HAGERUP (*ibid.*).

⁸ Remarks of their Excellencies Count TORNIELLI, Sir ERNEST SATOW, and Mr. MARTENS, president, eleventh meeting of Fourth Commission.

⁹ Declaration of his Excellency Sir ERNEST SATOW, fifth meeting of committee of examination, August 16, 1907.

It was not in the power of the committee to pass upon this matter. It could only transmit this proposition, expressing the wish that, in case of postponement, an exhaustive study by the Governments might, in the near future, bring about the uniformity 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 program of April 3, 1906,¹ 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,² our president inserted the following questions³ 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?

[263] Four propositions were presented—by the delegations of Great Britain, Russia, the United States of America, and Japan.⁴ The Commission discussed the principle involved in them and referred them to the committee of examination under the following conditions:

The Russian delegation⁵ 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 delegation⁶ laid stress especially on the fact that, in its opinion, a vessel which violates neutrality would no 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.

¹ Russian program of April 3, 1906, section 3, paragraph 6. Vol. i, *ante, in initio*.

² Remarks of his Excellency Mr. MARTENS, president, vol. iii, twelfth meeting of Fourth Commission, August 7, 1907.

³ See vol. iii, Fourth Commission, annex 1, *questionnaire*, questions 11 and 12.

⁴ This last proposition, presented by the Imperial Government as an amendment to the British proposition, was withdrawn in the committee of examination (see vol. iii, declaration of his Excellency Mr. TSUBZUKI, eighth meeting of the committee, August 24, 1907).

⁵ Vol. iii, Fourth Commission, annex 40.

⁶ Speech of Colonel OVTCHINNIKOW, twelfth meeting of the Commission, August 7, 1907.

The British proposition¹ and the proposition of the United States of America,² 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 support³ 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 recognized⁴ the fact that there was a connection 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.⁵

In your committee of examination the Russian system of the right of destruction and the Anglo-American system of the prohibition of destruction [264] were taken up and developed.⁶ The delegation of Germany⁷ declared that it was entirely of the point of view of the delegation of Russia.

The Italian delegation⁸ stated the connection 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.⁹ 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

¹ Vol. iii, Fourth Commission, annex 39.

² *Ibid.*, annex 42.

³ Speech of his Excellency Sir ERNEST SATOW, twelfth meeting of Commission, August 7, 1907.

⁴ Remarks of his Excellency Count TORNIELLI (*ibid.*).

⁵ Remarks of his Excellency Mr. MARTENS, president (*ibid.*).

⁶ See in support of the Russian proposition, the speech of Commander BEHR, eighth meeting of the committee, August 24, 1907 (see vol. iii); in support of the Anglo-American propositions, the remarks of his Excellency Sir ERNEST SATOW, *ibid.*; and eleventh meeting of the committee, September 4, 1907, as well as remarks of General G. B. DAVIS, in the name of the delegation of the United States of America, thirteenth meeting of the committee, September 9, 1907.

⁷ Declarations of Mr. KRIEGE, eighth meeting of committee, August 24, 1907; ninth meeting, August 28; eleventh meeting, September 4; thirteenth meeting, September 9; and the documents printed in annex 43.

⁸ Remarks of his Excellency Count TORNIELLI and his Excellency Mr. FUSINATO, eighth meeting of committee, August 24, 1907; ninth meeting, August 28.

⁹ See fourteenth meeting of committee, September 10, 1907.

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 meeting 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 [265] 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 meeting, 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.¹

As this report was placed on the program of its twelfth meeting, the committee was unanimously of the opinion that at that late hour there was not sufficient time to begin and satisfactorily 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, etc. 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.

¹ Report drawn up by Mr. VAN KARNEBEEK (see vol. iii, Fourth Commission, annex to the thirteenth meeting).

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 *vanu* to the Commission:

The Commission requests the Conference to be good enough to express the *vanu* 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 program of the next Conference.

This *vanu* was adopted unanimously.

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VIII

PROTECTION OF POSTAL CORRESPONDENCE AT SEA

The two provisions which follow relate to a question which did not figure in the program of the Conference or in the *questionnaire* of the Fourth Commission. They arose from a proposition which was presented by the delegation of Germany,¹ as a sort of annex to its project concerning contraband, and referred to the special subcommittee which was charged with this question.² 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 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, explained³ that as so many private commercial interests at the present day depend upon regular mail service, it is indispensable to remove this service from the disturbances of naval warfare. The advantages to be gained by belligerents from the control of the postal service is out of all proportion to the harm done to inoffensive commerce. Teleg-

¹ See vol. iii, Fourth Commission, annex 44.

² See fourth meeting of the subcommittee, September 14, 1907, and fifth meeting, September 24, 1907.

³ Speech of Mr. KRIEGER, eighth meeting of the Commission, July 24, 1907.

raphy and radiotelegraphy offer belligerents more rapid and surer methods of communication than the mail.

Although the question was set forth in connection with contraband of war, and although dispatches are, by analogy, often considered articles of contraband, it is proper to note that the question is, on the whole, quite independent, since it arises, whatever may be the flag of the vessel carrying mail, whether neutral or enemy. However, this distinction between neutral and enemy nationality had to be put in the text, by reason of the apprehension 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 service would assuredly have been to exempt regular mail-carrying vessels from the right of search and from the ordinary treatment of merchant ships in time of war. That did not appear to be possible, because of the conditions of common law, under which these same vessels were in all other respects. But it was thought advisable to state expressly that, in case the search of a mail- [267] carrying ship is necessary, it should be done with all possible dispatch.

The project was unanimously adopted by the subcommittee, except for the reservation 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 composing the crew of a captured enemy merchant ship are treated as prisoners of war. The right of capture is, in a manner, applied to the crew as well as to the ship itself, often without endeavoring 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 capturing 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 several occasions. It has been criticized because of the hardship caused by treating as prisoners of war private persons who take no part in hostilities, the majority of whom are poor people, whose arduous business is their only way of earning a living, and who deserve as much consideration as individual foreigners in armies and in enemy territory.

This matter did not figure in the Russian program for the Conference. It was laid before the Fourth Commission in a British proposition,¹ which contemplated only neutral sailors; afterwards in a Belgian proposition,² which extended the benefit of freedom even to enemy sailors.

As there was no discussion of the question before the Commission, and as the British delegation declared itself ready to accept the Belgian amendment, the question was referred to the committee of examination.

The committee admitted unanimously in principle the desirability of modifying the treatment of the crews of captured, inoffensive enemy ships, which are

¹ See vol. iii, Fourth Commission, annex 45.

² Minutes of the Commission, seventh meeting, July 19, 1907, declaration of his Excellency Mr. VAN DEN HEUVEL, annex 46.

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 vote¹ in Commission.

[268]

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 proposed² 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 so 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 Vol. iii, thirteenth meeting of the Fourth Commission, September 18, 1907.

² Proposition of the British delegation. See vol. iii, Fourth Commission, annex 47.

³ See committee of examination, fifth meeting, August 16, minutes; annex 48.

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.

[269] 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 belligerents 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 program for the Conference, it was inserted by our president, his Excellency Mr. MARTENS, among the questions submitted to the Fourth Commission³ for consideration, in order to satisfy the desires of various persons.

The reason for this exemption is, and always has been, one of humanity. [270] The favored 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 favor should not become an

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 (see vol. iii, Fourth Commission, twelfth meeting, August 2, 1907; and annex to this meeting) 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 Vol. iii, Fourth Commission, annex 1, *questionnaire*, question 13: Are coastal fishing boats, even when belonging to citizens of a belligerent State, liable to capture?

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 the 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 the 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 recognized only 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 special 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

[271] 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. The Portuguese delegation, in its explana-

¹ See vol. iii, Fourth Commission, annex 14, Article 2.

² *Ibid.*, annexes 49 and 51.

³ *Ibid.*, annex 50.

⁴ Remark of his Excellency Count TORNIELLI, twelfth meeting of Commission, August 7, 1907.

⁵ Minutes of Commission, eleventh meeting, August 2; and twelfth meeting, August 7, 1907.

⁶ Minutes of committee of examination, sixth meeting, August 21; and seventh meeting, August 23, 1907.

⁷ Remark of his Excellency Mr. BEERNAERT Fourth Commission, twelfth meeting, August 7, 1907.

⁸ Remarks of Captain IVENS FERRAZ, sixth meeting of the committee, August 21, 1907.

tions — 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 neighboring 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.² The committee confined itself to mentioning in the third paragraph, in conformity with a proposition of the Japanese delegation,³ 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 favor 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 favor 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 Vol. iii, Fourth Commission, minutes of committee of examination, sixth meeting, August 21, 1907; and seventh meeting, August 23; and annexes 52, 53, 54.

² Minutes of committee, eighth meeting, August 24, 1907; and the declarations made in the name of the delegations of Austria-Hungary and Sweden, and by their Excellencies Baron VON MACCHIO and Mr. HAMMARSKJÖLD, and the remarks of his Excellency Mr. HAGERUP, thirteenth meeting of Commission, September 18, 1907.

³ Annex 55; minutes of the committee, eleventh meeting, September 4.

⁴ Minutes of the committee, ninth meeting, August 28; and annex 56.

⁵ *Ibid.*

Annex B

[272]

**DRAFT REGULATIONS CONCERNING THE CONVERSION OF
MERCHANT SHIPS INTO WAR-SHIPS¹**

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 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 State 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 officers of the fighting fleet.

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.

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.

¹ Text submitted to the Conference.

Annex C

[273]

**DRAFT REGULATIONS RELATIVE TO THE STATUS OF ENEMY
MERCHANT SHIPS AT THE OUTBREAK OF HOSTILITIES¹****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 shall 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, or was not granted days of grace in which to leave, cannot be confiscated.

It is only liable to detention without payment or compensation, but subject to the obligation to restore 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 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 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.

ARTICLE 5

The present regulations do not affect merchant ships whose build shows that they are intended for conversion into war-ships.

¹Text submitted to the Conference.

Annex D

[274]

DRAFT AGREEMENT CONCERNING POSTAL CORRESPONDENCE
ON THE HIGH SEAS¹

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 E

DRAFT REGULATIONS CONCERNING THE STATUS OF THE
CREWS OF ENEMY MERCHANT SHIPS CAPTURED
BY A BELLIGERENT¹

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 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.

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ARTICLE 3

The names of the persons retaining their liberty under the conditions laid

¹ Text submitted to the Conference.

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.

ARTICLE 4

The preceding provisions do not apply to ships taking part in the hostilities.

Annex F

DRAFT AGREEMENT RELATIVE TO THE EXEMPTION FROM CAPTURE OF COASTAL FISHING BOATS AND CERTAIN OTHER VESSELS IN TIME OF WAR¹

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.

ARTICLE 2

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

Annex G

VCEU RELATIVE TO THE LAWS AND CUSTOMS OF NAVAL WAR¹

The Conference utters the *vœu* that the preparation of regulations relative to the laws and customs of naval war may figure in the program of the next Conference, and that in the meantime the Powers may apply, as far as possible, to war by sea the principles of the Convention of 1899 relative to war on land.

¹Text submitted to the Conference.

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EIGHTH PLENARY MEETING

OCTOBER 9, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 11 o'clock.

The minutes of the seventh plenary meeting are adopted.

The **President**: Gentlemen, I have received the following communication from the first delegate of Paraguay:

MR. PRESIDENT: I have the honor to inform your Excellency that, as I was not able to assist at the seventh plenary meeting of the Conference, I wish to express to you my favorable vote on the propositions and *vœux* adopted at this meeting; and I request you kindly to take note thereof.

Accept, etc., etc.

(Signed) E. MACHAIN,
Delegate of Paraguay.

I have also received a letter from the first delegate of Nicaragua, which is couched as follows:

MR. PRESIDENT: I have the honor to inform your Excellency that, as I was not able to assist at the seventh plenary meeting of the Conference, I wish to express to you my favorable vote on the propositions and *vœux* adopted at this meeting; and I request you kindly to take note thereof.

Accept, etc., etc.

(Signed) CRISANTO MEDINA.

Major General Mom Chatidej Udom:

MR. PRESIDENT: At the plenary meeting of September 21, the delegation of Siam gave the reasons which rendered it impossible for it to take part in the vote upon the draft Convention relative to the establishment of an international prize court.

The delegation of Siam is to-day able to announce the adhesion of Siam to this Convention, under reservation of Article 15, concerning the composition of the Court.

[277] The **President**: These declarations shall be recorded.

I am going to read to you a letter I received from the first delegate of Turkey:

MR. PRESIDENT: The imperial delegation declared in the course of the last plenary meeting of the Conference, upon the occasion of the adoption of the Convention concerning the conversion of merchant ships into war-ships, that, in the absence of instructions, it would abstain from voting.

I have the honor to inform your Excellency that my Government au-

thorizes the imperial delegation to adhere to the said Convention under the following reservation:

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.

I should be most appreciative if your Excellency would kindly advise the Conference at its next meeting of the favorable vote of the Imperial delegation under the reservation mentioned above.

Accept, Mr. President, the assurance of my highest esteem.

(Signed) TURKHAN.

This declaration is recorded.

The PRESIDENT: Gentlemen, one of our youngest and most distinguished colleagues, his Excellency Mr. GONZALO DE QUESADA, Cuban Minister at Washington, has sent me a copy of a work he has just published at Rotterdam upon arbitration in Latin America. This work, composed under the shield and during the period of our present session, is dedicated to the Conference and its President.

I permit myself to call your attention to this interesting work which treats of one of the most important questions on the agenda of our deliberations. It testifies not only to the extended acceptance by the New World of this kind of solution for international disputes, but also to the lively interest taken in our work by its most eminent representatives, which is accompanied by the desire to bring thereto the benefit of the experience gained in the application of this system by the Central and South American States.

It is for these reasons that I take pleasure in offering to Mr. DE QUESADA the sincere thanks of the Conference. (*Applause.*)

Gentlemen: We have before us to-day the last reports of the Third Commission which has just finished its labors. I deem it my duty to call your attention to the fact that it was the first to present to us, more than two months ago, the complete results of its studies relative to the adaptation of the stipulations of the Geneva Convention to maritime warfare, and the bombardment of ports, towns and villages by a naval force. The draft arrangements which are presented to us to-day bear upon the laying of automatic submarine contact mines¹ and upon the regulations to which the ships of belligerents in neutral ports would be submitted in case of maritime war.² It is useless to remark upon the [278] delicacy of these questions, especially of the latter, and upon what tact was required in handling them in order to reach conclusions, owing to the divergent interests and opinions which had to be taken into consideration. Here, as in the arrangements presented to us by the Fourth Commission, which we approved in our last meeting, the positions of neutrals and of belligerents, of maritime and of continental States, present such great differences that the possibility of an understanding could well be doubted. Indeed such understanding has not been reached upon all points and the texts voted upon by the Commission were not accepted by certain Powers except under reservations, and on condition of a more complete study by the Governments. But at least the fundamental

¹ For the debates on the matter—see vol. iii, minutes of the fourth, fifth, sixth and seventh meetings of the Third Commission and of the first, second and third meetings of its first subcommission.

² See the minutes of the second and eighth meetings of the Third Commission, of the third, fourth and fifth meetings of its second subcommission and of the meetings of the committee of examination of this last.

ideas of a future code have been laid down, which ideas, completed by the connected stipulations prepared in the other Commissions, should comprise all of the rights and duties of neutrals in maritime warfare.

This entirely new chapter of the law of nations, which has never yet been made the subject of an international understanding, will be one of the glories of the present Conference. Despite the extreme delicacy of the subject it has had the courage to broach it and the happy lot to reach a successful end, after a scholarly and difficult negotiation, without any injury to the good feeling of the delegations most directly interested therein. It might be said, on the contrary, that the perception of the divergent views which separated them, and the political necessity of accord have contributed to render these relations more intimate and more friendly.

Aside from the reciprocal good-will upon which I have just remarked, it is certainly to the superior tact, the indefatigable zeal and the spirit of timely conciliation of the eminent president of the First Commission, the first delegate of Italy, that we owe these results (*loud applause*). I believe then that I am stating the unanimous sentiment of the Conference in expressing once again to his Excellency COUNT TORNIELLI our sincere gratitude, a merited part of which, in his spirit of justice, he will doubtless wish to render to his distinguished collaborators, the reporters of the Commission, Mr. STREIT (*applause*) and Mr. LOUIS RENAULT (*applause*) for whose praise the vocabulary at my disposal does not contain terms eulogistic enough. (*Repeated applause.*)

The reporter of the first subcommission of the Third Commission has the floor.

Mr. Georgios Streit:

MR. PRESIDENT AND GENTLEMEN: The draft regulations concerning the laying of automatic submarine contact mines, which I have the honor to submit to the approval of the Conference in the name of the Third Commission, is the fruit of long and laborious deliberations. No less than three meetings of the first subcommission, ten of the committee of examination and four of the plenary Commission have been devoted to this subject. Propositions and amendments were presented in turn by the delegations of Great Britain, Italy, Japan, the Netherlands, Brazil, Spain, Germany, Russia, France, the United States of America, China, Norway, Sweden, Turkey and Colombia;¹ these propositions and amendments have been submitted to a thorough examination on the part of the technical military and naval delegates of the Powers, who sit among us with all the competence with which they are vested in this matter, and have [279] been the subject of profound legal discussions under the experienced and active direction of his Excellency Mr. HAGERUP in the subcommission and the committee of examination, and of his Excellency COUNT TORNIELLI in the plenary Commission.

This tedious work, although inspired from the beginning by the conviction, common to all the members of the Commission, that some decision must be reached, and animated by a spirit of conciliation and accord on all sides had, it is true, but a modest result, which approved by us should constitute the first step in the settlement of the question. But one cannot fail to realize that the problems to be solved in this new and difficult matter are of a very complicated nature.

¹ Vol. iii, Third Commission, annexes 9-37.

The Commission, faithful to the work of the First Conference and to the program of the Imperial Russian Government adopted by the Powers as a basis of the present Conference, and guided by humanitarian considerations and respect for the principle of the liberty of maritime highways, has prepared a collection of rules that are yet destined to check the horrors of war and to restrain in so far as possible the useless hardships of armed conflicts between nations. In the present state of things it could not be a question of prohibiting all use of automatic submarine contact mines; we must confine ourselves to the limitation of their employment in order that this weapon, which seems indispensable as a means of defense and which may be directed against enemy forces, may involve the least possible danger to peaceful navigation. Owing to the combination of restrictions concerning the technical construction of mines together with the many precautions which would be imposed upon their employment, the Commission believes it has been able to attain this object in a certain measure; it proposes to you this first attempt at settlement, which in accordance with the unanimous spirit that has dictated it, shall be of the greatest benefit to international society. But aware of the imperfections which its work may present, and desirous of assuring for it the near future progress along the path laid out to-day, the Commission proposes that you designate a period, fixed in advance, in which the question shall be examined by the Powers. This period should not exceed seven years: until the conclusion of a new Convention, the Convention negotiated to-day should remain in force.

Thus the regulations that we have the honor to submit to you, having in view an extreme hypothesis which may never be realized, testify to a sincere effort and constitute a new proof of the sentiments which animate the Second Peace Conference.

At the invitation of the **PRESIDENT**, the **Reporter** reads Article 1 of the "draft regulations concerning the laying of automatic submarine contact mines."¹

His Excellency Baron Marschall von Bieberstein: The delegation of Germany made a proposal to the Third Commission to prohibit for a term of five years the laying of unanchored automatic submarine contact mines. By this proposal we desired to show that we are ready to support all measures having for their object the protection of pacific navigation and neutral commerce menaced by floating mines.

With the same object we had already made a proposal to the committee of examination to the effect that unanchored contact mines be constructed in such a way as to become harmless after a certain time.²

These proposals not having been unanimously received we considered it necessary for technical and military reasons to make a reservation to paragraph 1 of Article 1. In view of the decision of the Commission and animated [280] by a spirit of conciliation, the German delegation accepts paragraph 1 of Article 1 without reservation, although maintaining its objections which have lost none of their force.

The President: The Conference records this declaration.

His Excellency Turkhan Pasha: The imperial Ottoman delegation cannot at the present time undertake any engagement whatever for perfected systems which are not yet universally known.

¹ Annex B to these minutes.

² Vol. iii, Third Commission, annex 23.

His Excellency Mr. Tcharykow: The delegation of Russia accepts Article 1 under reservation of the first paragraph.

Captain Luang Bhüvanarth Narübal: The delegation of Siam will vote in favor of the project, but it makes reservations to Article 1, paragraph 1.

The President: The Conference records these declarations.

The Reporter reads Article 2.

His Excellency Baron Marschall von Bieberstein: The delegation of Germany recalls that it made a reservation to Article 2 which it must maintain. It indicated in the examination the reasons for this reservation and considers it its duty to specify them. Article 2 presupposes the object underlying the placing of these mines. This is a subjective element not encountered in the other texts of the draft and might raise difficulties of application still further augmented by the word "sole." For these reasons it reserves its vote on this article.

His Excellency Mr. Léon Bourgeois: For reasons which developed in the committee and are identical with those stated by the first delegate of Germany, the French delegation reserves its vote on this article.

The Reporter reads Article 3.

His Excellency Turkhan Pasha: 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 Bosphorus, 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 defense 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.

The Reporter reads Articles 4, 5 and 6.

His Excellency Turkhan Pasha: The imperial Ottoman delegation cannot at the present time take part in any engagement as regards the conversion mentioned in Article 6.

The Reporter reads Article 7.

His Excellency Mr. de Villa Urrutia: The delegation of Spain will vote in favor of the draft, although it deeply regrets that it is not adequate and does not entirely fulfill the expectations of the Royal Government.

The vote upon the entire draft is next proceeded to; it is unanimously adopted with the exception of the reservation relative to paragraph 1 of Article 1 made by the delegations of the Dominican Republic (for the same reasons as those given by the delegation of Germany), Mexico, Montenegro, Russia, and Siam and by Turkey concerning this entire article.

Reservations are also made to Article 2 by the delegations of Germany and France; and by that of Turkey to Articles 3 and 6.

[281] The President: His Excellency Sir ERNEST SATOW has the floor.

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-defense, 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 endeavored 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 favor 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 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 mili- [282] tary 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 fulfill 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 honor to represent.

The **President**: The order of the day calls for the examination of the "draft Convention concerning the rights and duties of neutral Powers in case of maritime war."¹ Mr. LOUIS RENAULT has the floor.

Mr. Louis Renault: Among the topics for the consideration of the Conference the Russian program mentioned "the rights and duties of neutrals at sea," among others: the "question of contraband; *the rules applicable to belligerent vessels in neutral ports*; destruction, in cases of *force majeure*, of neutral merchant ships captured as prizes." The first and third questions have been assigned to the Fourth Commission; the second was reserved for the Third Commission.

The Commission had before it four different projects:

1. A draft from the delegation of Japan defining the status of belligerent ships in neutral waters;²
2. A draft from the delegation of Spain on the same subject;³
3. A proposal from the British delegation in the form of a draft convention concerning the rights and duties of neutral States in naval war;⁴
4. A proposal from the delegation of Russia containing draft provisions defining the status of belligerent war-ships in neutral ports.⁵

It will be noticed at once that the British proposal has a greater scope than the three other proposals, since, unlike them, it does not confine itself to the status of belligerent war-ships in neutral ports and waters, but also deals with the rights and duties of neutral States in general in naval war.

[283] The Commission has not considered itself bound by the exact terms in which its jurisdiction was defined by the Conference at the time when the several topics were distributed among the Commissions. It has examined the different articles of the British proposition embracing the whole subject of the situation of neutral States in naval war. It is believed that at a time when an International Prize Court is being created, it would be wise to develop to as great a degree as possible a codification of international maritime law in time of war. Thus the work of the Third Commission will be harmonized with that of the Second Commission, which covers the rights and duties of neutral States in war on land. This explains the general title given to the project and accepted unhesitatingly by the committee of examination.

In order to facilitate study of the subject, the second subcommission decided that there should be submitted to it a paper indicating the questions involved in the several proposals. This list of questions facilitated an exchange of views in

¹ Annex D to these minutes.

² Vol. iii, Third Commission, annex 46.

³ *Ibid.*, annex 46.

⁴ *Ibid.*, annex 44.

⁵ *Ibid.*, annex 48.

the meetings of July 27 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 analyze was submitted to two readings; 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 theater of hostilities; they need to enter harbors, and they do not always find harbors 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; 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 country at different times are not identical; moreover, sometimes rules are modified during the course of a war.

The essential point is that everybody should know what to expect, so that there will be no surprise. The neutral States urgently demand such precise rules as will, if observed, shelter them from accusations on the part of either belliger-

erent. They decline obligations that would often be disproportionate to their means and their resources or the discharge 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 State, which cannot be affected by the mere fact that a war exists in which it does not intend to participate. Its sovereignty should be respected by the belligerents, who cannot implicate it in the war or molest it with acts of hostility. At the same time neutrals cannot exercise their liberty as in times of peace; they ought not to ignore the existence of war. By no act or omission on their part can they legally take a part in the operations of war; and they must moreover be impartial.

It seems of little use to develop these general considerations, since they might give rise to lengthy discussions, inasmuch as neutrality is not viewed in the same light by everybody. It is better to confine ourselves to the study of propositions dealing with particular cases which, while naturally to be regulated in accordance with principles, are presented in concrete and precise shape.

His Excellency Sir Edward Fry: For reasons set forth at the meeting of the Commission on October 4, the British delegation reserves for its Government the approval of the entire draft Convention concerning the rights and duties of neutral Powers in naval war.

It will abstain from voting on each article separately.

His Excellency Mr. Rangabé: The delegation of Greece reserves its vote as it has not received definite instructions from its Government.

His Excellency Mr. Tsudzuki: The delegation of Japan reserves its vote on the entire draft in order to leave its Government all liberty for subsequent decision.

His Excellency Mr. de Villa Urrutia: The delegation of Spain, in view of the modifications introduced by the Third Commission into the draft prepared by the committee of examination, reserves its vote, leaving to the Royal Government all liberty to pronounce itself on the subject of the draft Convention concerning the rights and duties of neutral Powers in naval war.

His Excellency General Porter: The delegation of the United States of America reserves its vote on this draft, in order to give its Government time to make a thorough study thereof, and to assure itself up to what point its terms might be in conflict with certain stipulations contained in treaties already existing.

His Excellency Samad Khan Momtas-es-Saltaneh: The delegation of Persia will vote in favor of the entire draft with the exception of Articles 12, 19 and 23 upon which it reserves its vote in order to give its Government the opportunity to make a more thorough study thereof.

[285] **Captain Luang Bhüvanarth Narübal:** The delegation of Siam will vote in favor of the draft, but it makes reservations to Articles 12, 19 and 23.

The **Reporter** reads Articles 1 to 10 of the "draft Convention prepared by the Third Commission."¹

His Excellency Turkhan Pasha: The Ottoman delegation declares that the straits of the Dardanelles and the Bosphorus cannot 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.²

¹ Annex D to these minutes.

² See the report to the Conference, *post*, p. 298 [305].

The **President**: The Conference records this declaration.

The **Reporter** reads Articles 11, 12 and 13.

His Excellency Baron **Marschall von Bieberstein**: The delegation of Germany makes reservations relative to Articles 12 and 13.

His Excellency Mr. **Lou Tseng-tsiang**: The delegation of China makes reservations to Article 12.

His Excellency Mr. **Tcharykow**: The delegation of Russia has the honor to declare that in voting for Article 12 in its new wording it hastens to renew the objections it formulated in the Third Commission against the supposition that the so-called "24-hour" doctrine might be considered as a universal rule really preferred over all others.

Mr. **Henriquez i Carvajal**: The delegation of the Dominican Republic makes reservations to Article 12.

The **Reporter** reads Articles 14 to 27.

His Excellency **Lou Tseng-tsiang**: The delegation of China makes reservations to Articles 19 and 23.

His Excellency Baron **Marschall von Bieberstein**: The delegation of Germany makes reservations to Article 20.

The Conference proceeds to vote on the draft as a whole.

44 countries take part.

Voting for, without reservations: Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Denmark, Ecuador, France, Guatemala, Haiti, Italy, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, Netherlands, Peru, Roumania, Russia, Salvador, Serbia, Sweden, Switzerland, Uruguay, Venezuela.

Voting for, with reservations mentioned above: Germany, China, Dominican Republic, Persia, Siam and Turkey:

Not voting: United States of America, Cuba, Spain, Great Britain, Greece, Japan and Portugal.

The entire draft is therefore adopted by 37 votes, 6 of which are accompanied by reservations, and 7 abstentions.

[286] His Excellency Mr. **Mérey von Kapos-Mére**:

MR. PRESIDENT, GENTLEMEN: The Conference just having given its final vote upon the two regulations prepared by the Third Commission, it is in my capacity as an unassuming member of this Commission that I permit myself to take the floor.

If the Third Commission, to which one of the most difficult parts of the program of the Conference was assigned, has succeeded after long and arduous deliberations in happily concluding the task which devolved upon it, if despite great difficulties as well as opposing opinions and even interests an agreement has been reached on the subject of four arrangements each of which constitutes an important step forward, the good result is in great part due to the president of this Commission. Thanks to the indefatigable zeal that has permitted him to penetrate and to command better than any one else these complicated and sometimes dry matters, thanks to the admirable clearness of his mind and to his absolute impartiality, which will always constitute the first requisite of every president, Count **TORNIELLI** has largely contributed to the success of the work of the

Third Commission. I am convinced that I am voicing the thoughts common to us all in assuring him of our deep gratitude and warmest sympathy. (*Applause.*)

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK,
PROZOR.

Annex A

[287]

LAYING OF AUTOMATIC SUBMARINE CONTACT MINES

REPORT TO THE CONFERENCE¹

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 program of the Imperial Russian Government² 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,³ appointed a committee of examination⁴ 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 26, it deliberated on the draft regulations and accompanying detailed report submitted to it by the committee of examination.⁵ This work appears as an annex to the present report⁶ and we may be permitted to refer to it so far as the project of the committee has not been changed by the Commission.

The draft drawn up by the committee⁷ had its first reading in the meetings of

¹ This report was presented for the Third Commission by Professor GEORGIOS STREIT (Greece), reporter of the first subcommission.

² See *ante, in initio*.

³ Meetings of June 27, July 4, and July 11 of that subcommission.

⁴ This committee of examination was presided over by his Excellency Mr. HAGERUP (Norway), the 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 CHACÓN (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 HAYAO SHIMAMURA and Captain MORIYAMA (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 TURKHAN PASHA and his Excellency Vice Admiral MEHEMED PASHA (Turkey).

⁵ The committee of examination held ten meetings; its proceedings were not recorded.

⁶ See the report, vol. iii, p. 399 ([397]).

⁷ Vol. iii, Third Commission, annex 31.

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 to make slight changes in form. As a result all the seven articles of the new text¹ were able on second reading [288] 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 honor 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 defense 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 defense, 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

¹ Vol. iii, Third Commission, annex 35. [This annex is identical with the text submitted to the Conference.]

² Meeting of September 26.

³ Vol. iii, Third Commission, annex 31.

necessity"; this amendment was likewise rejected by a majority of the Commission.

As to Articles 2 to 4, paragraph 1, 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 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.

[289] 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 had 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 his 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 [290] 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. MÉREY 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 3² 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 Bosphorus 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 for this omission.

Article 5⁵ merely completes the provisions contained in the two preceding

¹ Vol. iii, Third Commission, annex 32.

² Article 6 of the committee's draft; see report to the Commission, vol. iii, Third Commission, annex A to the fifth meeting.

³ Report to the Commission.

⁴ Article 7 of the committee's draft; report to the Commission.

⁵ Article 8 of the committee's draft.

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.¹

The provision of Article 6² 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 conformity 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 connection 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 formula³ 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 amendment⁴ 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

¹ See also the report to the Commission.

² Article 9 of the committee's draft.

³ Vol. iii, Third Commission, annex 37.

⁴ *Ibid.*, annex 32.

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 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 [292] 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 defense.

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 defense of coasts if it should appear impossible to suppress their use altogether. His Excellency Sir ERNEST SATOW declared himself in favor 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 KAPOŠ-MÉRE directed the attention of the Commission to the difficulty of determining in some cases whether a military operation is a means of defense 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 defense 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

¹ Vol. iii, Third Commission, annex 36.

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 defense 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; 16 States voted for and 15 against it; there were 6 abstentions and 7 absent. As the majority was not absolute the amendment failed.

III

Finally, the Commission on motion of the Netherland delegation¹ had yet to consider the form to be given to the decision of the committee, approved in [293] 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:

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 honor to commend to the approval of the Conference.

¹ Vol. iii, Third Commission, annex 33.

Annex B**DRAFT REGULATIONS CONCERNING THE LAYING OF AUTOMATIC
SUBMARINE CONTACT MINES¹****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;
- [294] 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 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

¹ Text submitted to the Conference.

the *matériel* of their mines as soon as possible, so as to bring them into conformity with the foregoing requirements.

ARTICLE 7

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 [295] 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.

Annex C

DRAFT CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN NAVAL WAR

REPORT TO THE CONFERENCE ¹

Among the topics for the consideration of the Conference the Russian program ² mentioned "The rights and duties of neutrals at sea," among others: the "question of contraband; *the rules applicable to belligerent vessels in neutral ports*; destruction, in case of *force majeure*, of neutral merchant ships captured as prizes." The first and third questions have been assigned to the Fourth Commission; the second was reserved for the Third Commission.

The Commission had before it four different projects:

1. A draft from the delegation of Japan defining the status of belligerent ships in neutral waters.³
2. A draft from the delegation of Spain on the same subject.⁴
3. A proposal from the British delegation in the form of a draft convention concerning the rights and duties of neutral States in naval war.⁵

¹ This report was submitted to the Third Commission by a committee of examination composed of: his Excellency Count TORNIELLI (Italy), chairman; Mr. LOUIS RENAULT (France), reporter; Rear Admiral SIEGEL (Germany), Rear Admiral SPERRY (United States), Captain BURLAMAQUI DE MOURA (Brazil), his Excellency LOU TSENG-TSIANG (China), Mr. VEDEL (Denmark), Captain CHACÓN (Spain), his Excellency Sir ERNEST SATOW (Great Britain), Captain CASTIGLIA (Italy), his Excellency Mr. TSUDZUKI (Japan), his Excellency Mr. HAGERUP (Norway), Captain FERRAZ (Portugal), his Excellency Mr. TCHARYKOW (Russia), his Excellency Mr. HAMMARSKJÖLD (Sweden), his Excellency TURKHAN PASHA (Turkey). The report has been completed to include the last meeting of the Third Commission.

² See *ante, in initio*.

³ Vol. iii, Third Commission, annex 46.

⁴ *Ibid.*, annex 47.

⁵ *Ibid.*, annex 44.

4. A proposal from the delegation of Russia containing draft provisions defining the status of belligerent war-ships in neutral ports.¹

[296] It will be noticed at once that the British proposal has a greater scope than the other three proposals, since, unlike them, it does not confine itself to the status of belligerent war-ships in neutral ports and waters, but also deals with the rights and duties of neutral States in general in naval war.

The Commission has not considered itself bound by the exact terms in which its jurisdiction was defined by the Conference at the time when the several topics were distributed among the Commissions. It has examined the different articles of the British proposition embracing the whole subject of the situation of neutral States in naval war. It is believed that at a time when an International Prize Court is being created, it would be wise to develop to as great a degree as possible a codification of international maritime law in time of war. Thus the work of the Third Commission will be harmonized with that of the Second Commission, which covers the rights and duties of neutral States in war on land. This explains the general title given to the project and accepted unhesitatingly by the committee of examination.

In order to facilitate study of the subject, the second subcommission decided that there should be submitted to it a paper indicating the questions involved in the several proposals. This list of questions² facilitated an exchange of views in the meetings of 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 draft³ which we are about to analyze was submitted to two readings;⁴ 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 theater of hostilities; they need to enter harbors, and they do not always find harbors 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

¹ Vol. iii, Third Commission, annex 48.

² *Ibid.*, annex 49.

³ *Post*, annex D.

⁴ Vol. iii, Third Commission, annexes 55 and 63.

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 [297] 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;¹ 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 country at different times are not identical; moreover, sometimes rules are modified during the course of a war.

The essential point is that everybody should know what to expect, so that there will be no surprise. The neutral states urgently demand such precise rules as will, if observed, shelter them from accusations on the part of either belligerent. They decline obligations that would often be disproportionate to their means and their resources or the discharge 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 State, which cannot be affected by the mere fact that a war exists in which it does not intend to participate. Its sovereignty should be respected by the belligerents, who cannot implicate it in the war or molest it with acts of hostility. At the same time neutrals cannot exercise their liberty as in times of peace; they ought not to ignore the existence of war. By no act or omission on their part can they legally take a part in the operations of war; and they must moreover be impartial.

It seems of little use to develop these general considerations, since they might give rise to lengthy discussions, inasmuch as neutrality is not viewed in the same light by everybody. It is better to confine ourselves to the study of propositions dealing with particular cases which, while naturally to be regulated in accordance with principles, are 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 incumbent upon belligerents to respect the sovereign rights of neutral States. This obligation is not a consequence of the war any more than the right of the State to inviolability of its territory is a consequence of its neutrality. The obligation and the right are inherent in the very existence of States, but it is well to affirm them in circumstances where they are most liable to be misunderstood. As was said by Sir ERNEST SATOW in commenting upon an article of the British proposal from which Article 1 of our draft is borrowed almost verbatim, we have here "the

¹ Vol. iii, Third Commission, second subcommission, annex B to fourth meeting.

expression of the master thought of this division of international law.”¹

The principle is applicable alike to land warfare and to naval warfare, and we are not surprised that the regulations elaborated by the Second Commission on the subject of the rights and duties of neutral States on land begin with the provision: “The territory of neutral States is inviolable.”

[298] Generally speaking, it may be said belligerents should abstain in neutral waters from any act which, if it were tolerated by the neutral State, would constitute failure in its duties of neutrality. It is important, however, to say here that a neutral's duty is not necessarily measured by a belligerent's duty; and this is in harmony with the nature of the circumstances. An absolute obligation can be imposed upon a belligerent to refrain from certain acts in the waters of a neutral State; it is easy for it and in all cases possible to fulfill this obligation whether harbors or territorial waters are concerned. On the other hand, the neutral State cannot be obliged to prevent or check all the acts that a belligerent might do or wish to do, because very often the neutral State will not be in a position to fulfill such an obligation. It cannot know all that is happening in its 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 harbors 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 harbors 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.² 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.³

¹ Meeting of July 27.

² Russian proposition, Article 2 (vol. iii, Third Commission, annex 48); Italian code on the merchant marine, Article 251 (*ibid.*, annex B to the fourth meeting).

³ Vol. iii, Third Commission, annex 44.

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 [299] 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 vessels belongs. The belligerent must liberate the prize with 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 judgment 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.

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 its 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.

[300]

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, on the demand of that Power, the captor Government must liberate the prize with its officers and crew.

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 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.

¹ Vol. iii, Third Commission, annex 44.

² *Ibid.*, annex 46.

³ *Ibid.*, annex, 48.

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.

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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 purpose 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 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 3 (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

¹ Vol. iii, Third Commission, annex 44.

² *Ibid.*, second subcommission, annex A to fourth meeting.

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.

[302] 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.

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 Washington¹ 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 proposition² 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

¹ Vol. iii, Third Commission, second subcommission, annex A to the fourth meeting.

² *Ibid.*, Third Commission, annex 44.

³ *Ibid.*, annex 52.

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.

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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.

The committee of examination had some difficulty in deciding upon the wording of the next article, although there were no fundamental differences of opinion.

The first draft stated: "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."

The substance of these propositions evidently could not be disputed; but the form in which they were expressed was objected to for two very different reasons. On the one hand, his Excellency Mr. TSUDZUKI contended that the articles suggested that neutral ports would be freely open to belligerent war-ships, whereas the increasing tendency of writers was to recognize that it was a duty for neutrals to admit belligerent war-ships to their ports only in cases of distress. On the other hand, Admiral SPERRY, speaking for the delegation of the United States, declared that he could not accept Article 8 of the project for the reason that as a State is sovereign within its own jurisdiction what it 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 or certain of its ports, or passage through its territorial waters, to belligerent war-ships or prizes. The conditions, restrictions, or prohibitions shall apply impartially to both belligerents. A State may forbid any 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 territorial waters.¹

After earnest discussion the following essential points were agreed upon. There is no question here of recognizing by treaty the rights of a neutral State that are derived from its sovereignty and preexist war. The only element that war introduces is the obligation to treat the two belligerents in the same way and to apply to them impartially the conditions, restrictions, or prohibitions that it has pleased the neutral Government to make. But a prohibition may be

¹ Vol. iii, Third Commission, annex 56.

applied to a belligerent ship which has failed to conform to the regulations of the neutral or has violated neutrality. There is no intention to limit to such ships alone the right of the neutral to forbid access to its ports, but merely to excuse it in such cases from ensuring equal treatment to the vessels of both belligerents. We have therefore confined ourselves to these points in the present wording of Article 9, which, in the end, gained the support of all.

[304] It is to be noted that with ports and roadsteads mention is made of *territorial waters*, as was done in Article 30 of the British proposal. The question has been raised as to the extent of the right of a State with respect to its territorial waters. Does this right go so far as to forbid passage through it? We shall return to this question under Article 10. But, in the committee of examination,¹ Sir ERNEST SATOW, speaking of Article 30 of the British proposition, explained that it was necessary to distinguish *access* from simple *passage*. Here we are dealing with the prohibition by the neutral, if it sees fit, of a stay in its waters and not of a simple passage through them.

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.²

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."

In the meeting of July 30, Mr. VEDEL, the Danish delegate, read the following declaration:

The amendment³ 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

¹ Meeting of August 26.

² [The words "roadsteads, or territorial waters" do not appear in this paragraph in the draft Convention which was appended to this report and submitted to the Conference. See *post*, p. 321; Mr. RENAULT's report on the Final Act, *post*, p. 577 [583], on this article; and also the Convention as signed.]

³ Vol. iii, Third Commission, annex 45.

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 [305] details of this question. I desire merely to draw attention to the connection 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 through limited parts of its territorial waters so far as that seems to it necessary to maintain its neutrality, but that this prohibition cannot extend to straits uniting two open seas.

The formula adopted in Article 10 is based on an amendment of the British delegation,¹ and does not touch at all upon the preceding questions, which are left under the empire of the general law of nations. It confines itself to saying that the passage through neutral territorial waters of war-ships or prizes belonging to belligerents does not affect the neutrality of the State, and thus implies at the same time that the belligerents do not contravene neutrality by passing and that the neutral does not fail in his duties by permitting them to pass.

In spite of the innocuous character of the provision, Admiral SPERRY declared that he could not accept this article by reason of the political considerations involved in the question of passage through territorial waters.

At the subcommission's meeting of July 30 his Excellency TURKHAN PASHA read the following declaration:

The Ottoman delegation deems it its duty to declare that, under the exceptional condition created for the straits of the Dardanelles and the Bosphorus by treaties in force, these straits, which are an integral part of Turkish territory, can in no case be brought within Article 32 of the British proposal. The Imperial Government could undertake no engagement whatever tending to limit its undoubted rights over these straits.

Record was made of this declaration, which had been repeated on several occasions, and was on the last occasion made with reference to this Article 10.

His Excellency Mr. TSUDZUKI also declared that the Japanese Government undertook no engagement concerning the straits which separate the numerous islands and islets 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 territorial waters of war-ships or prizes belonging to belligerents.

¹ Vol. iii, Third Commission, annex 56.

According to the Russian proposal, Article 7, paragraph 3,¹ no pilots can be furnished ships of war of belligerents during their stay in neutral ports and territorial waters without the authorization of the neutral Government. This rule did not seem very satisfactory because it is not clear what is the meaning of authorization of the neutral Government. 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 licensed pilots. It is not obliged to furnish pilots, but if there are any, the latter may work for the belligerents. Besides, a State may even require that its pilots be employed in certain passages. The word "licensed" is used, not "authorized," to in-

[306] dicate that we mean 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 of belligerent war-ships in neutral ports.

According to Article 4 of the proposal of Russia,² 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,³ Articles 11 and 12 of that of Great Britain,⁴ and Article 2 of that of Japan,⁵ 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 theater 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 theater 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.⁶

The reasons for and against were carefully set forth in the committee of examination, especially at the time of the second reading.⁷ It will suffice to make a faithful analysis of them.

¹ Vol. iii, Third Commission, annex 48.

² *Ibid.*

³ *Ibid.*, annex 47.

⁴ *Ibid.*, annex 44.

⁵ *Ibid.*, annex 46.

⁶ *Ibid.*, annex 64.

⁷ Minutes of the meetings of September 11 and 12.

The German delegation states the plan presented by it as follows:

In proximity to the "theater of war" international regulations would fix the stay of belligerent war-ships in neutral ports and roadsteads.

For waters beyond the theater 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 "theater 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 theater 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* bel- [307] ligerents. Thus the presence or the approach of *both* adversaries who are relatively near is necessary to create a "theater 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. Such a surveillance can be effective only in restricted regions. A neutral State can control its waters near that part of the sea where a naval battle takes place, as that area is always comparatively small. It is here that the fate of the fleets will be decided and special vigilance will be here exerted.

To the objection that it is impossible to define exactly the limits of the theater of war and that this definition cannot be left to neutrals, as two neighboring neutral Powers might have a different understanding on the subject, which would be a source of complications, it is answered that it does not seem to be very difficult to determine where the theater of war is. If, for example, we take the Spanish-American War of 1898, it is clear that the theaters of war were in the Philippines and the West Indies, and not at all in the Mediterranean nor in the Eastern Atlantic. 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 the 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 theater of war," and take 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 theater of war, there is no danger of dispute. Such is the rule that Germany followed in the war in the Far East, and experience has shown that it answered the necessities of the situation.

Accordingly, a strict international rule is proposed for the theater of war; such a rule is not necessary for areas outside that theater. By accepting this proposal, neutrals are not embarrassed by the responsibility which is incumbent upon them if the strict 24-hour rule is accepted, for they would not be obliged to watch their whole seacoast, something which is impossible for most of them to do. When a naval action is about to take place in the Indian Ocean, it is not necessary for the Powers of the north of Europe to watch over their ports and roadsteads;

if the theater of war is in the Mediterranean, the coasts of the two Americas need not be kept under strict control.

The delegation of Russia supported this compromise measure presented by the delegation of Germany. It could not agree that the so-called 24-hour rule established in the domestic legislation of Great Britain and some other States should be considered as a universal rule. It believes that the French rule, which does not provide any limit of time determined upon in advance, and which is accepted by Germany and Russia, has a better claim to be generally adopted. Nevertheless, in a spirit of compromise, the Russian delegation accepts the distinction that has just been suggested.

The British delegation raised several objections to this plan, some of which have been mentioned above. The principal objection is based on the uncertainty inherent in a determination of the theater of war.

[308] In contrast with the case in land warfare, the theater of naval war is unlimited; it includes all the oceans, because hostilities can break out anywhere. From the moment a war-ship leaves one of its own ports it is liable to encounter an adversary. With steam and the progress made in speed the theater of hostilities, properly so called, is constantly shifting.

It would be a very difficult task, and at the same time a great responsibility, 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 theater 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 theater 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 theater 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 favorable 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 indis-

pensable. 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 examination, 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 [309] 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 theater 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 word-

ing 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 [310] any, must be perfectly obeyed. If it lays down a fixed period, it is necessary to conform to that 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 amendment¹ referred to above establishing a distinction between neutral ports situated in the immediate proximity of the theater 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

¹ Vol. iii, Third Commission, annex 64.

in the immediate proximity of the theater 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.

[311] 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 enter during the course of the war.

The question of proximity to the theater 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 theater 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 *a* in the Japanese proposition² mentions only stress of weather; Article 3 of the Spanish proposal³ mentions damage, stress of weather, or other *force majeure*; and Article 5 of the Russian pro-

¹ Vol. iii, Third Commission, annex 64.

² *Ibid.*, annex 46.

³ *Ibid.*, annex 47.

posal¹ 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 [312] necessary for the protection of foreigners, the case has 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.

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 proposal² 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

¹ Vol. iii, Third Commission, annex 48.

² *Ibid.*, annex 46.

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 [313] the possibility of granting the privilege of entering to a greater number of ships in particular circumstances. A special authorization would therefore presuppose a general provision issued beforehand. The Russian delegation accepted the idea of this amendment, which was opposed by the delegations of Japan and Great Britain as they saw no necessity for changing the draft.

The proposal of Mr. HAMMARSKJÖLD was carried by 9 votes (Germany, Brazil, Denmark, France, Norway, Netherlands, Russia, Sweden, Turkey) against 3 (Great Britain, Japan, 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 neutral Power, the maximum number of war-ships belonging to a belligerent which may be 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 port must be provided for. A custom of long standing has here introduced the so-called rule of twenty-four hours, which it is not proposed to change. The difficulty relates to the order of departure at that interval.

Article 13 of the British proposal¹ confined itself to saying that the neutral Government ought not to permit a war vessel of one belligerent to leave port until twenty-four hours have elapsed since the departure of a war-ship or a merchant ship of the other belligerent. In the committee of examination Sir ERNEST SATOW said that it was for the neutral to settle the order of departure. This

¹ Vol. iii, Third Commission, annex 44.

is the sense of Article 2 *b* of the Japanese proposal.¹ Article 6 of the Russian proposal² adopts priority of request.

A Portuguese amendment³ has been proposed to the Japanese rule. It was supported by Captain FERRAZ in the meeting of July 27 in the following words: "If the two belligerent ships which are present simultaneously in neutral waters are a merchantman and a ship of war, or a small cruiser or torpedo boat and a large cruiser, the merchantman or the feebler war vessel should leave the port first whatever may be the order of their entrance into the port. Otherwise the humanitarian end in view, which is to avoid a meeting or a combat, would not be attained. The battle-ship, going out first, would only have to wait near the port for the issue of the merchantman or the smaller war-ship; the capture or destruction of the latter would be certain and the neutral State would have handed them over." Consequently the Portuguese delegate proposed to word the last phrase of the Japanese article as follows: "It is for the neutral State to decide which of the hostile vessels shall leave first, with the view to prevent, so far as possible, a meeting or combat between these vessels."

There were, then, the following plans before us: (1) the neutral State regulates the order of departure; (2) the priority of request is taken into consideration; (3) the weakest 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 carried by 13 votes (Germany, United States, Belgium, Brazil, China, Denmark, Spain, France, Italy, Norway, Russia, Sweden, Turkey) against 3 (Great Britain, Japan, Portugal); Netherlands did not vote.

[314] It was deemed dangerous to have the neutral State settle the order of departure even 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."⁴ 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

¹ Vol. iii, Third Commission, annex 46.

² *Ibid.*, annex 48.

³ *Ibid.*, annex 50.

⁴ *Ibid.*, annex 53.

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 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 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 proposal¹ speaks of repairs absolutely necessary to render the ships seaworthy, and Article 19 of the British proposal² 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 connection with Article 15 and which some desired to get rid of by fixing a maximum term for repairs.

[315] 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 it would sometimes be difficult to decide on the cause of damage without taking measures that are inquisitorial.

The article mentions only ports and roadsteads. In reply to the question why no mention was made of territorial waters it was answered that it is probably difficult for ships to carry out repairs in territorial waters, and besides control on the part of neutrals over repairs made under such conditions would hardly be possible.³

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.

According to the second rule of Washington⁴ a neutral Government is bound 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.

All were agreed that this rule should be retained and several proposals in-

¹ Vol. iii, Third Commission, annex 46.

² *Ibid.*, annex 44.

³ Session of September 11.

⁴ Vol. iii, Third Commission, second subcommission, annex A to the fourth meeting.

clude it to a greater or less degree. The only discussion was on the point whether it was necessary to mention territorial waters as well as ports and roadsteads.

The affirmative was adopted by 8 votes (United States, Brazil, Spain, France, Great Britain, Italy, Japan, Turkey); Germany, Denmark, Norway, Netherlands, Russia, and Sweden did not vote. It has been said that a practice forbidden in ports and roadsteads could not be permitted in territorial waters. This is particularly true because the point of view taken is that of what belligerents may not do. The provision is thus justified more easily than that of the Washington rule which speaks of the obligation of the neutral Government.

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 deals with the question which is, with the possible exception of that of the period of stay, the most important in the subject. What quantity of provisions and fuel may be taken on board by belligerent war-ships in neutral ports?

Article 7 of the Russian proposal¹ says that these ships can provide themselves with the food, provisions, stores, coal and repairs necessary for the subsistence of their crews or the continuation of their voyage. Article 17 of the

British proposal² says that the quantity of stores, food, or fuel taken on [316] board in neutral jurisdiction must in no case exceed that which is necessary to enable the ship to reach the nearest port of its own country. According to Article 4 of the Japanese proposal³ the ships cannot take on any supplies except coal and provisions sufficient with what still remains on board to allow them to reach at the most economical rate of speed the nearest port of their own country or some nearer neutral destination. Finally, Article 5 of the Spanish proposal,⁴ without mentioning what may be on board, permits belligerent war-ships to provide themselves with 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

¹ Vol. iii, Third Commission, annex 48.

² *Ibid.*, annex 44.

³ *Ibid.*, annex 46.

⁴ *Ibid.*, annex 47.

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.

[317] 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 the whole article had been rejected by 10 votes (Germany, Brazil, Denmark, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) against 4 (United States, Spain, Great Britain, Japan).

According to the committee's draft, "revictualling and coaling do not give a right to prolong the lawful length of stay." In the Commission's meeting held October 4, his Excellency Mr. TCHARYKOW moved the suppression of this clause, supporting his amendment with the following words:

It has a restricted scope; it contemplates a particular case where a belligerent ship which has entered a neutral port has not had time to take on within the lawful period of stay the quantity of coal allowed it. What should the neutral Power do in this case? The Convention says nothing about it. Some are of opinion that it will not force the vessel to depart. That will perhaps be true if the neutral State is powerful and does not fear claims from the other belligerent; but otherwise the neutral State will be placed in a very delicate position, for through fear of reprisals on the part of the other belligerent it may find itself obliged to make the ship leave without coal or with an insufficient quantity of fuel, and the ship may conse-

¹ Vol. iii, Third Commission, annex 44.

quently become a derelict. It was to remedy these dangers that the delegation of Russia filed its amendment. Moreover, we are in agreement with the delegation of Japan on the point that the neutral port can never serve as a base of operations, and we think that the Convention contains in this particular in its Articles 5 to 9 sufficient rules and sanctions.

The delegation of Japan declared itself against the amendment, which it believed would introduce uncertainties as to whether Article 19 is one of the cases provided for by the last clause of Article 12 or whether Article 12 is to be applied in spite of the stipulations of Article 19. Mr. TSUDZUKI said:

We found ourselves confronted with two theories for the wording of Article 19, one maintaining that coal ought to be given belligerent ships only as an act of humanity, and the other assuming that vessels have a right to take on such coal supplies in neutral ports as they might need; Article 19 is a compromise wording which, however, does not trench on the question of principle. The omission of the third paragraph would have as a consequence a tendency to recognize in these ships the right to prolong their stay for supplies, that is to say, the omission would have a tendency to cause some recognition of the legitimacy of an idea that we have always opposed, namely, that ships have the right to enter the ports of another Power as into strategic points in order to take on fuel there. This omission would introduce into Article 12 an element of uncertainty so as completely to change its nature. Article 12, moreover, was a compromise. Although we should have preferred a single uniform rule for the whole world, the spirit of conciliation induces us to accept Article 12 even in its present reading because we should at least have the consolation that although not uniform and not universal the rules would be at least fixed. The omission of the third paragraph of Article 19 would take away from us even this consolation. The consequence would be quite serious. The period of stay would vary according to the facilities offered by neutral ports for the operations of replenishing the coal supply. Besides, neutral States would be obliged to resort to inquisitorial measures to ascertain whether ships were not abusing the operation of taking on supplies in order to prolong their stay needlessly and illegally.

These are the reasons why we cannot support this amendment. We accepted Article 19 in its present wording because its third paragraph gave the requisite definiteness to the meaning of Article 12. The omission of this paragraph would therefore imperil all the benefits of Article 12.

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 of the Italian shipping code¹).

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 neighboring 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 proposal² 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 [319] 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.

As to the period of three months, which was fixed by Great Britain during the War of Secession and which is arbitrary, it was remarked that as conditions of navigation have changed since that time, when vessels used sails as well as steam, fuel was then not so necessary for them as nowadays, so that the period of three months, although acceptable forty years ago, has become excessive.

It was proposed to the committee to allow a second revictualling under the following conditions of time and distance: "Belligerent war-ships which have shipped fuel in the port of a neutral State may not within the succeeding . . . months replenish their supply in a port of the same State less than . . . miles distant." The two numbers had been left blank, as the earlier discussions of the committee had not brought any positive result; in the technical committee of which we spoke above, the distance of one thousand miles was accepted by 10 votes to 3.

¹ Vol. iii, Third Commission, second subcommission, annex B to the fourth meeting.

² Vol. iii, Third Commission, annex 47.

³ *Ibid.*, annex 44.

⁴ *Ibid.*, annex 55.

Finally, the British proposal which forms Article 20 was adopted by 5 votes (United States, Spain, Great Britain, Italy, Japan) against 3 (Germany, Brazil, France). Denmark, Norway, Netherlands, Russia, Sweden, and Turkey did not vote. In view of this vote it cannot be said that we have found a perfect solution.

In the meeting of September 28 his Excellency Mr. TCHARYKOW declared that the Russian delegation would accept the British rule if the latter were presented in its entirety, and he recalled the terms of the instructions given by the Foreign Office in February, 1904: "and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or water subject to the territorial jurisdiction of Her Majesty, *without special permission*, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid." The rule is stated in the same terms in the neutrality proclamation of the United States dated October 8, 1870. The delegate of Russia therefore asked that the words *without special permission* be inserted in the article as drafted. This proposal was rejected by 5 votes (United States, Great Britain, Japan, Italy, Portugal) against 4 (Germany, Brazil, France, Russia). There were 5 abstentions (Denmark, Norway, Netherlands, Sweden, Turkey). The delegations of Russia and Germany then made reserves on the subject of Article 20.

Mr. LOUIS RENAULT, as delegate of France, reserved the privilege of submitting to the Commission an amendment in the sense of the resolutions of the technical committee. If the radius of one thousand miles is considered as too little, two thousand or twenty-five 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 was accepted without discussion.

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.

[320] Sir ERNEST SATOW proposed to insert after Article 20 the provision contained in Article 16 of the British project¹: "A neutral Power must not knowingly permit a war-ship of a belligerent lying within its jurisdiction to take on supplies, food, or fuel in order to go to meet the enemy or in order to enter upon operations of war." This text may be compared with Article 5 of the Japanese project:² "Neither belligerent vessels proceeding to the theater 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

¹ Vol. iii, Third Commission, annex 44.

² *Ibid.*, annex 46.

against entry of prizes, while others simply classed them with war-ships.¹ 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 [321] proposal was made to permit neutral Powers to receive in their ports prizes which may be left there to be sequestered pending the decision of a prize court. The connection 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 proposal. He pointed out that it does not mention the fundamental distinction that exists between enemy prizes and neutral prizes, the former becoming the property of the captor, who may dispose of them at his pleasure and sink them, while the latter must be released as soon as the captor finds himself unable to lead them into one of his ports. It is not certain that the acceptance of the proposal would prevent the destruction of neutral prizes. It will be inconvenient for a neutral to admit the prizes of belligerents into his ports.

The proposal was adopted by 9 votes (Germany, Belgium, Brazil, France, Italy, Netherlands, Russia, Serbia, Sweden) against 2 (Great Britain, Japan), with 5 abstentions (United States, Austria-Hungary, Denmark, Spain, Norway). In the meeting of September 28 several delegations which had previously voted for this article spoke against its retention. And it was foreseen that the omission of the article would be demanded in the Commission. Indeed, its suppression was moved by his Excellency Mr. HAMMARSKJÖLD on the ground that certain States

¹ 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].

had only consented to assume the onerous responsibility it imposed on them as neutrals for the purpose of enabling an agreement to be reached to prohibit the destruction of neutral prizes. That agreement not having been 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 the provision, which, according to him, was a starting-point wherefrom it might be hoped that two great reforms, the prohibition of the destruction of neutral prizes and respect 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 no serious guaranty against destruction of neutral prizes.

The article was retained by 29 votes (Germany, Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Dominican Republic, Ecuador, France, Greece, Italy, Mexico, Montenegro, Panama, Paraguay, Netherlands, Peru, Roumania, Russia, Salvador, Serbia, Siam, Turkey, Uruguay, Venezuela) against 7 (Denmark, Spain, Great Britain, Japan, Norway, Portugal, Sweden); the United States, China, Cuba, Luxemburg, Persia, and Switzerland did not vote.

There is no question of imposing an obligation upon neutral States, as they are always free to admit or exclude prizes. The article has for its single object to enable a neutral to receive and guard a prize without compromising its neutrality. The neutral State shall take the necessary measures as regards their preservation: it may, if it thinks fit, have the prize taken to another of its ports, a course which may be necessary by reason of the condition of the port into which it was brought or of the presence of other prizes, etc.

The prize court referred to in Article 23 is the *national* prize court; not the International Prize Court. Consequently there is nothing to prevent those Powers who do not accept the International Court from voting for this article, as has been said in the committee by the reporter in answer to a question put by Mr. BURLAMAQUI.

ARTICLE 23

[322] 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.

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 theater 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 reenter 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 reenter 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, [323] 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, France, Italy, Netherlands, Russia, Sweden, Turkey) against 2 (Great Britain, Japan), and 1 abstention (Norway).

Apropos of the cases regulated by this Article 24, there was mentioned the case of a war-ship wishing to put to sea too soon, before the expiration of the twenty-four hours provided by Article 16; no question then arises of disarming the ship but only of preventing its departure, which is easier to do.

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

¹See *ante*, report of Mr. BOREL on the rights and duties of neutral States on land, annex D to the fifth plenary meeting.

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.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for 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 neutral territory without permission.

According to the third rule of Washington,¹ a neutral Government is bound 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.

This principle met with no opposition; it was merely sought to find a formula that does not impose upon neutrals too heavy a responsibility in proportion to the means they have at their disposal.

This is the more necessary as we are dealing not only with ports, but also with waters.

The committee adopted an amendment offered by the delegations of Belgium and the Netherlands.

ARTICLE 25

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

The delegation of Japan proposed the following: "A neutral State, if it deems it necessary for the better safeguarding of its neutrality, is free to maintain or establish stricter rules than those provided by the present Convention."²

[324] It was asked what would be the need of this article, as the basis of the Convention is the sovereignty of the neutral State. Several articles reserve to the neutral Power the right to lay down more stringent rules, as, for example, Articles 9, 12, 15, and 23. A neutral State has the right to forbid belligerent war-ships access to its ports or to subject such access to such conditions as it deems fit; it can exclude prizes altogether. The one thing required is that the same treatment is to be accorded to both belligerents. The proposal was rejected by 10 votes (Germany, United States, Brazil, Denmark, France, Netherlands, Italy, Russia, Sweden, Turkey) against 3 (China, Great Britain, Japan), with two abstentions (Spain, Norway). At the second reading, his Excellency Mr. TSUDZUKI 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

¹ Vol. iii, Third Commission, second subcommission, annex A to the fourth meeting.

² *Ibid.*, Third Commission, annex 58.

the limits there 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.

[325] 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 these interests the security they need. If this project passes into the domain of international law it will complement the Declaration of the Congress of Paris of April 16, 1856, whose preamble contains the following passage, which we may adopt:

Considering:

That maritime law, in time of war, has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties of States in such a

matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point;

The Conference will therefore perform a useful work in diminishing the uncertainty of which the plenipotentiaries assembled at Paris in 1856 complained.

The project is preceded by a preamble designed to indicate the subject of the Convention and the purpose in drawing it up.

As in the Convention of July 29, 1899, on the laws and customs of war on land, it is stated that it has not been possible at present to decide on rules applicable to all circumstances which may in practice occur.

This does not mean that the cases not provided for are left to the arbitrary will of the parties; account must be taken of the general principles of the law of nations. An important observation may be made on this point. In several of the provisions use has been made of the phrase *territorial waters*. What must be understood by that? The committee of examination believed that it could make no determination of a question of so very general a kind.

The Powers should adopt detailed rules regulating the results of their attitude of neutrality, and we have seen that Article 27 of the Convention imposes upon them the duty of communicating the measures thus adopted. We have used the word *enactments*; this is the general expression that allows each Government to adopt the form which best suits its constitutional institutions or its customs; it may be a law properly so called, an act of the executive, a regulation, etc.

These measures should be applied impartially to both belligerents, and this impartiality requires that in principle they be not altered in the course of [326] the war, because even if the change is not dictated by partiality it balks a natural expectation. It is possible, however, that experience may show to the neutral the necessity of new measures calculated to safeguard its neutrality. The presence of belligerent war-ships in certain ports may be found to cause inconvenience; the neutral State will shorten the length of their stay or even will forbid them to enter. Along this line the first draft preamble only provided for the adoption by neutrals of *more rigorous measures*. It was accordingly criticized on that score; and the present wording was adopted by twelve votes (Germany, United States, Brazil, Denmark, Spain, France, Italy, Norway, Netherlands, Russia, Sweden, Turkey) against two (Great Britain, Japan). His Excellency Sir ERNEST SATOW had said that he could not imagine cases where it would be necessary for the neutral to take less rigorous measures; but his Excellency Mr. TCHARYKOW thought the eventuality possible, and accordingly asked for a modification of the text considered by him too restrictive. After the vote, their Excellencies Sir ERNEST SATOW and Mr. TCHARYKOW asked that it should be mentioned that in their opinion cases could not be conceived 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:

Annex D

DRAFT CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN NAVAL WAR¹

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;

Seeing that, in cases not covered by the present Convention, 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;
[327] 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, these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power;

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 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.

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.

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, on the demand of that Power, the captor Government must liberate the prize with its officers and crew.

¹ Text submitted to the Conference.

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 apparatus for the purpose of communicating with the belligerent forces on land or sea.

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.

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.

[328]

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.

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 ports¹ 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.

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 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 [See footnote, *ante*, p. 297.]

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.

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 15

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

[329]

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 or roadstead 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, 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 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.

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; [330] 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 sequestered 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 the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for 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 neutral territory without permission.

ARTICLE 25

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

ARTICLE 26

The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

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 war-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.

NINTH PLENARY MEETING

OCTOBER 16, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 10:30 o'clock.

The minutes of the eighth plenary meeting are adopted.

The **President**: GENTLEMEN: All of our Commissions have reached the end of their labors, and we present to you to-day the result of those of the First Commission, which has perhaps worked the hardest of all and has had the most difficult task. The improvements to be made in the provisions of the Convention relative to the pacific settlement of international disputes as regards the Court of Arbitration and international commissions of inquiry were taken into consideration in accordance with the Russian program. The experience gained in the eight years that have elapsed since the First Conference has not only shown the necessity of submitting the regulations prepared at that time to a careful revision (which has been done), but has also rendered desirable the enlargement and completion of the institutions then created in order to extend the field of action for international justice. Besides the creation for this purpose of a prize court, the plan of which you have already voted, the idea was presented to institute a permanent Court of Arbitral Justice and to define the conditions and cases where the recourse to arbitration recognized in principle should be rendered obligatory. For this double aim careful plans were submitted for study by the First Commission, and the most eminent members of the delegations, especially those particularly competent in questions of a legal nature, took an active part in their discussion. This conscientious and learned study, the details of which are entered in the minutes of this Commission and in those of its committee of examination, will furnish very valuable material for those who will consider the question later on, and will be an honor to this Conference.

Nevertheless we have had to take into consideration that the understanding necessary for the establishment and the operation of the projected institutions has not been reached, and we have been obliged to confine ourselves to declaring the principles unanimously admitted and to turn over to our Governments the task of completing our work and reaching an agreement upon the means to put [332] it into practice. It is to this effect that we have drafted the resolution and *van* which is to be submitted to your approval at the same time as the resolution recommending recourse to arbitration for difficulties concerning contract debts.

At the conclusion of the work of the First Commission a warm ovation was tendered its eminent president, Mr. LÉON BOURGEOIS, who, on his part, has been kind enough to attribute the merit to his collaborators and to the secretariat. The rôle that his Excellency Mr. LÉON BOURGEOIS, one of the pillars of the First Con-

ference, has played in the second is too universally known to make it necessary for me to draw your particular attention to it. Devoted heart and soul to the cause which is the subject of our labors, he has taken the most active part in all of its departments and we but perform a duty of justice by expressing to him the high esteem and the deep gratitude of the Conference. (*Applause.*)

In our meeting on September 21, upon the initiative of their Excellencies the first delegates of Roumania and Austria-Hungary, *vaux* and sentiments of gratitude were expressed to His Majesty the Emperor of Russia, my august sovereign. I did not fail to communicate these manifestations to His Majesty. But as the Emperor was traveling, it is only to-day that I am able to carry out the order he has given me to express to the Conference his most sincere gratitude. The Emperor continues to interest himself, as he has done in the past, in the success of the Peace Conferences, and he is always disposed to lend his assistance for the further development of the work that he initiated. (*Applause.*)

The reporter of the project relative to the establishment of a Court of Arbitral Justice has the floor.¹

Mr. Scott: Before beginning the discussion concerning the draft relative to the establishment of a Court of Arbitral Justice, I desire to give an explanation.

In the first edition of the report, Article 1 of the draft contained a part of a sentence introduced by mistake, as it was not found in the text voted by the committee of examination.

The object of the correction distributed in the Commission before the discussion was simply to restore the committee's text, as I myself explained before the vote.

The new edition of the report naturally takes this correction into account.

I have but one thing to add, namely, that nothing must remain of this regrettable error, in the sense that no argument can be drawn from the suppression of this clause under the circumstances just recalled. The text voted by the Commission² is identical with the text already voted by the committee and is the only one to be considered, so that no inference may be drawn from the erroneous addition of a part of a sentence and its suppression.

It was not desired to make any suggestions whatever concerning the basis of the constitution of the Court, and in the draft at present submitted to the Conference all allusion to this constitution has been systematically eliminated in order that the Powers might be perfectly free to pursue the course seeming best to them.

Gentlemen, it is unnecessary to explain to you the draft that we are charged to submit for your consideration. You are sufficiently acquainted with it, and you know besides that committee of examination B of the first subcom-
[333] mission has discussed it carefully and at length before its adoption. The

First Commission, in its turn, approved it with a slight modification of the text of Article 2 as it was prepared by the committee of examination. We do not endeavor to conceal the fact that the work still presents omissions and difficulties. It is hardly necessary to remark that the draft does not contain precise provisions upon the method of organization of the Court nor upon the

¹ Annex A to these minutes. For the debates on the matter see minutes of the first, eighth and ninth meetings of the First Commission, of the first, ninth and eighteenth meetings of the subcommission and the meetings of its committee B, and of the eighth meeting of its committee C.

² Annex B to these minutes.

choice of judges. These questions were long discussed in the committee without any solution being reached which was acceptable to all the States represented. It is to be hoped that a basis for agreement may soon be found on this subject, and it is in this hope that the committee pronounces itself in favor of the adoption of the following recommendation, which I have the honor to request the Conference to sanction by its vote :

The Conference recommends to the signatory Powers the adoption of the project annexed hereto, 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.

His Excellency Mr. **Carlin**: In the name of the delegation of Switzerland I have the honor to state that it will abstain from voting on the *vœu* relative to the establishment of a Court of Arbitral Justice. This abstention will have the signification given to it by the declaration I made on this subject in the meeting of the First Commission, on October 9: that is to say, that the delegation of Switzerland cannot join in any way in the *vœu* submitted to us.

His Excellency Mr. **Beldiman**: The delegation of Roumania, conformably to the declaration it had the honor of presenting in the name of the Royal Government in the meeting of the First Commission on October 10, will abstain from voting on the same grounds just set forth by the first plenipotentiary of Switzerland.

His Excellency Mr. **Esteva**: The delegation of Mexico does not believe it necessary to repeat to the Conference the declaration it made in the Commission upon a draft Convention for the establishment of an international Court of Arbitral Justice; but to-day on confirming its favorable vote, for the reasons stated in the Commission, the delegation of Mexico desires to declare to the Conference that this vote is cast under the condition that, in future negotiations between Governments, the principle of the equality of States shall not be violated and that, on the contrary, it shall be respected and maintained as the basis of the election of the judges and the organization of the Court.

His Excellency Mr. **Rangabé**: The delegation of Greece has the honor to declare that for the reasons set forth in its declaration made in the meeting of the First Commission on October 10, it will abstain from voting upon the draft relative to the establishment of a Court of Arbitral Justice and the *vœu* relating thereto.

His Excellency Mr. **Ruy Barbosa**: The delegation of Brazil insists upon the reservations made in the last meeting of the First Commission and desires to declare that it supports the *vœu* recommending the new Court of Arbitration under the absolute condition that the actual observation of the principle of the equality of sovereign States be understood, as it was defined by the votes of the First Commission, committee of examination B and its subcommittee, which rejected the system of rota and that of the choice of judges by foreign electors.

Mr. **Pérez Triana**: In the name of Colombia and Salvador I make the same reservations as those made by the delegation of Brazil.

His Excellency **Samad Khan Momtas-es-Saltaneh**: Mr. President, I cannot vote favorably upon the whole of the project for a Court of Arbitral
[334] Justice and the *vœu* proposed by the delegation of Great Britain, except under reservation of the declarations we had the honor to make on this

subject upon several occasions, namely, that the Imperial Government of Persia considers that this vote implies the observation of the principle of the equality of sovereign States, and consequently the absolute exclusion in future negotiations for the constitution of the new court of the system of periodicity and of rotation in the distribution of judges or of any other system violating this equality. I am therefore charged to accentuate in the most precise terms that it is only under these conditions that I will give to-day a favorable vote upon the project presented to us.

Mr. Tible Machado: The delegation of Guatemala confirms the declarations it made in the First Commission in the meeting of the ninth instant upon the subject of the maintenance—absolutely necessary, in its opinion—of the principle of the legal equality of nations in the constitution of the proposed Arbitral Court, and it adheres to the reservations formulated by his Excellency the Ambassador of Brazil.

His Excellency **Mr. Hudicourt:** The delegation of Haiti has the honor to repeat the declaration already made at the meeting of the tenth instant, namely, that it accepts the principle of the establishment of a Court of Arbitral Justice under the formal condition that the constitution thereof be based upon the legal equality of States.

Mr. Gil Fortoul: The Venezuelan delegation will vote in favor of the British *vanu* provided it be understood that the principle of the legal equality of States is to be recognized in all cases in the constitution of the court and in the choice of judges.

His Excellency **Mr. Machain:** The delegation of Paraguay will vote for the entire draft under the express reservation to Article I that it will be subordinated to the maintenance of the legal rights of sovereign States.

Mr. Apolinar Tejera: The delegation of the Dominican Republic, faithful to the declarations made by it in the First Commission, intends to vote in favor of the draft Convention for the establishment of a Court of Arbitral Justice under the formal condition and *sine qua non* of the principle of the legal equality of States.

Mr. Belisario Porras: The delegation of Panama adheres to the reservations expressed by Brazil.

Mr. Dorn y de Alsúa: The delegation of Ecuador makes the same reservations as Brazil.

Mr. Batlle y Ordoñez: The delegation of Uruguay will abstain from voting on the draft; but it desires to declare that it also believes that international justice may not be established except upon the basis of the legal equality of States.

His Excellency **Mr. Lou Tseng-tsiang:** The delegation of China makes the same reservations but will vote for the draft.

His Excellency **Mr. Claudio Pinilla:** The delegation of Bolivia makes the same reservations as Brazil.

His Excellency **Mr. Crisanto Medina:** The delegation of Nicaragua makes the same reservations.

The **President:** The Conference records these different declarations.

[335] The Conference proceeds to the vote on the *vanu* for the establishment of a Court of Arbitral Justice which is adopted by 36 votes and 6 abstentions.

Voting for: Germany, the United States of America, Argentine Republic, Austria-Hungary, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba,

Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Siam, Sweden, Turkey, Venezuela.

Abstaining: Belgium, Denmark, Greece, Roumania, Switzerland and Uruguay.

The Conference passes to the discussion of the revised draft Convention for the pacific settlement of international disputes.¹

The **President:** His Excellency Baron GUILLAUME, reporter of the First Commission has the floor.

His Excellency Baron Guillaume reads Articles 1 to 24 of the revised Convention for the pacific settlement of international disputes.²

His Excellency Mr. Carlin calls attention to the modifications that should still be made to the wording of Article 24, paragraph 2, according to the decision taken by the Commission.

The **Reporter:** Note has been made of this remark which should be taken into account by the drafting committee.

The **REPORTER** reads Article 25 to 48.

His Excellency Mr. Hill: The delegation of the United States of America renews the reservation it made in 1899 relative to 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.

His Excellency Mr. Rangabé: The delegation of Greece has the honor to declare that it has been authorized to accept Article 48 in its new wording and to withdraw the reservations it had the honor to formulate in the seventh meeting of the First Commission.

His Excellency Mr. Tsudzuki: The delegation of Japan maintains its reservations to Article 48 (paragraphs 3 and 4).

His Excellency Turkhan Pasha: The delegation of Turkey makes the same reservations to this article.

[336] The **Reporter** reads Articles 49 to 94.

His Excellency Mr. Rangabé: The delegation of Greece has the honor to declare that it maintains the reservations formulated by it in the seventh meeting of the First Commission concerning paragraph 2, Nos. 1 and 2 of Article 53, also the provisions of Article 54 to 58 in so far as they refer to paragraph 2 of Article 53.

His Excellency Mr. Carlin makes reservation to No. 2 of this article which the Swiss Government is unable to accept. It has the honor to request the Conference to have this reservation recorded.

¹ See report, Annex D to these minutes.

² Annex D to these minutes. For the debates on the matter see the minutes of meetings 1 and 3-10 of the First Commission, the meetings of the first subcommission and of its committees A and C.

His Excellency **Turkhan Pasha**: The Ottoman delegation makes reservations to paragraph 2 of Article 53.

His Excellency **Mr. Tsudzuki**: The delegation of Japan makes reservations to Article 53 (paragraph 2) and to Article 54.

His Excellency **Mr. Ruy Barbosa**: The delegation of Brazil makes reservations to paragraph 2 of Article 52, and to Articles 53 and 54.

His Excellency **Mr. Tsudzuki**: The delegation of Japan withdraws the reservations it made in the Commission upon Articles 65 and 78.

His Excellency **Mr. Carlin**: I believe I should make on the subject of paragraph 2 of Article 76 a remark identical to that I presented upon Article 24 (paragraph 2).

His Excellency **Turkhan Pasha**: 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 **President**: The Conference records reservations and declarations.

It proceeds to the vote on the draft as a whole; it is unanimously adopted with the reservations mentioned above.

The **PRESIDENT**: Gentlemen, we shall now pass to the vote upon the draft Convention concerning the limitation of the employment of force for the recovery of public contract debts.¹

His Excellency **Mr. Rangabé**: In the eighth meeting of the First Commission the Greek delegation, being without definite instructions, was obliged to [337] 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.

His Excellency **Mr. Drago**: In the name of the delegation of the Argentine Republic, I have the honor to make the following reservations:

1. With regard to debts arising from ordinary contracts between the *ressortissant* 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

¹ Annex F to these minutes. For the debates on this question, see the minutes of the eighth meeting of the First Commission, and of the fifth, sixth, seventh and eighth meetings of its first subcommission.

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.

His Excellency Mr. **Candamo**: The delegation of Peru will vote for the proposal of the delegation of the United States of America concerning contract debts under the reservation constituting the subject of its amendment of July 16,¹ which it presented to the First Commission, namely:

That the principles established in this proposition can not be applied to claims or controversies arising out of contracts made by the Government of a country with foreign subjects, when in these contracts it is expressly stipulated that these claims or controversies should be submitted to the judges of the tribunals of the country.

Mr. **Pérez Triana**: The delegations of Colombia and of Salvador make the same reservations.

Mr. **Gil Fortoul**: For the reasons I had the honor to set forth to the First Commission in the meeting of October 9, the Venezuelan delegation can not accept the wording of the second and third paragraphs of the American proposition, and consequently will not take part in the vote upon the whole.

His Excellency Mr. **Carlin**: The delegation of Switzerland will abstain from voting upon the proposition concerning the limitation of the employment of force for the recovery of public contract debts. The reasons and meaning of this abstention are stated in the declaration made by Mr. Huber, in the name of the delegation of Switzerland, at the meeting of the First Commission on the ninth of this month. I have the honor to refer to it and to declare once more that my Government does not intend to enter into any international agreement which may be established upon the basis of the proposition in question.

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.

[338] His Excellency Mr. **Machain**: The delegation of Paraguay will vote for the proposition of the delegation of the United States of America with the same reservations as those made by the Argentine delegation.

His Excellency Mr. **Crisanto Medina**: The delegation of Nicaragua makes the same reservations.

Mr. **Tible Machado**: The delegation of Guatemala made upon several occasions reservations and observations in the First Commission upon the American proposition concerning the recovery of contract debts. It maintains the spirit of these observations; but, desiring to contribute toward a certain unity in the reservations formulated, all with the same object, it adheres to the text of the reser-

¹ Vol. ii, First Commission, annex 53.

vations presented by the Argentine delegation and just laid before us by his Excellency Mr. DRAGO.

Mr. Dorn y de Alsúa: The delegation of Ecuador will vote affirmatively while maintaining the reservations made in the First Commission.

Mr. Batlle y Ordoñez: The delegation of Uruguay confirms the reservation already made in the First Commission.

The President: The Conference records reservations.

It proceeds to the vote. 44 delegations take part therein.

Voting for: Germany, the United States of America, Argentine Republic, Austria-Hungary, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Serbia, Siam, Turkey and Uruguay.

Abstaining: Belgium, Roumania, Sweden, Switzerland, Venezuela.

The President: The draft Convention is adopted by 39 yeas with 5 abstentions.

The REPORTER has the floor.

His Excellency Baron Guillaume: The committee charged with presenting a formula stating the points of agreement relative to obligatory arbitration has prepared a declaration,¹ which the Commission has adopted and submits to the Conference:

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.

[339] 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 opinions 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 Conference proceeds to the vote.

The *vœu* is adopted by 41 votes.

Three delegations *abstain*: The United States of America, Japan and Roumania.

The President: Gentlemen, permit me in the name of the Conference to thank the secretaries and reporters of the First Commission, Baron D'ESTOURNELLES DE

¹ Annex G to these minutes.

CONSTANT, Baron GUILLAUME and Mr. SCOTT, for the eminent services they have rendered in aiding Mr. LÉON BOURGEOIS in the task which devolved upon him.

The first delegate of Germany has the floor.

Baron Marschall von Bieberstein: At the conclusion of the last meeting of the First Commission we assisted at an impressive demonstration in honor of the illustrious statesman who directed the labors of that body. I make no pretensions to be able to surpass the eloquence of our colleagues who testified to the sentiments of esteem and admiration which animate us. But at this time when retrospective contemplation appears to be the order of the day, I desire to fulfil a duty imposed upon me by my own feelings. It is to render homage before the plenary Conference to his Excellency the first delegate of France, Mr. LÉON BOURGEOIS, to his eminent qualities of mind and of heart, to his noble zeal for a great cause, to his high competence, and to the perfect impartiality that has distinguished his presidency. When representatives of the entire world unite to discuss the greatest problems of humanity and of civilization, the common idea of the object to be attained does not prevent diverging opinions upon the method to be followed and the means to be employed. It is inevitable, it is even useful, provided that that which separates us remain in the background. In this respect the First Commission was sheltered from all danger, thanks to its president who, even during the most lively discussions, knew how to turn the thoughts back to the great and noble ideals which unite us.

He said to us the other day, in order to depreciate his own merit, that a president must always be worthy of the assembly over which he presides.

That is to say, the spirit of the assembly is reflected upon the president and inspires his actions.

I must make a reservation on this subject. Our case presents an exception to the rule. In the First Commission it was the president who communicated his spirit to the assembly and showed us how strong the presidential power may become when found in hands like his. I share the opinion expressed the other day by his Excellency Mr. LÉON BOURGEOIS that "we depart together from the Conference conscious of having worked for the welfare of humanity and of making a considerable progress in the cause of obligatory arbitration."

It is on these grounds that I desire with all my heart to express to the first delegate of the French Republic my profound gratitude and most sincere sympathy. (*Repeated applause.*)

[340] His Excellency Mr. Martens: Mr. President, Gentlemen: After the very eloquent address just made by his Excellency the first delegate of Germany in honor of his Excellency Mr. LÉON BOURGEOIS it is perhaps temerity on my part to desire to add several words. Nevertheless, I have decided to do so, not only in the capacity of a member of the First Commission, but also as a "veteran" of the Peace Conferences. Besides I am convinced that these words coming from my heart will find an echo in yours.

In 1899 I had the honor to work under the direction of Mr. LÉON BOURGEOIS in the Third Commission, of which he was president; this Commission dealt with the same questions concerning arbitration and the Permanent Court of Arbitration.

Well! during the eight years that have elapsed between the two Conferences, events both joyful and sorrowful have taken place, great catastrophes have happened, and many changes have arisen among men and things.

But Mr. LÉON BOURGEOIS is always the same. The same faith in a better future animates him, the same confidence in the possibility of preventing bloody conflicts between nations by peaceful means imbues him, and the same hope of bringing about by arbitration a better organization of international life places him above the ordinary level of men.

You have all seen, gentlemen, with what intelligence Mr. LÉON BOURGEOIS has presided over our discussions and with what youthful ardor he has defended the noble cause of suffering humanity.

It is not sufficient to have his great intelligence, his talents and his *savoir faire* to explain the moral authority and general devotion that our president has known how to win for himself. All this is incontestable. But it is necessary to take into consideration that other quality which is the characteristic trait of Mr. LÉON BOURGEOIS. He places in the questions concerning arbitration and the welfare of nations something that is rarely found—his whole soul. With all his heart he has devoted himself to the establishment of arbitration as a practical means for the settlement of disputes between nations; it is as a man of spirit that he has taken such ardent interest in the noblest aspiration of the nations of the civilized world; in his heart he often finds reasons unknown to his intellect.

Such is the charm of working under the direction of our illustrious colleague. This understanding of heart which forms, so to speak, his second nature unites us by indissoluble bonds and makes us forget the mean and petty things of practical and political life. This understanding of heart shows to all those who can see a new way to be followed in order to advance toward a better and happier future. Intelligence by itself can command and even reign. But intelligence without heart will never form lasting bonds and friendships which give warmth and beauty to life.

This is why the remembrance of our president will always remain precious and unforgettable for all of us who have had the honor to work under his direction. This is why, gentlemen, at the time of our approaching separation we will not say "*adieu*" to our eminent president. No, pressing his hand we will say, "*Au revoir, au revoir, our very dear president!*" (*Unanimous applause.*)

His Excellency Mr. Ruy Barbosa: After the eloquent and eminently authoritative voices just heard, I make bold to rise, if I may be permitted to do so, in the name of that Latin America whose soul has often vibrated here in my [341] words, to render deep homage to the important part the illustrious president of the First Commission, his Excellency Mr. LÉON BOURGEOIS, has taken in the work of this Conference. By the discretion of his tact, the nobility of his ideas, the charm of his language, by the warmth of his confidence in the good and his hope for the future, by the continual breath of goodness that comes from the bottom of his generous soul, he has been, so to speak, the *good spirit of the Second Peace Conference.*

As such he will always be remembered. (*Applause.*)

His Excellency Sir Edward Fry: I am unable to add anything to the eloquent words in praise of his Excellency Mr. LÉON BOURGEOIS, but in the name of the British delegation, I desire to express to him the most sincere sentiments of admiration and affection. (*Applause.*)

The President: There is nothing to say, nothing to add to what has been so well expressed concerning our friend, my personal friend: nevertheless one of

his qualities was passed over in silence: it is his patience, his immense patience. I do not wish to abuse it in imposing upon him an address of praise, but I do desire to assure him of great sympathy and admiration for his great qualities, his great impartiality, and in particular for his great patience. (*Smiles and applause.*)

The PRESIDENT: The second delegate of France has the floor.

Baron d'Estournelles de Constant: GENTLEMEN: The Peace Palace we have inaugurated at The Hague is to be erected, thanks to the generosity of private initiative and of the Netherland Government; but there is no doubt that other Governments will desire to participate in its construction. They may do so in many ways; principally by contributions of a national character.

The new edifice will be the palace of all the peoples of the earth. Is it not fitting that it should be constructed with material from all countries? It will thus be as suitable in its origin as in its purpose. It will be created of the substance of all for the use of all.

Antiquity had not our mechanical forces at its disposal, but still it succeeded in placing in its temples and its palaces materials brought from the most distant countries. Why may we not do the same? Why not give to the peoples themselves the pleasure of sending their offering to the new temple of peace?

Greece and Italy could furnish their marbles, America and Asia their woods and precious metals, Germany, England, Russia, France, Japan and Spain and all the countries of the earth their masterpieces of national art. The individual expense for each country would be almost nothing, while such objects would constitute one of the world's most unique collections, well worthy of our International Court of Arbitration.

The creation of this monument, awaited for so many centuries, comes from the noblest and most humanitarian ideal; is it not fitting that this idea be represented by a gift emanating not only from the decision of the Governments, but from the heart of humanity? What more eloquent testimony could be [342] rendered to our civilization than that the union of what is the most beautiful upon the face of the earth be offered by common accord to the glorification of justice?

Gentlemen, if you share this opinion, I have the honor to propose to you the adoption of the following *vœu*:

The Conference utters the *vœu* that each Government signatory to the Hague Convention may contribute to the erection of the Peace Palace by sending, upon agreement with the architect, materials for construction and decoration, and objects of art representing the purest specimens of its national production, in order that this Palace, the expression of universal good-will and hope, be constructed of the very substance of all countries. (*Applause.*)

The President: I permit myself to recommend this *vœu* to the Conference. The reception it has just received proves that it has found sympathy on all sides, and it does not seem necessary to put it to vote. It will be entered in the minutes. (*Applause.*)

The PRESIDENT: The reporter of the Drafting Committee has the floor.

Mr. Louis Renault: 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 endeavored 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.

[343] The result of your labors, whatever may be said of them, is not a negligible quantity. This is easily seen from the number of the 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 Convention 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 declarations 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 fourteenth of last June, in which the signatory Powers consented to the adherence 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 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 Convention, 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 Convention 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 upon which stress was laid in support of the second and third, and which started from a common point, consist in considering the States [344] 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 favor 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 Conventions relating to the Prize Court (Article 51); 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 various ratifications deposited at the same time. In the matter of adhesions, [345] 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 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 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 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 are 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 [346] the purpose of making its text 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 endeavored 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 relative 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 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. (*Loud applause.*)

The President: The first delegate of Greece has the floor.

His Excellency Mr. Rangabé: The delegation of Greece has the honor to declare that, having received instructions from the Royal Government, it withdraws the reservations made in the last plenary meeting relative to the Convention concerning the rights and duties of neutral Powers in naval war, and that it accepts the said Convention as it was voted by the Conference at the meeting of October 9.

The President: The Conference records this declaration.

Gentlemen, I request you kindly to meet to-morrow, Thursday, at 11 o'clock, to finish the examination of the report of the Drafting Committee. By so doing, it will be possible to sign the Final Act Friday morning and the closing session may take place that afternoon.

The meeting adjourns at 12:45 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK,
PROZOR.

Annex A

[347]

PROJECT RELATIVE TO THE CREATION OF A COURT OF ARBITRAL JUSTICE

REPORT TO THE CONFERENCE¹*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 first 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. 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, based upon a broad and beneficent principle, might not remain a dead letter, the Conference undertook to create a Court in which international conflicts 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 conflicts. But, the choice of judges being incidental to arbitration, they added in Article 17 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 analyzed, it is evident that ques-

¹ 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 KAPOŠ-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).

tions 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 [348] respect for law. So far it would seem that the foundations were laid for a real Court, in the judicial sense of the word, but arbiters, the choice of the parties litigant, instead of judges, were to be appointed.

Inasmuch, however, as the 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 it. 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; but in matters which may be compromised, judges appointed by 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 work 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 peculiar 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 uneasiness and distrust appear here? . . . And does not everyone 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 experience will show the advantages or disadvantages of the two systems.

Impressed by these views, the framers of the present project have had 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 has to be created anew for each case submitted. There is only a permanent list from which the judges must be chosen for each particular case. The framers of the Convention meant the

Court to be accessible at all times to the suitors, but their hopes have been [349] frustrated by faulty machinery. 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 connection 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 . . . but with an earnest hope that it would serve as a basis . . . of further advanced work in the same direction by a future Conference. . . . And our present effort is by no means to belittle or detract from their work, but to build upon it a still nobler and more commanding structure, and it is their support that we would seek especially to enlist. . . .

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, . . . 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-third have not, as yet, been called upon for any service. . . . Certainly it was for no lack of adequate, and competent, and distinguished judges . . . 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, . . . 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 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

¹ See vol. ii, First Commission, first subcommission, ninth meeting.

² *Post*, p. 388 [392], annex B.

In calling attention to the palpable defects of the older Court no attempt is made to belittle what is a landmark in the development of international arbitration, but experience shows that although the theory elaborated was correct, its practical application is susceptible of improvement. The greatest progress consists in making the Court permanent in fact. 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 this Conference a project for the institution of a permanent 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 in his turn speak more boldly.

The United States of America has always favored international arbitration, [350] as the ponderous volumes of Moore's *Digest* amply show. In 1899 the American delegation cooperated 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 certain of the cases tried before it. As the United States was successful in its cases, 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 the sovereign members of the family of nations, just as surely and truly as the Supreme Court decides disputes of an international character between the States of the American Union.

The attitude of the United States has not changed; it has always believed and said that the Court of 1899 is only the first step toward a Permanent Court of Arbitral Justice which since 1899 it has wished to see created, 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 exactly 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.

According to this Act, Congress was to be the last resort on appeal in controversies between 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 citizens 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 delegation of the

United States presented a project for the establishment of a court of law [351] 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 general discussion that took place on August 1 and on August 3 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 conditions.

On August 1 his Excellency Mr. JOSEPH H. CHOATE, first delegate of the United States of America, supported the American project.⁴ He began by quoting the following passage from President ROOSEVELT's letter of April 5, last, 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 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

¹ *Missouri v. Illinois* (1905), 200 U.S., 496, 518.

² Vol. ii, First Commission, annex 75.

³ *Ibid.*, annex 76.

⁴ See vol. ii, First Commission, first subcommission, ninth meeting.

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.

Having thus described the project, Mr. CHOATE gave an outline of its main provisions:

In the first article 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, without distinction 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 the nomination of their successors.

[352] The second article provides that the 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 preceding 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 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. The third article expresses the preference that in no case, unless the parties otherwise agree, shall any judge of the Court take part in the consideration of any matter coming before the Court to which his own nation shall be a party. In other words, this Court shall be 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 the jurisdiction of this Permanent Court would be large enough to embrace the hearing and decision of all cases involving differences of an international character between sovereign States, which may be submitted to it by an agreement of the parties; that it shall not only have original jurisdiction, but that it shall be competent to entertain appeals from other tribunals, and to determine the relative rights and duties arising out of the conclusions of commissions of inquiry or sentences of 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. To sum up, 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 that under the terms of the program for the Conference the

¹ Mr. Scott thereupon explained technically and in detail the principles upon which a Permanent Court should be based.

² See vol. ii, First Commission, first subcommission, ninth meeting.

creation of a Permanent Court was permissible, and giving the idea of permanence the support of his theories 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, 1906,¹ which contains the program adopted by all the Powers. It speaks, first of all, of the necessity of perfecting the principal creation of the Conference of 1899, that is, the Permanent Court: "The First Conference separated in the firm belief that its labors would subsequently be perfected from the effect of the regular progress of enlightenment among peoples, 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."

But 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,² 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 [353] 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 States, 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 of America.

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,

¹ See *ante, in initio*.

² Vol. ii, First Commission, annex 75.

and LARRETA, DRAGO, and SÁENZ PEÑA, first delegate from Argentine, stated that their delegations were in favor 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 MOMTAS-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 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 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 freedom to choose between the two institutions.

His Excellency Mr. BEERNAERT of Belgium delivered a long and careful address in which he replied to the arguments in favor of the proposed Court, and professed his profound and earnest conviction that the line of progress was in the old direction, that the institution of 1899 was preferable to the proposed one, which, by imposing permanent judges upon the litigants, would destroy the principles of selection which is the essence of arbitration.

His Excellency Sir EDWARD FRY replied briefly, stating 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 to be 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.

His Excellency Mr. LÉON BOURGEOIS, who spoke not as the president of the Commission, but as first delegate of France, distinguished 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.

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 obligation. However, we reach the same conclusions in both domains.

In the domain of universal arbitration there is a zone of possible obligation 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 States 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 States 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 favor 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 project³ was not dis- [355] cussed. The American project⁴ served as a basis for discussion, but it is useless to consider it in detail, for it was withdrawn in favor of a common project of the German, American, and the English⁵ delegations. Later, at the third meeting on August 20 his Excellency Mr. BARBOSA, first delegate from Brazil, presented a project⁶ 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,

¹ See vol. ii, First Commission, first subcommission, tenth meeting. Those voting in favor 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, Sweden, 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 Vol. ii, First Commission, annex 75.

⁴ *Ibid.*, annex 76.

⁵ *Ibid.*, annexes 80 and 81.

⁶ *Ibid.*, annex 83.

⁷ See First Commission, first subcommission, committee of examination B, eighth meeting.

⁸ Vol. ii, First Commission, annexes 77, 78 and 47.

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.

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 inferior courts from which an appeal might be taken. It was suggested by the Austro-Hungarian delegation that a misunderstanding might arise, and that the expression "High Court" might seem to be synonymous with a court of cassation. The British delegation explained that the term "High Court" as understood in Great Britain did not imply necessarily this idea, 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 the purpose for which the Court was intended was the administration of arbitral justice.

His Excellency Mr. CHOATE, speaking for the authors of the project, expressed a willingness to accept the title which seemed most satisfactory. "We leave," he said, "the christening of the child to the committee. If all the sponsors agree upon the name, we will endorse their choice. Once christened, the child's success in life depends on its acts, not on its name." To this the President 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, [356] 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 JUSTICE¹

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,"

¹ *Post*, p. 388 [392].

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.

International law, which ought to be an international system, as understood and applied in any community is, unfortunately, insensibly influenced by national feeling or local prejudice, much as the stream is colored 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 judges, knowing that their decision is likely to be authority with its successor and cited as a precedent, will devote the labor 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 the scientific development of arbitral jurisprudence.

[357] 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 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. 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. As the jurist is influenced by his system of law and the training in it, it is necessary to have judges trained in the various systems of law. For the purpose of the Court municipal law must be internationalized. In this case, and in this case only, can the judgment be equitable in any international sense.

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 divers judges 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 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? 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 [358] not, however, be left to implication, and the authors of the project expressed the idea clearly and precisely in the words "agree to organize 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. The idea advocated by Mr. MÉREY was accepted in the final text: "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.

But the question is still unanswered, namely, what is the relation between the two Courts? Various views were expressed on the subject. One view would make the new Court a simple 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 latter. 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 connection 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 vary according to time, place and circumstance. The judge 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."

It seemed unnecessary to the authors of the present project to express this requirement; because it is impossible to suppose that the signatory Powers [359] 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 article arise from the very nature of the institution.

As his Excellency Mr. LÉON BOURGEOIS pointed out, the Permanent Court of 1899 was fitted to subserve a twofold purpose, namely, the decision of political and of judicial questions. As the present Court is preeminently 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 various judicial systems so essential to the successful operation of an international tribunal. In the next place, it was hoped 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 Mr. KRIEGE in the following language:¹

¹ See vol. ii, First Commission, first subcommission, committee of examination B, sixth meeting.

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 possible 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 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 slowly developed during centuries of conflict and assumed a definite and systematic shape. It is universally 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 personality of the judges selected rather than upon academic and artificial distinctions.

The second paragraph of Article 2 deals with the selection of persons who possess the qualifications of judges, and in this connection 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.

[360] 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 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 the president of the committee pre-

ferred 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 your committee indicated very clearly its desire 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, would be, naturally and exclusively the 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. 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.

[361] It stipulates that the judges of the Court are nominated for a certain term and that they are reeligible. 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 in this respect as well as to assure 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. The Administrative 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 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. 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 article.

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 dismissal 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 judgment in which he takes part would likewise be valid and binding.

Although the matter seems free from doubt, nevertheless, upon the suggestion of the president, the conclusion of the authors of the project upon the validity of a judgment 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.

[362] 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 cooperation 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 all cannot occupy one place at the same time, it seemed advisable to prevent the possibility of a dispute as to rank or position. Anyone 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 wording of the latter text is rather general and indefinite, 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 pointed out 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 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.

The history of courts of justice shows 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 inexpedient 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 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 *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:

[364]

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.

¹ See vol. ii, First Commission, first subcommission, committee of examination B, sixth meeting.

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 because the functions would be the same whatever the name ultimately chosen might be, the committee of examination 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."

This expression 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 and forestall all interpretation. 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 the committee of examination 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 reelection. 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 [365] 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 ensure 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 *ressortissant*." 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 though the year of their appointment shall have expired. It is admitted that this provision can be questioned in theory, as was pointed out by the president of the committee, 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 and fortified themselves by the maxim *interest reipublicae ut sit finis litium*. The submission of a partially decided case to new judges might prolong a decision indefinitely, 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 reelecting 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.

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 a sufficient reason why the

¹ See vol. ii, First Commission, first subcommission, committee B, sixth meeting.

[366] mandate should not be extended beyond a year. The possibility of reelection 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 [367] 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 judgment 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 judgment would be an advantage both from his familiarity with national jurisprudence and from his desire to prevent the formulation of the judgment 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 [368] 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 large court is unlikely to impair its usefulness, and possesses, on the contrary, the advantages mentioned in the German amendment, 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.

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.

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 though 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 [369] mode of selection, and the last paragraph 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 reelected. 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.

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 traveling 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 the 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 the judges of the Court of Arbitral Justice should receive 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 [370] 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 traveling 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 traveling expenses. The committee deemed it inadvisable to fix any rate of mileage. The provisions of each country in the matter of traveling 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 traveling 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 honor 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.

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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, specially composed 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 [372] 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 unless lawfully challenged they will be bound to sit in judgment; 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 to assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

The original text is as follows:²

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

¹ See vol. ii, First Commission, first subcommission, committee of examination B, fourth meeting.

² See vol. ii, First Commission, annex 80, Article 13.

connection 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 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 sten- [373] ographers 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 form¹ 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 dues which might be confided to them. It was objected that residence at The Hague would practically denationalize the judge, 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 continued residence at The Hague 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 VON BIERBERSTEIN, that

¹ See vol. ii, First Commission, annex 80, Article 14.

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, 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 [374] 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 obligatory, if a signatory and litigating Power requested the convocation of the Court. The wording as adopted was as follows:

¹ See vol. ii, First Commission, first subcommission, committee of examination B, sixth meeting.

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. In order to avoid all misinterpretation, 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 judgment 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.

[375] 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 labors 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 of the delegation.

But the *compte rendu* has an importance and interest far transcending its communication to the Court. The judgments 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, which appeared to him unwise to establish. 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 confine 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

¹ See vol. ii, First Commission, first subcommission, committee of examination B, sixth meeting.

as the medium of transmission, and by the use of the expression *compte rendu* instead of the word "report" to make the performance of the duty simply clerical. It was further decided that the *compte rendu* in question should be communicated to the judges and to the 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.

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 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.

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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 See vol. ii, First Commission, annex 80, Article 16.

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 the parties 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, 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.

[377] 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, 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 favor 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

¹ See vol. ii, First Commission, first subcommission, committee of examination B, third meeting.

that the recourse contemplated in paragraph 3 would not be a revision, but a judgment on appeal or annulment. 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 favor 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 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 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 reexamination before the tribunal or judge pronouncing the [378] original decision, as appears from Article 55 of the Convention of 1899, 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. 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 enumerated in the preceding article, if the parties agree to the "summary proceeding." 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 possesses 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 purely formal changes. Its object is to make [379] the delegation competent to sit as a commission of inquiry if chosen by the parties for such a purpose. This provision is not intended by any means to create a prerogative; it is competent only if chosen by the parties.

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 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

¹ See vol. ii, First Commission, annex 9.

commissioners of inquiry. The fact that each litigant 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 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 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 should, 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 or the performance of their duties created by the Convention. For a like reason the traveling 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, upon what grounds may its competency be denied? The answer would seem to be twofold: the first answer to

Mr. ASSER¹ was that the American delegation could not accept his [380] proposition. Desiring the establishment of a court of 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

¹ See vol. ii, First Commission, first subcommission, committee of examination B, seventh meeting.

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 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. 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 share 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 coextensive 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 either in the Court or in the delegation itself when it has to render a decision, that is to say, whenever the parties in controversy conclude a special agreement to submit the case to its 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 treaty of arbitration confers [381] upon the arbitration tribunal the power of deciding this preliminary question.

¹ See vol ii, First Commission, first subcommission, committee of examination B, seventh meeting.

² *Ibid.*

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 no opposition and were adopted with the formal change proposed by his Excellency Count TORNIELLI, namely, that the words "a diplomatic agreement" be replaced by the phrase "an agreement 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 in its 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 concurred 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:

¹ See vol. ii, First Commission, first subcommission, committee of examination B, fourth meeting: Mr. Scott.

[382] Our proposition is conceived upon the same 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 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 best 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 favor obligatory arbitration, but desire it to produce practical results. We wish to perfect it so that it will become an available reality.

In accordance with this sentiment I have the honor to offer the following proposition: if two parties agree to admit that a dispute 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 made by the committee (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 advisable 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 not in any case change the application of existing conventions and could never be applied to them. But the obligatory character of its 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 falsehood by declaring that the contentious case does not come under the treaty, in order to evade 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 (he said) cannot accept the German proposition. As a matter of fact, it deals with desperate cases in which diplomatic negotiations have failed, and only with the hypothesis of a general treaty of arbitration.

Nothing like this was ever inserted in the thirty treaties that have heretofore been concluded; it has never been proposed to impose a *compromis* not accepted by both parties.

You are all aware, gentlemen, of the difficulties met with in the Senate in obtaining approval of the treaties signed by the American Government.

¹ See vol. ii, First Commission, first subcommission, committee of examination B, fourth meeting.

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.

[383] 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 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, 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 termination 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 article 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 [384] 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 provisions 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 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*, or if they have implicitly excluded the delegation by 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 right is expressly reserved to the State in controversy to reject the intervention of the Court, if it should appear that the 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 honor. It appears, therefore, that the will of the State is free, 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 traveling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them.

[385] 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 those persons so added who are not members of the Court shall be compensated by the parties who have appointed them. Let us consider each of these provisions 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 judgment, 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 judgment.

The functions of the delegation as a commission of inquiry have already been dealt with in Article 18, and it is therefore unnecessary here to discuss their expediency. 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 judgment is pronounced.

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 only receive compensation from the party whose representative he is for the time being. Therefore the last paragraph provides that:

The traveling 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 at the disposal of those who wish to resort to it. If, on the contrary, they look [386] beyond the Court and choose judges or experts, the parties themselves shall defray the expenses involved in their choice.

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 regarding access to the Court of signatory or non-signatory Powers. The authors of the project, upon the suggestion of his Excellency Mr. ASSER, thought that the Court should be established and open only to the signatory Powers; otherwise an additional and unjustifiable financial burden would be thrown 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 is 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

¹ Fifth meeting.

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

[387] 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 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 cooperate 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 Govern-

¹ Seventh meeting.

ment 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 the applications of this article 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.

[388] 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 certain obligations.

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 one of the parties 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 judgment.

ARTICLE 28

The judgment 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 clear and satisfactory. A difference of opinions exists whether the names of the judges should be mentioned who dissent from the judgment 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 [389] dissent recorded, even though he does not deliver a dissenting opinion.

On the other hand, many believe that a statement of dissent would tend to weaken the judgment 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 shall be mentioned, without indicating concurrence or dissent. In order to prevent the implication of assent or dissent, it is provided that the judgments and decrees of the Court are to be signed by the president and clerks. The president's signature does not imply concurrence in the judgment: it merely guarantees the genuineness of the judgment, in the same way that the signature of the clerk guarantees the authenticity of the official copy of the judgment.

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 of that provision, the judges thus designated would stand upon a basis of add a judge or another member to the delegation. Should both avail themselves 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.

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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 precision, but it was thought advisable to lay down certain general principles of procedure and to permit the Court to frame its rules of procedure according as circumstances and experience might dictate. In any event the Court should communicate its rules, when framed, to the signatory Powers so that litigants may know in advance the rules to be observed and followed in the conduct of the case.

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 cooperation 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 and to frame its rules of procedure. 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. The Court, however, is a judicial body, not a legislature, and the proposed modifications should not 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.

[391] 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 favor 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 struc-

¹ See the discussion in vol. ii, First Commission, first subcommission, committee of examination B, eighth meeting. [This recommendation became *vœu* No. 1 in the Final Act.]

ture, 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!

Annex B

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DRAFT CONVENTION RELATIVE TO THE CREATION OF A COURT OF ARBITRAL JUSTICE¹

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 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 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).

¹ Text voted by the Commission.

The judge who is senior in point of age takes precedence when the date of notification is the same.

[393] The deputy judges are assimilated, in the exercise of their functions, with the judges. They rank, however, below the latter.

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 *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.

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

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 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 traveling 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.

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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 International 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.

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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 (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 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 litigant parties acting in common agreement. With the assent of the parties 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 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 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.

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 traveling expenses and remuneration to be given to the said persons are fixed and borne by the Powers appointing them.

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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 of July 29, 1899, 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 39, paragraph 2, of the Convention of July 29, 1899.

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.

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 cannot preside.

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.

ARTICLE 28

The judgment 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.

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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 this 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 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.

Annex C

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ARTICLES OF CONFEDERATION OF THE UNITED STATES OF AMERICA, 1777¹

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 judgment 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 Revised Statutes of the United States, 1878, p. 9.

Annex D

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REPORT OF BARON GUILLAUME ON THE REVISION OF THE
CONVENTION OF 1899 FOR THE PACIFIC SETTLEMENT
OF INTERNATIONAL DISPUTES

GENTLEMEN: The First Commission, of which I have the honor 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 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 a 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.

[400] 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, honorable, 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 program 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.

The accomplishment of this task was confided to the First Commission, assisted by the work of two committees of examination.¹

I am going to try to report their labors 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 decree 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

¹ 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 KAPOŠ-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'ESTOUFFNELLES DE CONSTANT and 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.

[401] 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 delegation¹ 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 dispute, the States to which they have confided the defense 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.

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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.

¹ See vol. ii, First Commission, annex 6.

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 delegation¹ 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 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 everyone, 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

¹ See vol. ii, First Commission, annex 6.

² *Ibid.*, annex 2.

only the statement of the facts asserted by each of the States in dispute, and forming the basis of their responsibility.

[403] This eminent juriconsult, however, did not at all desire to introduce something new in this connection; 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 honor 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 honor 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

¹ See vol. ii, First Commission, annex 2.

² *Ibid.*, annex 3.

³ *Ibid.*, annex 4.

⁴ *Ibid.*, annex 1.

⁵ *Ibid.*, annex 5.

The proposals of the last two Powers were, it is true, combined and formed but one proposition.¹

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 period within which the commission should be formed. This provision was also implied in the Convention of July 29 which, while indicating the method of forming the commission, provided for a different stipulation.

Such are the provisions which 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 honor 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, 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.

¹ *Ibid.*, annex 7.

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.

[405] 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 parties¹ shall be authorized to name counsel or lawyers to have charge of the defense 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.

[406] 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."

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 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:

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 defense of their rights or interests to counsel or lawyers named by the *commission*, it is proposed," etc., etc. 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.]

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 commissions 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 [407] 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 endeavored to take into account these different considerations by writing into the draft which it has the honor 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 [408] 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 Italy² and the Netherlands³ 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.

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.

¹ See vol. ii, First Commission, annex 7.

² *Ibid.*, annex 3.

³ *Ibid.*, annex 4.

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 [409] 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 [410] 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 two

litigant States, signatories of 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 judgment 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.

[411] 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 honor 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 [412] 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.

[413] 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 all 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.

[414] 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.

[415] 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 provide for the occasion when one of the members of the commission refuses to sign the said report. They agree with the thought which prompted the amendment proposed by the Italian delegation.

The text of these articles is as follows:

ARTICLE 33

The report of the international commission of inquiry is adopted by a majority vote and signed by all of 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.

We did not feel obliged to modify the phraseology of 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

¹ See vol ii, First Commission, annex 2.

appeal would be had to this beneficent method for the peaceful settlement of international differences.

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 French proposition, Article 35 of the present Convention, an amendment providing: [416] 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 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 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 Article 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 are grouped the various propositions concerning the establishment of obligatory arbitration, the discussion of which I shall have the honor of setting forth.

¹ See vol. ii, First Commission, annex 4.

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 favor of its retention. We [417] 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.

[418] I shall have the honor 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.

[419] 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 juriconsult 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 endeavor 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.

[420] 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, 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:

¹ See vol. ii, First Commission, annex 12.

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.

[421] 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 delegation¹ 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 as 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 honor 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 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

¹ See vol. ii, First Commission, annex 15.

to the notice of the other State, serving as an intermediary between them for every exchange of views which may lead to the conclusion of a *compromis*.

The Chilean delegation proposed,¹ on the other hand, that in case a dispute which arises from facts which did not exist prior to the present Convention should break out between two Powers one of them could always address to the International Bureau at The Hague, if necessary by telegraph, a declaration making known the fact 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 reply made thereto, 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.

[422] 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 disputed that Article 27 of the Convention of 1899, which tends to facilitate resort to arbitration, has 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 honor, 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 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 shorten-

¹ See vol. ii, First Commission, annex 16.

ing, 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.

[423] 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 honor 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 48 as submitted.

Mr. SCOTT renewed a declaration made in 1899 with regard to Article 27, now Article 48:

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."

[424] 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."

[425] 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 labors 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 29 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.

[426] 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 [427] 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.

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

¹ See vol. ii, First Commission, annex 10.

² *Ibid.*, annex 8.

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 therefore 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, [428] 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 subcommission on August 13 I had the honor 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 unfavorable 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 [429] *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 favor 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;

[430] 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 amendment¹ had been presented by the delegation from the Argentine

¹ Vol. ii, First Commission, annex 13.

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 proposed¹ 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.

[431] 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 honor 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.

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

¹ *Ibid.*, annex 11.

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.

[432] 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.

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:

¹ See vol. ii, First Commission, annexes.

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 defense 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.

[434] 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 *vari* 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 honor 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 juriconsults 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 [435] 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, etc., 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 defense of their case.

ARTICLE 71

They are entitled to raise objections and points. The discussions 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.

[436] 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"; 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 therefore. 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, and to arrange all the formalities required for dealing with the evidence.

I have had the honor 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.

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.

[437] 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 honor 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 judgment of the same tribunal which rendered it.

Under these conditions the amendment proposed by the German delegation has not been accepted by the committee.

Articles 51 and 52 of the Convention of 1899 were studied together by the committee.

The Netherland delegation requested the omission of the second paragraph of Article 52 of the convention of 1899.

Mr. LOEFF set forth the reasons in favor of this modification, intended to prevent the members of the tribunal from stating their dissent. This provision is, according to him, opposed to one of the great fundamental principles of arbitral procedure, which requires that the award shall be a final decision, *omni sensu*, not only in the sense that there is no appeal, properly speaking, to a second tribunal, but also in the other sense that the award 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 merits 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 [438] 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 honor 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 *van* 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 juriconsult 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.

[439] 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 sub-commission; 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 judgment 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

[440] 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.

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 judgment.

¹ See vol. ii, First Commission, annex 9.

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.

[441] 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 [442] 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.

[443] 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

TEXT PROPOSED BY THE COMMISSION

CHAPTER I.—*The system of 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

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.)

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.

[444] 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.

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 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.

[445] 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:

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, *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, 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.

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 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 discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

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.

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 its staff at the disposal of the signatory Powers for the operations of any special board of arbitration.

[446] 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 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 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 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 labors of the Court, the working of the administration, and the expenditure.

[447]

ARTICLE 29

The expenses of the Bureau shall be borne by the signatory Powers in the proportion fixed for the Inter-

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 labors 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

national Bureau of the Universal Postal Union.

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;

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.

[448]

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 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,

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.

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.

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 56

(No change.)

ARTICLE 57

(No change.)

ARTICLE 58

When the compromise 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

(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 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 defense 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.

[449]

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.

The discussions consist in the oral development before the tribunal of the arguments 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 defense 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 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

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.

[450] 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 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 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

(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 defense of their case.

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 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 periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 70

(No change.)

ARTICLE 71

(No change.)

ARTICLE 72

(No change.)

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.

[451]

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.

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 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 77

(No change.)

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 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 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 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.

ARTICLES 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 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.

[452]

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 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 83

(No change.)

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.

[453]

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 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 [454] 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 93

(No change.)

ARTICLE 94

(No change.)

[455]

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 labors, 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 inter-

esting 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 honor 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.

[456] You are acquainted with the statements presented at the commencement of our labor by the delegations from the United States of America,¹ Serbia,² Portugal,³ Sweden,⁴ and Brazil.⁵ 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

¹ See vol. ii, First Commission, annex 20.

² *Ibid.*, annex 18.

³ *Ibid.*, annex 19.

⁴ *Ibid.*, annex 22.

⁵ *Ibid.*, annex 23.

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 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

[457] 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 of or necessity for 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 *van*, 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

¹ Vol. ii, First Commission, annex 15.

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.

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 judicial 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.
- [458] 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 honor 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 favor 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 delega-

tion 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 honor 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.

[459] 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 honor* 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 favorable 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 his 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 honor and essential interests of nations.

As these reservations should be left to the estimation of the parties; we [460] thus reserve the right to withdraw with one hand what had 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 favor of the most extended and broadest propositions with regard to arbitration; it will endeavor 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 delegation of the United States of America and Portugal.

The delegation from Austria-Hungary is, in principle, favorable to the idea of obligatory arbitration. It recognizes that the insertion of reservations based upon honor 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 the obligation has never failed to be recognized by States seems to speak in favor 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 in admitting the power to establish a special arbitral tribunal by the agreement of the parties, a practical and and beneficial need will be met, resulting to the profit of arbitration, that is to say, of peace.

[461] 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 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 amendment¹ 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 analyzed 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 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 Uruguay³ 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 labors the committee took occasion to proclaim this rule that the adoption of a clause in favor 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.

¹ See vol. ii, First Commission, annex 26.

² *Ibid.*, annex 69.

³ *Ibid.*, annexes 47 and 48.

The proposition of the delegation of the Dominican Republic¹ is the first which came before the committee by reason of its general character. It expressed a *vox* in favor of international obligatory arbitration without restriction.

The delegation from Denmark² 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 defect 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 Brazil³ provides for obligatory arbitration in all questions which do not affect the independence, territorial integrity, 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 judgments 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.

¹ Vol. ii, First Commission, annex 24.

² *Ibid.*, annex 25.

³ *Ibid.*, annex 23.

His Excellency Mr. DRAGO expresses the opinion 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. HAMMARSKJÖLD 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. 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 honor too dear to rely thereon without reason.

His Excellency Mr. D'OLIVEIRA is also favorable 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 judgment 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

¹ See vol. ii, First Commission, annexes 18, 19 and 22.

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 [464] injurious to introduce into Article 16 of the Convention of 1899 purely superficial modifications; we should limit ourselves to a simple recommendation therein in favor 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 honor, 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 [465] 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 honor 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 honor 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 judgment 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 [466] interpretation of the point in dispute adopted by the arbitral award, this interpretation shall be binding upon all. In the contrary case, the judgment 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.

[467] 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 only some 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 [468] 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 judgment 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 and 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 the 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 humor 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 16 *b* of the Portuguese proposition; but his Excellency Sir [469] 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 favor 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 unfavorable 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.

[470] 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 then 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 judgments 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 judgment 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.

[471] 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. A 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 States themselves are litigant parties, and where it is a question of obtaining a judgment 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 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.

According to the other idea developed in the committee, international arbitration has for its definite purpose legislation for the future, in the sense that judgments are considered as the complement of the treaties themselves. Nothing then is against resort to arbitration with regard to a dispute in which

¹ See vol. ii, First Commission, annex 35.

² See the arbitral decision in the case of the “Pious Fund of the Californias.”

a judgment has been entered, even in a court of last resort, under the national judicial system. While respecting this decision in the special case in [472] question, the arbitrators in some measure take the place of the contracting parties themselves, completing the convention by their judgment, 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 honor, 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 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 favorable 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 judgments 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 law, decree, 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 counter-propositions.

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 honor or vital interests of the States.

The British delegation called attention first of all to the fact that it would be extremely difficult to state whether the many conventions appearing upon the Portuguese list, Article 16 *b*, did contain any provisions concerning honor 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 view¹ 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.

¹ See vol. ii, First Commission, annexes 31, 32 and 39.

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 favor 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 modification which I have just had the honor 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 “honor” 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 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 honor 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:

¹ See vol. ii, First Commission, annex 37.

ARTICLE 2

[475] Each signatory Power shall be the judge of whether the difference which may arise involves its vital interests, independence, or honor, 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 [476] 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 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 honor or essential interests of States, and which are of [477] 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 juriconsult 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 endeavors 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 judgment upon the importance of the list resulting therefrom.

[478] 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 honor 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 proposition² 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 favorable 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, etc., 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:

¹ See vol. ii, First Commission, annex 34.

² *Ibid.*, annex 27.

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.

[479] 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 honor, his instructions not authorizing him to do so. The Grecian delegation is therefore obliged to abstain from any vote in this connection, although it is not unfavorable 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.

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 is 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 vigor 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. HAMMERSKJÖLD 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.

[480] 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:

<i>British and Portuguese Propositions</i> ¹		<i>For</i>	<i>Against</i>	<i>Not Voting</i>
ARTICLE 16 a				
A.	Interpretation and application of treaty provisions concerning the following subjects:			
1.	Customs tariffs	9	2	7
2.	Measurement of vessels	11	4	3
3.	Wages and estates of deceased seamen	10	3	5
4.	Equality of foreigners and nationals as to taxes and imposts	10	4	4
[481]	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 system	9	4	5
	b. Weights and measures	11	3	4
11.	Reciprocal free aid to the indigent sick	12	2	4
12.	Sanitary regulations	9	7	2
13.	Regulations concerning epizooty, phylloxera, and other similar pestilences	8	6	4
14.	Private international law	9	3	6
15.	Civil or commercial procedure	9	4	5
<i>Portuguese Proposition</i>				
ARTICLE 16 b				
2.	Taxes against vessels (dock charges, lighthouse, and pilot dues), salvage charges and taxes imposed in case of damage or shipwreck	8	7	3
5.	The right of foreigners to pursue commerce and business, to practise the liberal professions, whether it is a case of a direct grant, or by being placed upon an equality with nationals	5	9	4
10.	Patents, trade-marks, and trade name	4	9	5
12.	Geodetic questions	6	7	5
13.	b. Questions of repatriation	8	6	4
14.	Emigration	5	6	7
<i>British Proposition</i>				
ARTICLE 16 a				
B.	Pecuniary claims for damages, when the principle of indemnity is recognized by the parties	11	4	3
[482]	<i>Swedish Proposition</i> ²			
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	3
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
<i>Serbian Proposition</i> ³				
ARTICLE 1				
1a.	Postal, telegraph, and telephone conventions	8	3	7

¹ Annexes 32 and 34.

² Annex 22.

³ Annex 29.

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 ¹ 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 [483] 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 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.

¹ See vol. ii, First Commission, annex 38.

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.

[484] 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 anyone 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 judgment 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 [485] 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 [486] the various delegations, elaborated a new scheme¹ 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 appli-

¹ See vol. ii, First Commission, annexes 40 and 41.

cation 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 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 [487] 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 cooperation 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 [488] 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 anyone 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 endeavored 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 recriminations 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 [489] 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, etc.," 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 as an amendment to Article 16 of the Convention of July 29, 1899.¹ To the 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 [490] 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 favor 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. MÉRÉY 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 honor 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.

¹ See vol. ii, First Commission, annexes 27 and 28.

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 [491] 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 judgment 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 favor 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 favor 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 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 [492] 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, 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 [493] 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 favor 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 favor 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 favor 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.

[494] 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 unfavorable 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 favor 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 favor of the Austro-Hungarian proposition will not prevent it from voting favorably 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.

[495] 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 [496] 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 labors 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 honor of any of the said States, and do not concern the interests of other States not involved in the dispute.

[497] 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 honor, 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. LÉON 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.

[498] The British article is thus accepted, with a slight change in its wording, proposed by his Excellency the first delegate of Sweden.

ARTICLE 16 c¹

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.

¹ It was understood that a wording that would reconcile the texts of the British and American propositions was still being sought.

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.

[499] 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.

[500] 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.

[501] 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 Serbia.

[502] 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*)

Etc., etc., etc.

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.

[503] 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 honor 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:

[504] 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.

Article 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.

[505] 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 [506] 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 favor 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 the 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 raising 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 honor 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.

[507] 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 honor 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 honor, 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)

etc.

II.

III.

[508]

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 [509] 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 ratifications 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.

[510]

RESOLUTION PRESENTED BY THE DELEGATION OF AUSTRIA-HUNGARY
RELATIVE TO OBLIGATORY ARBITRATION¹

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.

[511]

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 honor 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

¹ This wording was slightly modified to conform with the observations made in the committee. See vol. ii, First Commission, annex 42.

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 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 [512] 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 analyzes 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.

[513] 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 re-

ceives 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 favorable 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 entirety. Mr. DE SOVERAL hopes that this great example will be followed by the Commission unanimously. Arbitration emerges innocent and acquitted from the severe trial which it has undergone before the committee. He asks that the Commission confirm this acquittal.

Let it not be said that obligatory, but not *world-wide*, arbitration emerges victorious from the debate. The difficulties brought up embrace the whole field of international law. If there were any grounds for them, it would be necessary to conclude that no *world-wide* convention is possible upon any matter; that is to say, that the Conference must be closed at once and never again opened. But far from that; the Conference has for three months been elaborating *world-wide* conventions on the most complex questions of the law of nations, upon the Prize Court, upon the Court of Arbitration. In these Conventions it engages the vital interests of the Powers; it cannot fear to act in the same manner with respect to the settlement of differences where neither honor, nor independence, nor the essential interests of States are involved.

[514] 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 judgment 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 cocontractants, 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 [515] “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 "honor, 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.

[516] 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*.

[517] 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 continually 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 [518] 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; it 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 favorable to the principle of obligatory arbitration and desirous of cooperating 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 we would like to set up against the idea of war, that
[519] arbitration which involves grave political matters, capable of disturbing

the peace of the world, because they affect the honor 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 then endeavors to group the legal objections which were aimed at the project conclusion, sooner or later, of world-wide arbitration treaties. Mr. D'OLIVEIRA 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 [520] 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, honor 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.

[521] 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 16 *e* 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 up 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 [522] 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 favor of the text adopted by the committee; but its vote must not be interpreted as being unfavorable 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 and endeavor 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 honor, etc., 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.

[523] His Excellency Mr. CHOATE 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 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 favor 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. MILOVANOVITCII, 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.

[524] 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 contracting.

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 endeavored 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.

[525] 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. Favorable 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 favor 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.

[526] 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 favor 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

extraterritorial 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 161, 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 [527] 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 favor of extending arbitration.

[528] 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 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 [529] 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 honor 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 honor, 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 is passed by 33 votes to 8, with 3 abstentions. It is 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*.

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.

[530] 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,

[531] 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, [532] 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 Article 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 16 *i* is omitted upon the proposal of the United States of America.

[533]

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.

[534] 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 honor 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 honorable 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 [535] 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.

The 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 honor 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 program 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.

[536] 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, etc. 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 16 *e* of the Anglo-American project, which is a simple explanation of the machinery indicated in that article, are adopted without vote or discussion. The following is their tenor:

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 [537] 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 honor 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 honor, 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.

[538]

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 Article 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 arbitrator's 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.

[540] 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.

[541]

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.

[545] 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 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 honor;

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;

[546]

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.

[547] 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-Hungary 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.

[548] 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 favor 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 favorable. 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 favor 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 favor 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 [549] 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 states that after three months of discussion the Commission has made known its wishes by an overwhelming majority. It has declared itself in favor 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 favor 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 absentions.

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 honor to request in committee A that a proposition, presented by the Italian delegation on the subject [550] 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 honor to announce.

I am convinced that after the intense labor 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.

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 traveled 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 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 labor. The study undertaken

by the First Commission and its committees will be a valuable source to [551] 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.

[552] The delegation of the United States of America 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.

[553]

PROPOSITION OF THE DELEGATION OF THE UNITED STATES
CONCERNING THE EMPLOYMENT OF FORCE FOR
THE RECOVERY OF CONTRACT DEBTS

I have already had occasion to state¹ 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.

¹ See p. 463 [461].

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 second 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:¹

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:

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.

[554] 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.

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.

¹ See vol. ii, First Commission, annex 48.

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 favorable 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.

The delegation of Panama supports the American proposition. It admits the right to resort to coercive means only in 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 [555] 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.

It is in favor 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, 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. The 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.

[556] 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.

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.

The delegation of Brazil would ask nothing better than to see war abolished; but, if, while admitting other cases of armed conflict as legitimate, it is desired

to create a legal category of absolute immunity in respect to public debts, it believes that there is no justification for this exception.

While approving the pacific tendencies of both his Excellency 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 endeavor 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 delegation¹ to oppose the proposition [557] 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 honor and the vital interests of States cannot be submitted to arbitration, a new article providing obligatory arbitration for cases where national honor 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 judgment 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?

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

¹ See vol. ii, First Commission, annex 55.

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 [558] 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 proposition¹ 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 endeavor 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 See vol. ii, First Commission, annex 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 connection.

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

[559] 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 favorable 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.

[560] 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

¹ [This draft was accepted by the Conference without change. For the action of the General Drafting Committee, see *post*, p. 575 [581].

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.

"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 [561] 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 modeled, 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 honor 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 favor 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 favor of the first paragraph of the project and against the other two.

The abstentions were: Belgium, Greece, Luxemburg, Roumania, Sweden, and Switzerland.

[562] 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 proposition 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 program 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 definitely 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.

[563] 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 E

DRAFT OF REVISION OF THE CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

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 Powers strangers to the dispute have the right to offer 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

[564] 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

In disputes of an international nature involving neither honor 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.

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 determines the mode of their selection and the extent of their powers.

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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 signatory 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 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.

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.

[566]

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 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

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 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.

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.

The 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.

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.

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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.

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 may 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 of the international commission of inquiry is adopted by a majority vote and signed by all of 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.

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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 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.

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.

[569] 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 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 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 are 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 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.

[570] 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.

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.

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 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.

[571]

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 presents to them an annual report on the labors 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 5 and 6.

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 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 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.

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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.

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

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.

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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 defense 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.

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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 counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense 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 litigant Powers undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the dispute.

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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.

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 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 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.

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 disputes definitively and without appeal.

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.

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.

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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.

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.

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 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.

[577]

GENERAL PROVISIONS

ARTICLE 91

The present Convention shall be ratified as speedily as possible.

The ratification 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.

Annex F

PROPOSITION CONCERNING THE LIMITATION OF THE EMPLOYMENT OF FORCE FOR THE RECOVERY OF CONTRACT 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.

[578] 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.

Annex G**DRAFT DECLARATION CONCERNING OBLIGATORY ARBITRATION**

The Conference,

Actuated by the spirit of mutual agreement and concession characterizing its deliberations, agrees upon 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:

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.

TENTH PLENARY MEETING

OCTOBER 17, 1907

His Excellency Mr. Nelidow presiding.

The minutes of the ninth plenary meeting are adopted.

The meeting opens at 5:20 o'clock.

The **President**: Mr. LOUIS RENAULT has the floor for the purpose of continuing his explanations upon the Final Act and the Conventions.¹

Mr. **Louis Renault**: Gentlemen, 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.

The **President**: Gentlemen, I beg you to give your entire attention to the remarks of Mr. LOUIS RENAULT; it is necessary that all corrections be made as soon as possible, in order that we may sign a perfect text.

Mr. **Louis Renault**: 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 labors.

There are mentioned in the Final Act fourteen Conventions, the text of one resolution, one declaration, and *vœux* to the number of five.

[580] 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* relating to obligatory international arbitration was adopted by you unanimously in yesterday's session, upon the proposal of the First Commission.

The *resolution* 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*.

¹ *Ante, in fine.*

In the first place we have the *væu* concerning the adoption of the Draft Convention for the creation of the Court of Arbitral Justice. This *væu*, which has not been modified, admits of an annex.

His Excellency Mr. Carlin: I have the honor to remark that the *væu* appearing under the figure 1 has not been unanimously voted. There have been several abstentions to it, among them that of the delegation of Switzerland. And since, contrary to the precedent established in the Final Act of 1899, no mention was made of this circumstance following the *væu* in question, I desire that it be well understood here; and I declare that the delegation of Switzerland cannot sign the Final Act except under reservation of this statement, which I request to be inserted in the minutes of the present meeting.

Mr. Louis Renault: The second *væu*, 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 *væu*, 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 *væu*, 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 *væu*, which you adopted at the last plenary session¹ 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 *væux* 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 *væu* to his attention.

The President: I trust that the delegates will put into effect the *væu* that they adopted yesterday, and that they will advise their Governments to take it into serious consideration.

Mr. Louis Renault: 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 [581] 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 program 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 honor 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, concerning "the pacific settlement of international disputes," underwent two revisions at the hands of the Drafting Committee. The Conven-

¹ [*Væu* regarding the erection of the Peace Palace. *Ante*, p. 335 [342].

tion 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 sub-committee and by the General Drafting Committee.

The object of the second Convention is to give diplomatic form to what is called the "Porter proposition."¹ 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 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. 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 relating to the "laws and customs of war on land" is a revision of that of 1899, 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.² The obligation rests upon the Governments themselves and consequently has no place in Regulations concerning instructions to be given to [582] 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.³ 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

¹ Vol. ii, First Commission, annex 48 [proposition regarding contract debts].

² Vol. iii, Second Commission, annex 13.

³ *Ibid.*, annex 12.

change the numbering of the Regulations. You will observe that in this new Article 54 two words which appeared 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 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 relating to the "conversion of merchant ships into warships," we have changed merely the style and we have given the preamble a more modest and conventional form.

In the matter of the Convention 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 relating to "bombardment by naval forces in time of war." This is a legacy from the First Peace Conference, 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.

Mr. Georgios Streit: I am not very well prepared to furnish these explanations. The third paragraph of Article 2 was introduced at the last read-
[583] ing, upon the proposal of the French delegation,¹ for the purpose of combining the different ideas. This paragraph contemplates certain cases of pressing military exigency where previous warning is impossible; but it is none the less true that even in these cases only the localities mentioned in Article 2, paragraph 1, may be bombarded.

His Excellency Mr. Hagerup: No one can furnish better interpretation of this article than the French delegation which is its author.

¹ Vol. iii, Third Commission, annex 7.

Mr. Louis Renault: Perhaps there have been modifications in the arrangement of the paragraphs, modifications which might have caused the obscurity to which my attention has been called and which I thought I should point out to you.

In the Convention 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 "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,¹ 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 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 [584] 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.

¹ Fourth plenary meeting, annex D.

The **President**: You know the hour of our last meeting to-morrow. We will then sign the Final Act, and the day after to-morrow, the Conventions.

Mr. **Louis Renault**: I believe it will be necessary for the Conference to vote upon the Final Act.

The Conference proceeds to the vote. The Final Act is unanimously voted by 44 States, with a reservation formulated by the delegation of Switzerland upon the *vœu* recommending to the signatory Powers the adoption of the Convention for the establishment of a Court of Arbitral Justice.

The **President**: The VICE PRESIDENT of the Conference has the floor.

His Excellency Mr. **de Beaufort**: The Correspondence Commission is happy to be able to state that during the time that has elapsed since the plenary meeting on July 20, it has continued to receive all kinds of documents, some sent by peace societies or assemblies, others from individuals, and nearly all of them bearing upon the matters which have been the subject of our labors. In addition there are some, the tenor of which is entirely outside the jurisdiction of this assembly, sometimes not even concerning the principles of international law; also others to which we can only reply by repeating the eloquent words of our illustrious PRESIDENT who said at the meeting mentioned above: "We are gathered together to study and establish the principles of international law, not to control its application to the international policy and the internal affairs of the various States."

We should mention among the communications sent to us as wishes in favor of peace, those expressed at a meeting held in the Christian Chapel of Kobe, at another celebrated in the Hotel de Ville at Kioto, and a third at Osaka. The petitions sent to us by the *Association internationale de la Croix Rouge* of Budapest, the American Humane Association of Bristol Ferry, the International Arbitration and Peace Association of London, were all inspired by sentiments of a humanitarian nature. The Interparliamentary Union for Promotion of Arbitration also extended wishes to the Conference for success as concerns the means of preventing international conflicts; the following have likewise expressed themselves to the same effect: the *Société de la Paix*, established at Nara, near Kioto; the Young Friends' Society of Sebring (Ohio); an assembly of thirty Italian enthusiasts upon pacific ideas; the inhabitants of Salem (Ohio); the Norwegian assembly *l'Alliance internationale pour la Paix par l'Education*; the *Concorde internationale des Solideristes et des Pacifistes* who sent the program of the day of the Fifth *Congrès des étudiants réuni à Bordeaux*; finally the *Alianza Intellectual* society of Madrid.

The *Comité français de protection et de défense des Indigènes* transmitted to us its *vœux* for the application of the laws of war to the natives of the colonies and the protectorate countries. It is fitting to make special mention of the telegram that the *Seizième Congrès de la Paix*, assembled at Munich, sent us at the

time of its first meeting, which was in accord with the principles forming the [585] basis of its deliberations. As I have just said numerous individuals have sent us proposals and petitions bearing upon the means to diminish or prevent the causes of conflicts between nations. We will mention among them PAOLO CAISSON, president of *l'Unione internazionale pro disarmo*, of Genoa; the Curé de Calto (Rovigno); Mr. CHATELAIN, of Transvaal; Count STAGAKI, of Tokio, who sent a study upon the causes of wars, etc. It also seems well to mention

the interesting project of which the Marquis DE CAMARASA is the indefatigable propagator. It deals with the construction of an Ibero-Afro-American railroad which would diminish greatly the distance separating Europe from South America. The Conference of Algeciras uttered a *vœu* for this project, and, although it is outside our jurisdiction, it may be regarded with deep interest as a new means of *rapprochement* between nations capable of rendering service in the development of commerce between peoples.

Very interesting books have been sent us, either single copies or a sufficient number for distribution among the delegates; the committee will thank the authors for their kind generosity. All these communications were duly classified, and form a total of nearly three hundred volumes. By casting a glance over the itemized list in which these communications, books, etc. have been entered, it will be perceived that the warm *vœux* we mentioned in our first report have not failed to accompany us the entire length of the way we have just traveled. May we be permitted to testify our gratitude to these *collaborateurs du dehors* for the attention with which they have followed the development of the task we have just finished; because these manifestations of hope and encouragement are striking evidence of their appreciation of the firm will and the good intentions with which we have all served the cause so dear to us—the cause of peace.

In concluding this report, I desire to thank my colleagues who were members of the committee for their very kind cooperation, and to offer our special thanks to our excellent secretary, Mr. SPOTTORNO, who, by his zeal and devotion, greatly facilitated our work, and has a claim to our gratitude and our praise. (*Repeated applause.*)

The meeting adjourns at 6:30 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK.
PROZOR.

CLOSING MEETING

OCTOBER 18, 1907

His Excellency Mr. Nelidow presiding.

The meeting opens at 3:45 o'clock.

The **President**: Gentlemen, those of you who have remarks to make upon the minutes of the last meeting will kindly bring them to the attention of the secretary general of the Conference who will make note of them.

The first delegate of China has the floor.

His Excellency Mr. **Lou Tseng-tsiang**: The Government of China has followed the progress of the work of the Second Peace Conference with particular attention, and has just sent me the order to bring in person to Peking the final texts of the Conventions, declarations, resolutions, and *varux* proceeding from the interesting and laborious discussions in this high assembly which has lasted for four entire months.

As a confirmed partisan of this great work for which the representatives of the entire world are gathered here, I shall not fail to warmly recommend to my Government the acceptance of these new Conventions, the tangible results of our long labors.

The Imperial Government desires to make a thorough study of these numerous documents, and if to-morrow we cannot join our colleagues in the signing of the acts we hope nevertheless to be able to do so several months hence. (*Applause.*)

The **President**: Do your remarks also apply to the Final Act?

His Excellency Mr. **Lou Tseng-tsiang**: No, Mr. President, only to the acts submitted for signature to-morrow.

The **President**: **GENTLEMEN**: We have at last reached the end of our labors. Despite the good-will with which we undertook them, they have lasted much longer than we expected. We were obliged to exhaust the program which served as the basis of our deliberations, and, if we have not succeeded in [587] 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 honor 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 endeavor 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 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 endeavored 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 labors pass judgment 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 endeavoring 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 [588] 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 Arbitrations 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. (*Applause.*) 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. (*Applause.*)

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 labors by the secretary general. The press has thus been able to keep the whole [589] 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 labor. (*Applause.*)

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 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 honor 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. (*Applause.*) 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. (*Repeated applause.*)

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 labors, 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.¹
(*Repeated applause.*)

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 [590] 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 labors, the delegates of the Second Peace Conference gratefully remember the initial proposal for its call, which was made

¹ See the reply of Her Majesty, annex A to these minutes.

by the President of the United States, and present to him their respectful compliments.¹ (*Applause.*)

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. (*Applause.*)

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 honor to preside here (*applause*) 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. (*Prolonged applause.*)

His Excellency Mr. DE BEAUFORT has the floor.

His Excellency Mr. de Beaufort: I request Mr. PRESIDENT to accept the expression of my gratitude for the cordial and kind words he has just expressed to the vice president. My task has not been difficult, for the vice presidency is not a very heavy burden when one has the advantage of a president like his Excellency Mr. NELIDOW. (*Applause.*)

I will not praise him here; his praise is upon the lips and in the heart of everyone present. We have all had occasion to appreciate the eminent qualities of our president, we have all admired his indefatigable zeal, his learning, his tact and his spirit of conciliation. We have seen our president always in our midst assisting in every way possible the meetings of our commissions and our committees of examination. I am almost tempted to say, at the risk of using an expression which might be considered as incongruous in a Peace Conference: our president is always on the firing line.

I am sure, the name of Mr. NELIDOW will remain impressed in your memories as it will be in mine, and although I have no special mandate I am convinced that I voice your sentiments when I ask our eminent president to accept the assurance of our sympathy, our gratitude, and veneration, and of our best wishes for his happiness. (*Applause.*) I propose, gentlemen, that you all rise in honor of our worthy and honored president, his Excellency Mr. NELIDOW. (*The Assembly arises.*) (*Applause.*)

Permit me, gentlemen, to add several words more to what I have just said. We are upon the eve of separation, and for my part, I experience great regret in taking leave of so many distinguished men from all parts of the world, [591] with whom I have had the pleasure and the good fortune to be associated for more than four months.

When about to separate after having labored together in a great work, we ask ourselves what has been the result of these labors. I do not conceal from myself the fact that viewed in the light of certain organs of public opinion the fruits of our labors have been disappointing; but we should not forget that those whose minds are centered exclusively upon what the Conference might have done

¹ See the reply of the Secretary of State of the United States of America, in the name of the President, annex B to these minutes.

thereby lose sight of all that it really has accomplished. There is no need for me to enumerate all the Conventions and Declarations to show you the importance of our work. I will only say that personally I do not feel in any way discouraged.

I appeal here to all of our colleagues who have had experience in parliamentary work. They know as well as I that complaints against the slow progress of these proceedings are heard in all countries, and that efforts to accelerate this progress almost always remains ineffectual. They are aware of the obstacles that continually present themselves during the elaboration of important laws and of the fact that this elaboration, even to be successfully carried out, demands an undue amount of time.

Nevertheless, these parliaments are composed of men acquainted with one another, all speaking the same language, living under the same laws, having common interests and full liberty of action.

On the contrary, the Conference in which we have taken part, appropriately styled the World Parliament, was composed of men who for the most part were unknown to each other, who spoke different languages, men living under different laws and furnished with precise instructions based upon the interests of their Governments. Moreover, it devolved upon the Conference to solve difficult, delicate and often new questions, questions which involve the highest interests and which may not be settled except by mutual concessions.

I believe then that there is no occasion for surprise that the elaboration of the task submitted to this Conference should have been so difficult and have required so long a time.

In my opinion, it is rather surprising to see what the Conference has accomplished in four months, and the agreements that have been reached upon different points of great importance upon which opinions were at first greatly divided.

Permit me, gentlemen, to call to your minds apropos of this subject the celebrated utterances of a statesman well known in history who replied to an indiscreet interrogator who asked him if he believed he had achieved much during his long career:

Little, when I consider myself alone; a little, when I compare myself with others.

At the risk of abusing your patience I still permit myself to make an observation along these lines which will be of some use in future.

All parliaments have minute regulations containing provisions for their work. I believe that the necessity of similar regulations for the Peace Conference is becoming more and more urgent. During the course of our deliberations questions of procedure were sometimes brought up. They presented serious difficulties and had to be done away with or else settled hurriedly. I believe it would be advisable to establish settled rules which could give these questions a fixed and permanent solution. To the numerous *vœux* uttered in the Conference, I wish them to add the following, namely, that the preparation of a minute set of regulations for the Conference be studied and submitted to the next Conference at its first meeting.

[592] Gentlemen, when saying *adieu* one always adds *au revoir*. This *au revoir* at this time not only implies the hope of a personal meeting but also of a meeting at the Conference; it signifies the continuity of our work.

Permit me to say *au revoir*, and to join to it the *vœu* that the Conference of

1907 will open an era of peace for the entire world which will last continuously until the next Peace Conference. (*Repeated applause.*)

The **President**: His Excellency Sir EDWARD FRY, first delegate of Great Britain has the floor.

His Excellency Sir **Edward Fry**: As senior member of this Conference it is, I believe, my privilege and my duty to reply to the eloquent addresses of our president and vice president, and, at the same time, to thank them most sincerely for their long labors.

His Excellency Mr. NELIDOW has presided over our meetings with absolute dignity and impartiality, and the courtesy and good-will he has always shown in his relations with all the members of the Conference merit all the praise that we can bestow upon him.

Mr. NELIDOW was called upon to fill one of the highest posts in the entire world; he fulfilled his duties in a manner worthy of his exalted position, of his country, and of himself.

His Excellency has not only presided over our meetings, he has willingly given his assistance to the plan relative to the assembly and the constitution of a Third Peace Conference, and His Majesty the Emperor of Russia has again shown his interest in this Institution by authorizing Mr. NELIDOW himself to present this proposal to us.

His Excellency Mr. BEAUFORT, who as Minister of Foreign Affairs in 1899 was associated with the work of the First Conference, has again distinguished himself by the creditable way in which he has fulfilled the duties of vice president and of president of the Correspondence Commission.

Gentlemen, in your name I express to him our most sincere gratitude. (*Applause.*)

In your name I offer our respectful homage to Her Majesty the Queen of the Netherlands who has received us with a hospitality which demands our most sincere gratitude. (*Applause.*)

I hasten to join in your name to the gratitude expressed by his Excellency Mr. NELIDOW to the presidents, reporters and secretaries of the commissions and subcommissions: they have worked day and night during long months and we can never thank them sufficiently for all that they have done. (*Applause.*)

I have no intention of reviewing the labors of this Conference. I will confine myself to remarking that, of all the plans we have adopted, the most remarkable in my opinion is that of the Prize Court because it is the first time in the history of the world that a real international court has been constituted. International law to-day is scarcely more than a confusion of opinions, often contradictory, and of decisions of national courts based upon national laws. We hope that in the future there will be formed around this Court by degrees a system of truly international laws owing their existence only to principles of justice and equity, and which will have consequently a right not only to the admiration of the world but to the respect and obedience of civilized nations. (*Applause.*)

[593] One word more. We will soon separate: and I am sure that each one of us will wish for all the others, and for their countries, the blessing of heaven.

Finally, I say from my heart and calling to mind all that the word implies: *Adieu.* (*Repeated applause.*)

The **President**: His Excellency the first delegate of Italy has the floor.

His Excellency Count **Tornielli**: Gentlemen, permit the delegate of Italy, which in ancient times was the competitor of the Netherlands in the art of printing, to express a word of admiration for the work accomplished by the printing office of the Conference.

When the labors of the First Conference were at an end, my predecessor took it upon himself to draw the attention of his colleagues to what he called a miracle of typographical labor. What should we say to-day of this work doubled, perhaps tripled, kept up for four long months always at the same rate, without an interruption, at which we were, and with reason, always astonished?

The sight of this enormous amount of labor—neat, well ordered and well directed, is a great honor to the workmen and to their directors.

Thanks to them our burden has not only been lightened, but we have never been out of work for a single day.

Let us render praise to the perfectly regulated management which obtains such marvelous results and ask it to inform the modest workmen of our deep gratitude. (*Repeated applause.*)

The President: The first delegate of the Argentine Republic has the floor.

His Excellency **Mr. Sáenz Peña**: Mr. President, in the name of the Government of my country, I must express its gratitude to the Governments of Russia and of the Netherlands for the invitation addressed to the nations of Latin America in so far as this gracious act permitted the Argentine Republic to take part in the Second Peace Conference.

It is the first time that the representatives of South America have joined in your deliberations; the summons was a friendly one on the part of the States that assisted at the First Conference, and, if this call does not create for us a different juridical system or political condition, it has made evident the existing situation and welds into a mutual sentiment the happy cordiality of the great human family. Justice is often rewarded, and such was the case with this convocation. It is of common benefit to us, and marks progress and improvement in public law, which, on account of its universal character, calls for the "consensus" of all sovereignties without distinction of States or Continents. Henceforth we are able to state that the political equality of States has ceased to be a fiction and is established as an evident reality. According to the *vox* of LAWRENCE, there will not exist in the future one law of nations for Europe and another for America.

In the history of Great Britain is recorded this memorable sentence uttered in the Parliament of Westminster by one of his precursors. "I have [594] called a New World into existence to redress the balance of the Old."

These words were pronounced during the first third of the nineteenth century, and, at the dawn of the twentieth century the evolution is complete, and the sovereigns of Russia and the Netherlands by convoking us here have constituted themselves the executors of the prophecy of **GEORGE CANNING**. The balance is established by law and the harmony of historical statutes which regulate and adjust the two worlds like the two halves of a single sphere which must be lightened by one justice and a same civilization.

It is evident that our progress has been swift, since we have succeeded and the first century of our national life is not yet completed; if our existence has been short, our organic labor was great and fruitful; and in referring to it before you I am aware of the fact that you regard it with great sympathy and deep affection

because our civilization is the result of your example, gentlemen representatives of Europe, as the discovery of our continent will always stand as your work and glory, gentlemen representatives of Spain and also of Italy, whose radiant skies lightened the vision of the navigator who enlarged the world by encircling the earth.

I wish to make special mention of two great Powers that have proved their solid affection for us by supporting with all their influence the invitation of which I speak: one actuated by a sentiment of friendship and continental solidarity; the other by the tie of origin and race which is the voice of nature speaking to the heart of men despite their mature age, and to the sentiment of peoples athwart their sovereignty. If I mention at this time His Majesty King ALPHONSO XIII and his Excellency Mr. President ROOSEVELT, I do not consider that I diminish by this act of justice the gratitude due to all the States represented at the First Conference.

In speaking of Latin America and its relation with this assembly, I intend to consider a historical fact and to make use of the right common to us all. No one, I trust, will harbor the thought that I dream of taking upon myself faculties or powers foreign to my mission. I have stated several places and upon several occasions: "In these days there exists no chancery in the New World," and no American State has the right to speak in the name of the hemisphere. These statements may appear useless but such is not really the case, especially at this time, since it permits me to confine my words within the bounds of Argentine thought. We can differ with the American nations with regard to certain ideas but not with regard to the sentiment of friendship and reciprocal respect which is the life of the policy of our continent. The Argentine Republic may repeat here a statement it made at the International Congress of Washington, in which European nations did not take part: "We lack neither affection or love for America, we do lack distrust and ingratitude towards Europe." Such has always been and such will always be our policy; we say this taking under full consideration our national individuality and fully appreciating our sovereignty.

The Argentine Republic considers that it has the proper idea of its position with regard to the States occupying the first rank in the order of services rendered to civilization. The size of nations like that of the human statue is a fact, and it is a right we would be unwise to disregard and that we would do well to imitate as an example and index of national greatness. Our civilization followed yours and assimilated your experience and knowledge; we do not forget that we have had predecessors; we respect and admire them and are happy to see that they do not decline because, contrary to the order of human life, the passing [595] of centuries renews their energies and progress enlivens their active and vital existence.

The Argentine Republic, strong in these convictions, has not pretended to dwell upon its policy in this cosmopolitan assembly, but it has not had to modify it in pronouncing itself in favor of international progress in its most advanced and clear form. It has, it is true, defended its opinions and presented its arbitration and disarmament treaties, not with an idea of offering any information but with the hope of being of general service. These treaties are our identification card in the double rôle of sincere friends of peace and faithful supporters of arbitration.

I wish to take advantage of this occasion to thank the Conference for its

favorable reception of these treaties, and also for the address, inspired by these documents, delivered by his Excellency Baron MARSCHALL VON BIEBERSTEIN.

Obligatory arbitration and the permanent tribunal constituted the two main matters dealt with by this Conference; the Argentine Republic voted for both; however we must declare with all sincerity that even though we have accomplished much, we have not accomplished all; we have made progress, but are far from our goal. Why? Because arbitration is the jurisdiction of the future which seeks its definite juridical form in the present. We could hardly reproach ourselves for not being able to anticipate time and the fundamental evolution of ideas. Just as there is an atmospheric condition so there also exists an international state of the world which weighs upon all nations, and from this imperfect present state of affairs with its unformed aspirations and generous sentiments it is not possible for us to obtain a perfect radical formula. The question is one of substance and not of form, a question of principles and not yet one of protocols. The extension of sovereignty with its structure and political magnitude represented unquestionable progress, but the time will come when it will be necessary to ask whether this progress where humanity has stopped, whether this composit of right, pride and force constitute the last conception and the supreme object of law, or whether it is not possible without altering its essence to eliminate the element of force. It may be stated that the conception is not perfect when it regards international judges as adversaries of sovereignty and the enemies of national honor. It seems evident that this is the difficulty, the extension of that principle where policy and science are united in the same excesses. So long as the principle itself of the ideas is not changed in such a way as to place the matter upon a new rational and scientific basis, we can render the usages of war more human but we shall not be laying down the law of humanity. We must create a special international status of the world for peace without dishonor. This required labor belongs to institutions, to scientific associations, to publicists and, in general, to the thinkers who pursue the substantial change of ideas with perseverance. The peace movement is making itself evident in all civilized nations and most particularly in France, among a respectable parliamentary group composed of eminent thinkers who are well represented in this Conference. France knows the secret of rendering truth contagious by the brilliancy of its intellect and by the warmth of its heart which seems always inspired by the spirit of conciliation and warmed by the genius of fraternity. We must wait, but in the meantime we must give strong impetus to the movement, and declare that we as well as our successors will always be ready to respond to the call of the cordiality of nations to consolidate the new ideas from which peace may arise, not as a passing sentiment, but as an organic and living idea which will establish the honor of nations in the relinquishing of force.

[596] The new doctrine already has its apostles and its pilgrims who look toward the New World. That territory is rich and fertile for the germination of all good seed. We will receive them with open arms and make them realize that we too have our shrines there, upon the highest plateau of the Cordillère of the Andes where we, with Chile, have carved the image of the Redeemer Christ, inspiring concord of men and nations.

Mr. President, I request you in the name of the Argentine Republic to present its grateful homage to His Majesty the Emperor of Russia, NICHOLAS II, the illustrious initiator of the Peace Conferences.

Mr. Minister for Foreign Affairs of the Netherlands, kindly accept all the gratitude which we owe you for the kind hospitality we have received in the country that you so well represent. May The Hague be called henceforth the City of Justice and may your august Queen long remain the gracious chatelaine of the peace and fraternity of nations. (*Applause.*)

The President: Mr. TRIANA, delegate of Colombia, has the floor.

Mr. Pérez Triana: Mr. PRESIDENT, GENTLEMEN: This is the closing session of the Second Peace Conference; the hour is solemn. The assembly for the first time of all the nations of the world in a common movement for peace and justice is an event whose great importance will increase each day.

Up to the present, humanity has dreamed the red dream of violence. It moves through the centuries bent beneath the burden of war. Our material civilization has increased the elements of destruction. Our mitigations of ancient ferocity are generally inspired by calculation which suppresses what is useless; their motive is policy and not pity. It is permissible to exchange everything for victory.

From the cradle to the grave the specter of war broods over us like a pitiless sentinel. Kings, peoples are its slaves. Each generation finds the burden heavier than the preceding generation, whose faults and misfortunes it inherits. When the clarion note is sounded all must be abandoned. It is the supreme duty which demands the supreme sacrifice: illusion, tenderness, love, the dreams of youth, the triumphs of old age, all disappear into the bloody gulf: war takes the roses from our gardens and the branches from our laurel trees.

Everywhere is heard the complaint seeming to announce that resignation is exhausted; that humanity has reached the end of its strength.

From the elevated and solitary eminence of his throne, a mighty monarch heard the dull, one might say, the menacing rumor of this complaint. His soul was tormented by this infinite suffering and he wished to alleviate it. That tear of pity will live forever in the memory of men in a glow of imperishable gratitude; it is more precious than dynastic prerogatives and the diamonds of the imperial crown. (*Applause.*)

This is why we are assembled here, gathered from the corners of the world by the wind of history which will now disperse us again to the ends of the world, like leaves fallen from the trees.

The task of establishing peace on earth is great and difficult; it may not [597] be realized in a day nor in a generation; but men are accustomed to travel through life's shadowy valley content and courageous if but one ray of hope gleams upon their path.

This Second Peace Conference has fed the sacred fire of hope in the breast of man; it has thus fulfilled its duty within the limit of its power. We are about to return to our countries with confirmed faith to preach the word of encouragement. We representatives of Latin America can say to our peoples that we have taken our place among the great and ancient Powers of the earth, that we have fulfilled our duty, and that henceforth we may be counted on as useful factors in all movements for peace. (*Applause.*)

Great prudence in international policy was shown in permitting us to have a voice in this assembly. Among nations as among men there are some who have arrived upon the top of the mountain; others who are midway in their ascent; and finally those who have scarcely begun their journey. The unquestionable

possibilities of the future are worthy of the glory of the past and of the power already acquired. The lowly of to-day may become the great of to-morrow. When the question arises of correcting those abuses that oppress men and of preparing for their future happiness, we can take our place among nations, we, who can offer to all the unfortunate and ship-wrecked of life a place in the sun, a free home upon the vast stretch of a continent where generous Providence has scattered all his gifts and blessings with a lavish hand.

Our plains are open to the winds of heaven; our territory is open to all currents of life, to all the migrations of men. Latin America is destined to become before the end of the first half of this century a constellation of great and powerful nations. By taking these facts into consideration we understand our historical rôle in this Conference. We are the depositaries of the future, the guardians of political independence and of the liberty of the millions of men who will come to people our territory.

The voice of pessimism is often heard condemning the ideal of peace as a dangerous illusion; struggle, it says, exists everywhere, force and violence are supreme: it is the law of life. Listen not to these false prophets. The superiority of man consists just in the fact that he is able to subordinate arbitrary violence to law. On the day that a man was moved for the first time by the sorrow of another, began the evolution of pity; on that day there appeared upon the horizon the wondrous dawn of charity and peace among men.

These are the principles the Peace Conference has just established in a solemn manner. We should progress toward the ideal without faltering, without counting either difficulties or sacrifices.

To inspire ourselves and to confirm our faith, we have but to follow the example of the hospitable people among whom we are assembled.

One time they found themselves arrayed against the ocean which invaded their territory; it was an enmity between the elements and man. Man said: "Give way! we must have the very bed over which you roll as our fields for tillage and pasture, for our villages and for our towns." And the struggle commenced. A struggle that lasted for centuries, a struggle that was handed down from generation to generation as a formidable and ennobling heritage. To-day, outside the dykes that protect the conquered earth, the ocean shakes its briny mane amidst the roaring hurricane; one would say that it is a hymn to one of the most noble victories upon which man may pride himself, after a struggle where no suffering was cursed by cruelty, where no tear was shed in bitterness, [598] and where quiet and tranquil heroism raised itself before men like a benediction and a promise. This is a lesson that all conquerors should learn. (*Applause.*)

In parting we express our gratitude to the sovereign who convoked us, to the august Queen who gave us her generous hospitality (*applause*), to the illustrious President of the United States, and to all the eminent and benevolent men who lent their valuable assistance to the great cause of redemption and justice. (*Prolonged applause.*)

The President: The first delegate of Japan has the floor.

His Excellency Mr. Tsudzuki: As the representative of a Power that several years ago experienced to the utmost the horrors of modern war, I believe that I am in a better situation than anyone else to express the feelings of appreciation of the eminently humanitarian labors of this Conference. Moreover, as I

belong to the country at the greatest distance from the seat of this Conference, it is my privilege to testify to the sentiment of gratitude that animates all peoples, even at the opposite end of the globe, towards those of our colleagues who not only took part in the assiduous work of this Conference, but guided and inspired it. But above all, Mr. President, it is to you, the representative of the directing force of this assembly, that I permit myself to address my most sincere thanks on behalf of my country which, up until the end of the last century gave a very rare example of profound and continuous peace for three hundred years; in the name of my country that has always placed the calm and enduring happiness of peace high above the troubled and passing glory of war.

In thus expressing my thanks to you, Mr. President, I realize that I but repeat the praise we have never ceased to render to the cause of humanity and peace. But it is not only to the chief official and representative of the Conference that I desire to express my gratitude, Mr. President. In the name of the Japanese delegation, which has had the honor of taking part in this noble task, I desire to render profound homage to your work in the Conference, to your impartiality, to your spirit of conciliation, to your perseverance, to your firm desire of accomplishing humanitarian work, and to your sacrifice of all personal considerations, even of health itself. (*Applause.*)

I believe, Mr. President, that in rendering you this homage it is but just to think also of him who has assisted you and who would have replaced you in case you had been prevented from sitting, his Excellency Mr. DE BEAUFORT. It is a very pleasant duty for me to render justice to his tact, to his spirit of conciliation and impartiality, and above all to his rare and beautiful characteristic of self-effacement, with which he collaborated in the delicate and difficult labors of the presidency of the first truly cosmopolitan Conference in history. In rendering this praise to our vice president, I cannot forget that Mr. DE BEAUFORT is also the first delegate of the Netherlands and thus forms the prudent and valuable link between the Conference and the Government which accorded us such generous hospitality for four months, a hospitality in keeping with the chivalric name of the hall where we are meeting to-day. (*Applause.*)

Permit me to take advantage of this opportunity to repeat my thanks to all the presidents and vice presidents who guided to a successful conclusion the work, sometimes rather difficult, of the commissions and subcommissions, and also to the reporters, secretaries and other officials of the internal administration of the Conference. I am convinced that it is the efforts of these gentlemen, Mr. President, that have enabled you to declare to the world and to posterity that we have done much for the cause of humanity. It is the work of these gentlemen that permits us to say to our own consciences that our assembly here from all parts of the globe was not in vain.

In conclusion, I wish to express my thanks to you, gentlemen, for the cordial welcome you have accorded to one of your younger brothers in this truly international fraternity; you have recognized that we are younger relations, that we are with you heart and soul in your century-old devotion to the great cause of peace and civilization.

Having addressed these words to our presidents and colleagues of the Conference, I permit myself to go beyond the bounds of this assembly. I particularly wish to join with all my heart in the sentiment of profound gratitude just expressed to the Netherland Government not only for the cordial hospitality

which for four months has permitted us to carry out our work in a peaceful atmosphere of hospitality and friendship, but also for the assistance direct and indirect with which the Netherland Government supported the operation of this Conference. I wish to address to his Excellency the Minister for Foreign Affairs of the Netherlands the deep gratitude of the country whose uninterrupted relations of friendship and peace with his nation have lasted for three centuries, and which will always remember that but a century ago we gave to all the representatives of western civilization in the Extreme Orient the general name of Dutch. (*Applause.*)

The **President**: His Excellency the first delegate of Persia has the floor.

His Excellency **Samad Khan Momtas-es-Saltaneh**: Mr. President, in the name of one of the most ancient countries of the world, I ask permission to say a few words to join in this enthusiasm emanating from this historic hall. It is really to you, Mr. President, that we owe the success of our labors. During the four months and a half you and our illustrious aides, the presidents of the four commissions, have shown ability and great patience in leading to a happy conclusion the deliberations of the Second Peace Conference.

We hasten to offer you in return the expression of our sincere gratitude.

I am sure that we all separate with never to be forgotten memories, and also with a certain sadness at quitting this hospitable country where each one leaves some part of himself. (*Applause.*)

The **President**: His Excellency the Minister for Foreign Affairs of the Netherlands has the floor.

His Excellency **Jonkheer van Tets van Goudriaan**: 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 (*ap-*
[600] *plause*), 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 labors 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 program 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 labors.

When the next assembly meets at The Hague, in pursuance of the *van* 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 appreciate the fact that The Hague may thus become the regular and permanent seat of the Peace Conferences. (*Applause.*)

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 laboring 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 honorable president, you have already shown your desire to address your thanks by telegraph to [601] 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 labored under the presidency of Your Majesty's representative. (*Repeated applause.*)

The President: I regret to announce that the meeting is adjourned and the Conference is closed.

The meeting adjourns at 5 o'clock.

The President,
NELIDOW.

Secretaries General,
W. DOUDE VAN TROOSTWIJK.
PROZOR.

Annex A

[602]

TELEGRAM OF HER MAJESTY THE QUEEN OF THE NETHER-
LANDS RECEIVED BY MR. NELIDOW AFTER THE
CLOSE OF THE CONFERENCE

I thank your Excellency and the other delegates for the telegram just received. It has been most gratifying to see the Second Peace Conference assembled at my residence, and I renew the assurance that it will afford me great pleasure to offer hospitality to future Conferences.

(Signed) WILHELMINA.

Annex B

[603]

LETTER OF MR. ROOT, SECRETARY OF STATE OF THE UNITED
STATES OF AMERICA, RECEIVED BY MR. NELIDOW
AFTER THE CLOSE OF THE CONFERENCE

DEPARTMENT OF STATE, WASHINGTON, *October 24, 1907*

EXCELLENCY: I have the honor to advise your Excellency that the President has received the telegram of the eighteenth instant by which you informed him that the delegates to the second Peace Conference remembered with gratitude the initial proposition which was made by the President for the convocation of the Conference, and having completed their labors, wished to present to him their respectful homage.

I am charged by the President to express to you and to the delegates to the Conference his high appreciation of your courteous message and his sense of the honor conveyed by it, and to offer to the delegates his congratulations upon the beneficent results of their deliberations.

Accept, Excellency, the assurances of my distinguished consideration.

(Signed) ELIHU ROOT,

Secretary of State of the United States of America.

His Excellency the President of
the Second Peace Conference, The Hague.

CONVENTIONS AND FINAL ACT

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

[The Convention having to remain open for signature until June 30, 1908, the signatory Powers and their plenipotentiaries shall be inscribed upon that date conformably to the following order adopted for the Final Act:

Germany, the United States of America, the Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Columbia, the Republic of Cuba, Denmark, the Dominican Republic, the Republic of Ecuador, Spain, France, Great Britain, Greece, Guatemala, the Republic of Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Serbia, Siam, Sweden, Switzerland, Turkey, Uruguay, 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;

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;

[605] 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.

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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 honor 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.

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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.

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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.

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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.

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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.

[611] 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.

[612] 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 [613] 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 labors 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.

[614] 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.

[615] 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 defense 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. [616] 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 defense 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.

[617]

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 [618] 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.

[619]

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 a 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.

[For the signatures and the reservations see the table of signatures, *post*, *in fine*.]

CONVENTION RESPECTING THE LIMITATION OF THE EMPLOYMENT OF FORCE FOR THE RECOVERY OF CONTRACT DEBTS

(For the heading see the Convention for the pacific settlement of international disputes.)

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. [621] 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, 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 which 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 [622] 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) 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 to the contracting Powers through the diplomatic channel.

[For signatures and reservations see the table of signatures, *post, in fine.*]

[623]

III

CONVENTION RELATIVE TO THE OPENING OF HOSTILITIES

(For the heading see the Convention for the *pacific settlement of international disputes.*)

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.

[624]

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.

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.

[625]

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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

CONVENTION RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

(For the heading see the Convention for the pacific settlement of international disputes.)

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 [627] unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment 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.

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 [628] 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 certi-

fied 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 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 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) 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

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 labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection 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 honor, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

[631] 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 honor, 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 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, 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 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.

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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.

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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 defense, 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.

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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 pretenses, he obtains or endeavors 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.

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CHAPTER IV.—*Capitulations*

ARTICLE 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

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 theater 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.

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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 defense.

ARTICLE 45

It is forbidden to compel the population of occupied territory to swear allegiance to the hostile Power.

ARTICLE 46

Family honor 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.

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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.

**CONVENTION RESPECTING THE RIGHTS AND DUTIES OF
NEUTRAL POWERS AND PERSONS IN CASE
OF WAR ON LAND**

(For the heading see the Convention for the pacific settlement of international disputes.)

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.

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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.

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.

[640] 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 theater 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.

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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 favor 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 favor 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.

[642] 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.

[643] 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

CONVENTION RELATIVE TO THE STATUS OF ENEMY MERCHANT SHIPS AT THE OUTBREAK OF HOSTILITIES

(For the heading see the Convention for the pacific settlement of international disputes.)

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.

[645] 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 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.

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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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

**CONVENTION RELATING TO THE CONVERSION OF
MERCHANT SHIPS INTO WAR-SHIPS**

(For the heading see the Convention for the pacific settlement of international disputes.)

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.

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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.

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.

[649]

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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

**CONVENTION RELATIVE TO THE LAYING OF AUTO-
MATIC SUBMARINE CONTACT MINES**

(For the heading see the Convention for the pacific settlement of international disputes.)

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;
- [651] 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 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.

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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.

[653] 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

CONVENTION CONCERNING BOMBARDMENT BY NAVAL FORCES IN TIME OF WAR

(*For the heading see the Convention for the pacific settlement of international disputes.*)

Animated by the desire to realize the *vœu* 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.

[655] A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbor.

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 harbor, 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.

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 colored triangular portions, the upper portion black, the lower portion white.

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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 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 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.

[657]

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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

**CONVENTION FOR THE ADAPTATION TO MARITIME WAR-
FARE OF THE PRINCIPLES OF THE GENEVA
CONVENTION**

(For the heading see the Convention for the pacific settlement of international disputes.)

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.

[659]

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 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 meter 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 meter 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.

[660] 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.

[661]

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 their 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.

[662]

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 military insignia, 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.

[663] 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

**CONVENTION RELATIVE TO CERTAIN RESTRICTIONS WITH
REGARD TO THE EXERCISE OF THE RIGHT OF
CAPTURE IN NAVAL WAR**

(For the heading see the Convention for the pacific settlement of international disputes.)

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 [665] 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.

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.

[666]

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 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 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 11

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 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 12

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 *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 has been received by the Netherland Government.

[667]

ARTICLE 13

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 14

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 10, paragraphs 3 and 4, as 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

**CONVENTION RELATIVE TO THE CREATION OF AN
INTERNATIONAL PRIZE COURT**

(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 which sometimes arise in the course of a naval war in connection with the decisions of national prize courts;

Considering that, if these courts are to continue to exercise their functions in the manner determined by national legislation, it is desirable that in certain cases an appeal should be provided, under conditions conciliating, as far as possible, the public and private interests involved in matters of prize;

Whereas, moreover, the institution of an international court, whose jurisdiction and procedure would be carefully defined, has seemed to be the best method of attaining this object;

Convinced, finally, that in this manner the hardships consequent on naval war would be mitigated; that, in particular, good relations will be more easily maintained between belligerents and neutrals and peace better assured;

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:

PART I.—General Provisions

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.

[669]

ARTICLE 2

Jurisdiction in matters of prize is exercised in the first instance by the prize courts of the belligerent captor.

The judgments of these courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

ARTICLE 3

The judgments of national prize courts may be brought before the International Prize Court:

1. When the judgment of the national prize courts affects the property of a neutral Power or individual;
2. When the judgment 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 judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law.

ARTICLE 4

An appeal may be brought:

1. By a neutral Power, if the judgment 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 judgment 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 judgment 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 [670] 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 judgment has been given in first instance or only after an appeal.

If the national courts fail to give final judgment within two years from the date 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 the belligerent captor and a Power which is itself or whose subject or citizen 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 judgment in accordance with the general principles of justice and equity.

The above provisions apply equally 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 enactments of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

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 pronounces the capture to be null, the Court can only be asked to decide as to the damages.

ARTICLE 9

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.

PART II.—*Constitution of the International Prize Court*

ARTICLE 10

The International Prize Court is composed of judges and deputy judges, who will be appointed by the contracting 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.

[671]

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 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.

ARTICLE 17

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.

[672] No judge or deputy judge can, during his tenure of office, appear as agent or advocate before the International Prize Court nor act for one of the parties in any capacity whatever.

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.

ARTICLE 19

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 20

The judges on the International Prize Court are entitled to traveling allowances in accordance with the regulations in force in their own country, and in addition receive, while the Court is sitting or while they are carrying out duties conferred 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 in Article 47, and are paid through the International Bureau established by the Convention of July 29, 1899.

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 21

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 22

The Administrative Council fulfils, with regard to the International Prize Court, the same functions as to the Permanent Court of Arbitration, but only representatives of contracting Powers will be members of it.

ARTICLE 23

The International Bureau acts as registry to the International Prize Court 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 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.

[673] 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 centers 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

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).

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.

[674]

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.

ARTICLE 31

If the appellant does not enter his appeal within the period laid down in Articles 28 or 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 his entering it before had ceased to operate, the Court can, after hearing 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 forthwith officially transmitted by the Court to the respondent.

ARTICLE 33

If, in addition to the parties who are before the Court, there are other parties concerned who are entitled to appeal, or if, in the case referred to in Article 29, paragraph 3, the Government who has received notice of an appeal has not announced its decision, the Court will await before dealing with the case the expiration of the period laid down in Articles 28 or 30.

ARTICLE 34

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 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.

[675]

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 judgment in accordance with the material at its disposal.

ARTICLE 41

The Court officially notifies to the parties decrees or decisions made in their absence.

ARTICLE 42

The Court determines without restraint the value to be given to all the facts, evidence, and oral statements.

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 of judges is even and equally divided, the vote of the junior judge in the order of precedence laid down in Article 12, paragraph 1, is not counted.

ARTICLE 44

The judgment 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.

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 of the case, together with copies of the various decisions arrived 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 the trial, and also pays 1 per cent of the value of the subject-matter of the

[676] case as a contribution to the general expenses of the International Court. The amount of these payments is fixed in the judgment of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to an 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 47

The general expenses of the International Prize Court are borne by the contracting Powers in proportion to their share in the composition of the Court as laid down in Article 15 and in the annexed table. The appointment of deputy judges does not involve any contribution.

The Administrative Council applies to the Powers for the funds requisite for the working of the Court.

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.

[677] 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.

ARTICLE 53

The Powers referred to in Article 15 and in the table annexed 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. 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 [678] 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.

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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

[679]

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
<i>First Year</i>		<i>Second Year</i>	
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
<i>Third Year</i>		<i>Fourth Year</i>	
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
<i>Fifth Year</i>		<i>Sixth Year</i>	
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

**CONVENTION CONCERNING THE RIGHTS AND DUTIES
OF NEUTRAL POWERS IN NAVAL WAR**

(For the heading see the Convention for the pacific settlement of international disputes.)

With a view to harmonizing the divergent views which, in the event of naval war, 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;

Seeing that, in cases not covered by the present Convention, 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, these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has 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 as their plenipotentiaries, to wit:

[Here follow the names of plenipotentiaries.]

[681] Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

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.

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.

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 of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with belligerent forces on land or sea.

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.

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.

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. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel in-
[682] tended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the 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 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.

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 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, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

ARTICLE 15

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be 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 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.

[683] 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.

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, 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 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.

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 an 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.

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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 sequestered 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 the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for 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 neutral territory without permission.

ARTICLE 25

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

ARTICLE 26

The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

ARTICLE 27

The contracting Powers shall communicate to each other in due course all laws, proclamations, and other enactments regulating in their respective countries the status of belligerent war-ships in their ports and waters, by means of a communication addressed to the Netherland Government, and forwarded immediately by that Government to the other contracting Powers.

ARTICLE 28

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 29

The present Convention shall be ratified as soon as possible.

The ratification shall be deposited at The Hague.

[685] 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 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.

[686] 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

DECLARATION PROHIBITING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS

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 discharge 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.

[688] 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

**FINAL ACT OF THE SECOND INTERNATIONAL
PEACE CONFERENCE**

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 Councilor 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, Quartermaster 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 Councilor, member of the Prussian Upper Chamber, and Crown Syndic, scientific delegate ;

Mr. GÖPPERT, Counselor of Legation and Counselor attached to the Department for Foreign Affairs, assistant delegate ;

Mr. RETZMANN, Lieutenant Commander on the Naval General Staff, assistant naval delegate.

[690] 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 ;

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 Councilor 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 Councilor, 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 Councilor at the Ministry of the Imperial and Royal Household and of Foreign Affairs, delegate;

[691] Mr. JULIUS SZILÁSSY VON SZILÁS UND PILIS, Counselor 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, Honorary General, 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.

[692] China:

His Excellency Mr. LOU TSENG-TSIANG, Ambassador Extraordinary, delegate plenipotentiary;

His Excellency the Honorable 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.

[693] 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;

Rear 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 Honorable 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 Honorable 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 Honorable 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 EDMUND 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, Counselor of Embassy, technical delegate, first secretary to the delegation;

[694] Mr. CECIL HURST, Counselor of Embassy, technical delegate, legal adviser to the delegation;

Lieutenant Colonel the Honorable HENRY YARDE-BULLER, D.S.O., Military Attaché at The Hague, technical delegate;

Commander J. R. SECRAVE, 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 BRUSATI DI VERGANO, Senator of the Kingdom, Ambassador of His Majesty the King at Paris, member of the Permanent Court of Arbitration, president of the Italian delegation, delegate plenipotentiary;

His Excellency Mr. GUIDO POMPILJ, Parliamentary Deputy, Assistant Secretary of State at the Royal Ministry for Foreign Affairs, delegate plenipotentiary;

Mr. GUIDO FUSINATO, Councilor 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;

[695] His Excellency Mr. AIMARO SATO, Envoy Extraordinary and Minister Plenipotentiary at The Hague, second delegate plenipotentiary;

Mr. HENRY WILLARD DENISON, Legal Advisor 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 Councilor, Russian Ambassador at Paris, delegate plenipotentiary;

His Excellency Mr. MARTENS, Privy Councilor, permanent member of the Council of the Imperial Russian Ministry for Foreign Affairs, delegate plenipotentiary;

His Excellency Mr. TCHARYKOW, Councilor 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 Storting, technical delegate.

Panama:

Mr. BELISARIO PORRAS, delegate plenipotentiary.

[696] 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, Councilor 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;

[697] 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 Councilor, Russian Ambassador at Paris, delegate plenipotentiary;

His Excellency Mr. MARTENS, Privy Councilor, 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, Councilor of State, Chamberlain, Envoy Extraordinary and Minister Plenipotentiary at The Hague, delegate plenipotentiary;

Mr. PROZOR, Councilor 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 Arbitra-
 tion, 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. CORRAGONI D'ORELLI, Counselor of Legation at Paris, delegate plenipo-
 tentiary;

Captain LUANG BHÜVANARTH NARÜBAL, delegate plenipotentiary.

[698] 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 plenipoten-
 tiary;

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 TURKIHAN 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 [699] 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 discharge 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.

[700] 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 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 for the creation of a Court of Arbitral Justice,¹ 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 program 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.

[701] 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 program of this Third Conference a sufficient time in

¹ *Post*, p. 690 [702].

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 program 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 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 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.

[For the signatures and reservations see the table of signatures, *post, in fine.*]

[702]

Annex to the First Vœu Uttered by the Second Peace Conference.

**DRAFT CONVENTION RELATIVE TO THE CREATION OF A
COURT OF ARBITRAL JUSTICE**

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. [703] The deputy judges are assimilated, in the exercise of their functions, with the judges. They rank, however, below the latter.

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 traveling 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.

[704]

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.

[705]

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 traveling 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.

[706]

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 judgment 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.

[707]

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.

TABLE OF STATES SIGNATORIES
OF THE
CONVENTIONS, DECLARATION, AND FINAL ACT
OF THE
SECOND PEACE CONFERENCE

SIGNATURES AFFIXED AND RESERVATIONS FORMULATED UP
TO JANUARY 10, 1908

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 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	XV Final Act	
							S	..... Germany 1.
							S	United States of 2.
S	S	S	S	S	..... S	S	S	..... America 3.
S	S	S	S	S	S	S	S	Argentine Re- 3.
.....	.....	.....	.....	.....	.....	.....	.....	..... public
S	S	S	S	S	S	S	S	Austria-Hungary 4.
S	S	S	S	S	S	S	S	..... Belgium 5.
S	S	S	S	S	S	S	S	..... Bolivia. 6.
S	S	S	S	S	S	S	S	..... Brazil 7.
S	S	S	S	S	S	S	S	..... Bulgaria 8.
.....	S R	S	S	S R	S	S	S	..... Chile 9.
S	.....	S	S	S	S	S	S	..... China 10. [713]
S	S	S	S	S R	S	S	S	..... Columbia 11.
.....	S	S	S	S	.....	.....	S	..... Cuba 12.
.....	S	S	S	S	.....	.....	S	..... Denmark 13.
S R	S	S	S	.....	S R	S	S	Dominican Re- 14.
.....	.....	.....	.....	.....	.....	.....	S	..... public
.....	.....	.....	.....	.....	.....	.....	S	..... Ecuador 15.
.....	.....	.....	.....	.....	.....	.....	S	..... Spain 16.
.....	.....	.....	.....	.....	.....	.....	S	..... France 17.
.....	.....	.....	.....	.....	.....	.....	S	... Great Britain 18.
S	S	S	S	.....	S	S	S	..... Greece 19. [715]
S	S	S	S	S R	S	S	S	..... Guatemala 20. [715]
S	S	S	S	S R	S	S	S	..... Haiti 21.
.....	.....	.....	.....	.....	.....	.....	S	..... Italy 22.
.....	S Japan 23.
S	S	S	S	S	S	S Luxembourg 24.
.....	S Mexico 25.
.....	S	S	S	S	... Montenegro 26. [717]
.....	S Nicaragua 27.
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S	S	S	S	S	S	S	S	... Netherlands 31.
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.....	S Portugal 34.
.....	S Roumania 35.
S	S	S	S	S R	S	S	S Russia 36.
S	S	S	S	S R	S	S	S Salvador 37.
S	S	S	S	S R	S	S	S Serbia 38.
S R	S	S	.....	S	S R	S	S	..... Siam 39.
.....	.....	.....	.....	.....	.....	.....	S	..... Sweden 40.
.....	.....	.....	.....	.....	.....	.....	S R	... Switzerland 41. [719]
.....	.....	.....	.....	.....	.....	.....	.....	..... Turkey 42.
S	S	S	S	S R	S	S	S	..... Uruguay 43.
S	S	S	S	S R	S	.....	S	..... Venezuela 44.

[S signed
R = reservation]

[720]

RESERVATIONS**I****United States of America**

Under reservation of the declaration made in the plenary session of the Conference of October 16, 1907.

Brazil

With reservation as to Article 53, paragraphs 2, 3 and 4.

Chile

Under reservation of the Declaration formulated with regard to Article 39 in the seventh session of October 7 of the First Commission.

Greece

With reservation of paragraph 2 of Article 53.

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 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.

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

With the reservation stated to the First Commission.

Colombia

Colombia makes the following reservations: She does not agree to the employment of force in any case for the recovery of debts, whatever be their nature. She accepts arbitration only after a final decision has been rendered by the courts of the debtor nations.

Dominican Republic

With the reservation made at the plenary session of October 16, 1907.

[721]

Greece

With the reservation made at the plenary session of October 16, 1907.

Guatemala

1. With regard to debts arising from ordinary contracts between the citizens or subjects of a nation and a foreign Government, recourse shall be had to arbitration only in 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.

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.

Peru

With 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.

Salvador

We make the same reservations as the Argentine Republic above.

Uruguay

Under reservation of the first 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.

IV**Montenegro**

With the reservations formulated in Article 44 of the Regulations annexed to the present Convention and contained in the minutes of the fourth plenary session of August 17, 1907.

Russia

With the reservations formulated in Article 44 of the Regulations annexed to the present Convention and contained in the minutes of the fourth plenary session of August 17, 1907.

V

Argentine Republic

The Argentine Republic makes reservation of Article 19.

[722]

VI

Russia

With the reservations formulated in Article 3 and Article 4, paragraph 2, of the present Convention, and embodied in the minutes of the seventh plenary session of September 27, 1907.

VIII

Dominican Republic

With reservation as to the first paragraph of Article 1.

Siam

With reservation of Article 1, paragraph 1.

IX

Chile

With reservation of Article 3, formulated during the fourth plenary session of August 17.

X

Persia

With reservation of the right, recognized by the Conference, to use the Lion and Red Sun instead of and in the place of the Red Cross.

XII

Chile

With reservation of Article 15, formulated at the sixth plenary session of September 21.

Cuba

With reservation of Article 15.

Guatemala

With the reservations formulated concerning Article 15.

[723]

Haiti

With the reservation regarding Article 15.

Persia

With reservation of Article 15.

Salvador

With reservation of Article 15.

Siam

With reservation of Article 15.

Uruguay

With reservation of Article 15.

XIII**Dominican Republic**

With reservation regarding Article 12.

Persia

With reservation of Articles 12, 19 and 21.

Siam

With reservation of Articles 12, 19 and 23.

XV**Switzerland**

With reservation of *van* No. 1, which the Federal Council did not accept.

SCAP
LEGAL SECTION
LAW DIVISION

SCAP
LEGAL SECTION
LAW DIVISION

