

# MINUTES

OF THE

CONFERENCE OF STATES SIGNATORIES

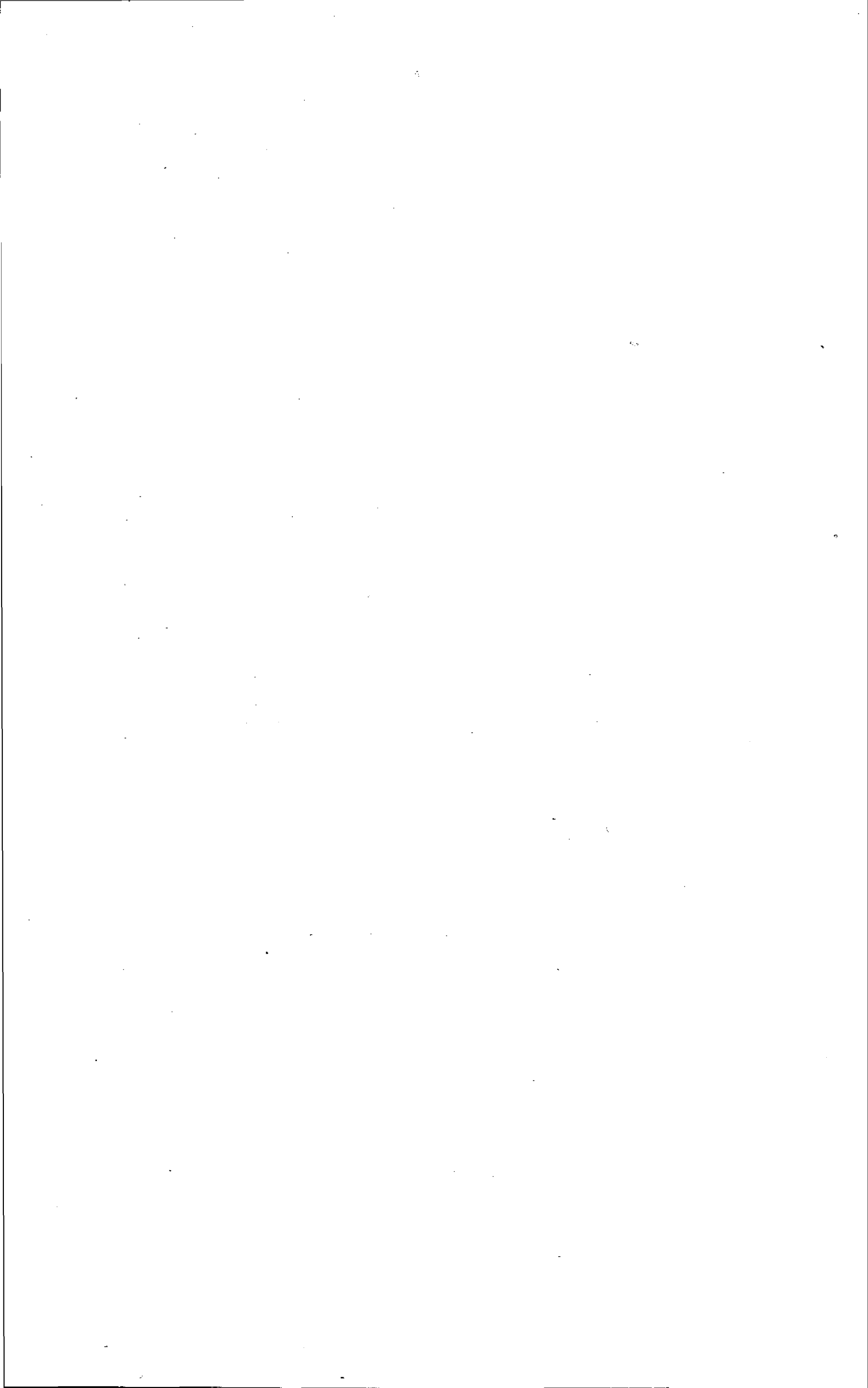
OF THE PROTOCOL OF SIGNATURE OF THE

STATUTE OF THE

PERMANENT COURT OF INTERNATIONAL JUSTICE

Held at Geneva from September 1st to 23rd, 1926.

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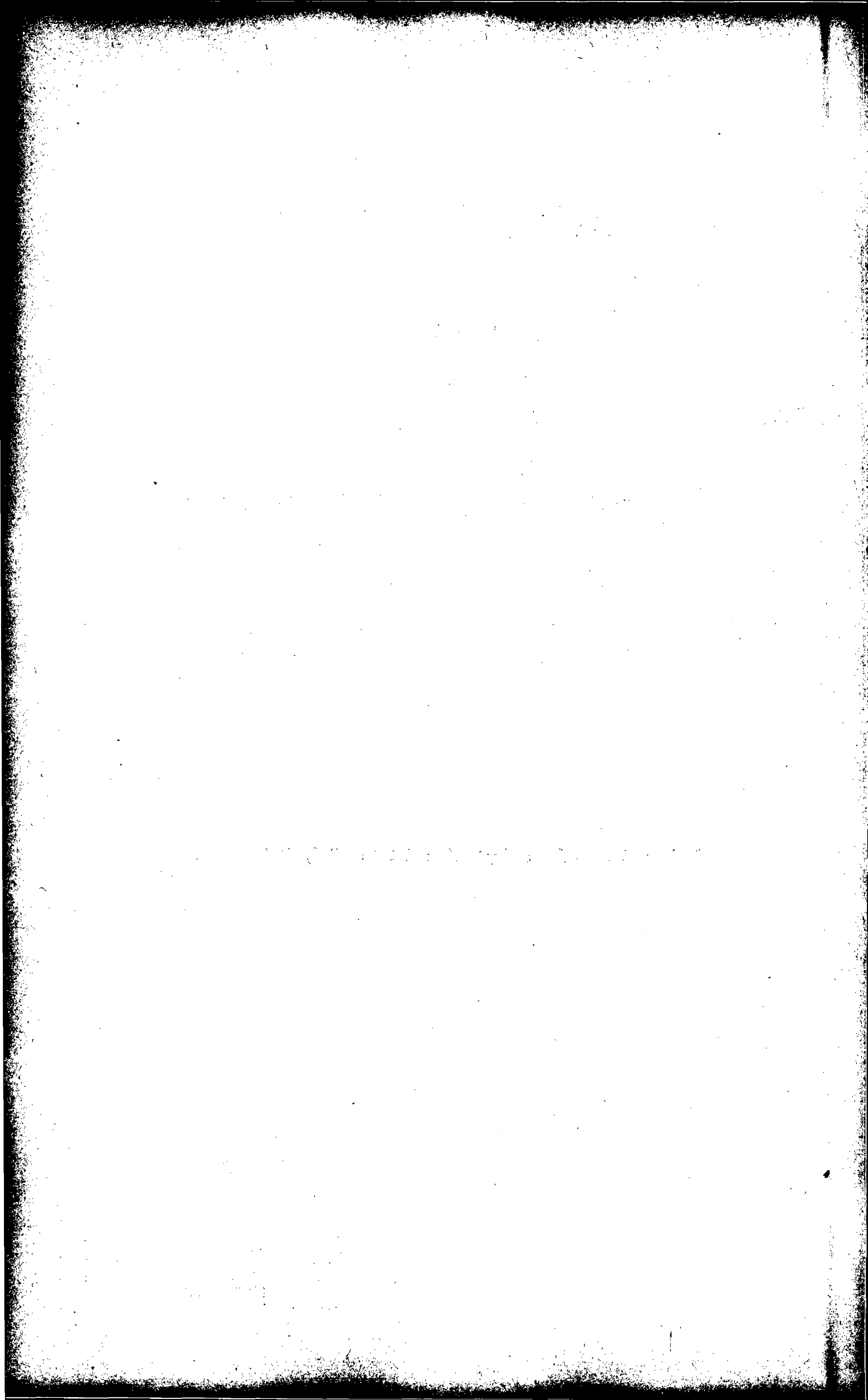
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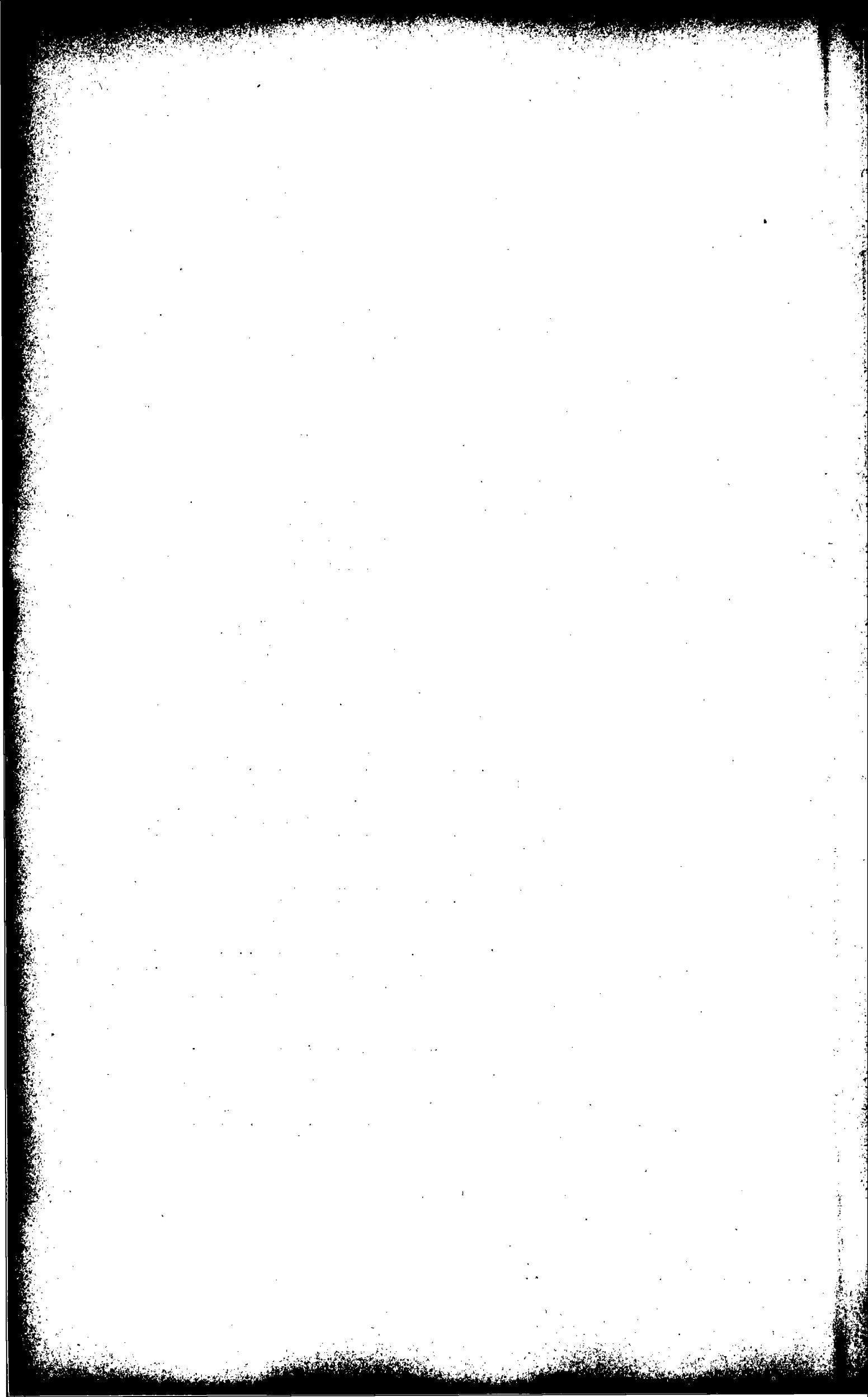
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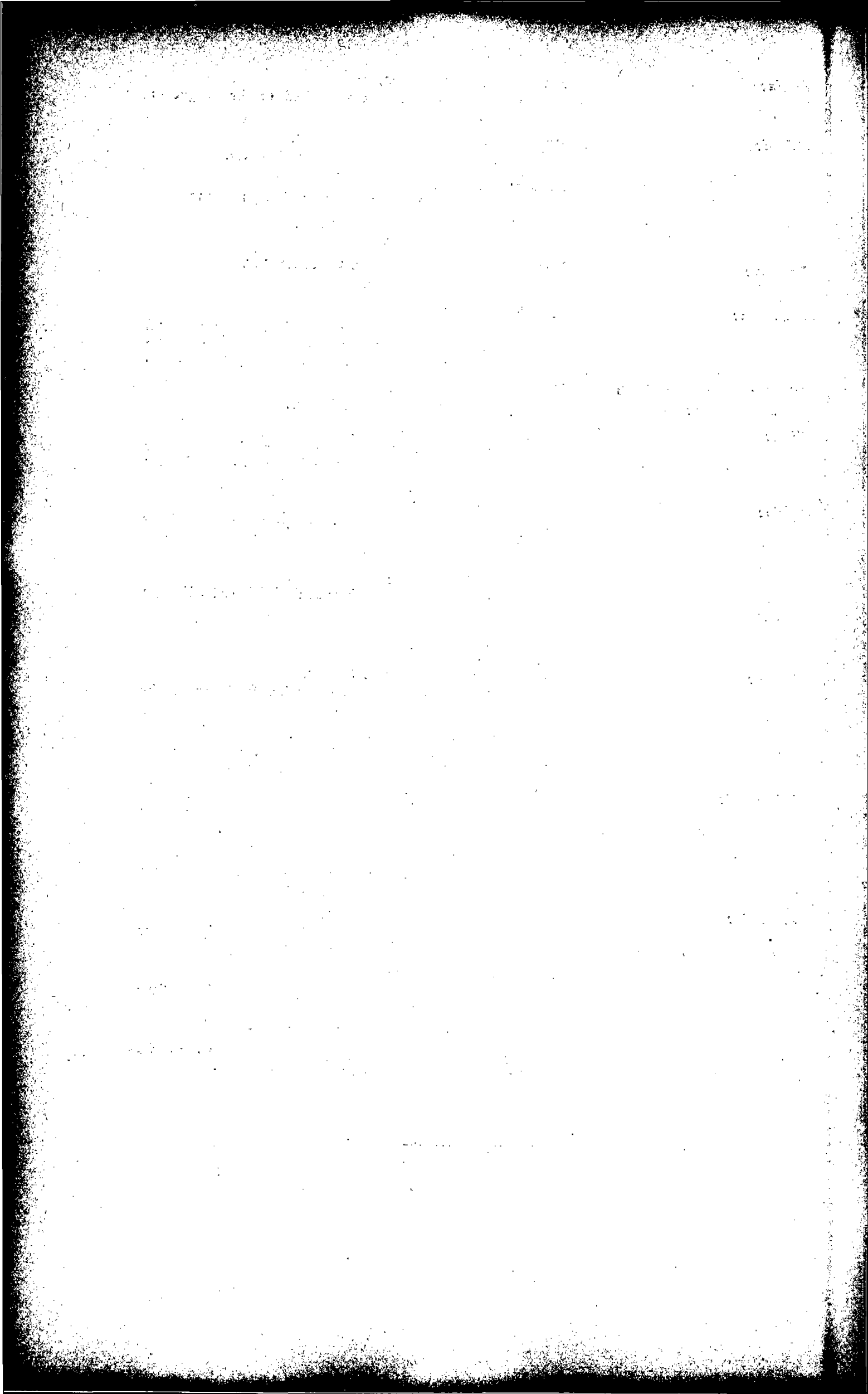
LIST OF DELEGATES AT THE CONFERENCE.

- Union of South Africa:* Mr. J. S. SMIT,  
High Commissioner in London.
- Albania:* His Excellency M. Ilias VRIONI,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to His Excellency the President of the French  
Republic and to His Britannic Majesty.  
His Excellency Dr. Djemil DINO,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to His Majesty the King of Italy.
- Australia:* The Honourable J. G. LATHAM, C.M.G., K.C.,  
Attorney-General of the Commonwealth of Australia.
- Austria:* Dr. Marc LEITMAIER,  
Ministerial Counsellor.
- Belgium:* M. H. ROLIN,  
Chef de Cabinet of the Minister for Foreign Affairs.
- British Empire:* Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C.,  
Legal Adviser to the British Foreign Office.
- Bulgaria:* His Excellency M. V. MOLLOFF,  
Minister of Finance.  
Substitute: M. Dimitri MIKOFF,  
Chargé d'Affaires at Berne, Permanent Representative  
of the Bulgarian Government accredited to the League  
of Nations.
- Canada:* The Right Honourable Sir George Eulas FOSTER, G.C.M.G.,  
Member of the King's Privy Council for Canada.
- China:* His Excellency M. CHAO-HSIN CHU,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to His Majesty the King of Italy.
- Czechoslovakia:* His Excellency M. OSUSKY,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to His Excellency the President of the French  
Republic, Delegate of Greece, Poland, Roumania, the  
Kingdom of the Serbs, Croats and Slovenes, and Czecho-  
slovakia at the Reparation Commission.
- Denmark:* His Excellency M. A. DE OLDENBURG,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to the Swiss Federal Council. Permanent Danish  
Representative accredited to the League of Nations.
- Dominican Republic:* M. Tulio FRANCO FRANCO,  
Chargé d'Affaires at Paris, Rome and Brussels.
- Estonia:* M. A. SCHMIDT,  
Director of Political Questions at the Foreign Office.
- Finland:* His Excellency M. Rafael ERICH,  
Minister Plenipotentiary, Permanent Representative of  
Finland accredited to the League of Nations.
- France:* M. Henri FROMAGEOT,  
Legal Adviser to the Ministry for Foreign Affairs.  
Substitute: M. le Comte CLAUZEL,  
Minister Plenipotentiary, Head of the French League of  
Nations Service.

- Greece:* M. Vassili DENDRAMIS,  
Chargé d'Affaires at Berne, Permanent Representative  
of the Greek Republic accredited to the League of  
Nations.  
Substitute: M. Panayotis PIPINELLIS,  
Secretary at the Ministry for Foreign Affairs.
- Hungary:* M. P. DE HEVESY,  
Resident Minister accredited to the League of Nations.
- India:* Sir William Henry Hoare VINCENT, G.C.I.E., K.C.S.I.,  
Member of the Council of the Secretary of State for India,  
Sir Edward Maynard DES CHAMPS CHAMIER, K.C.I.E.,  
Legal Adviser to the Secretary of State.
- Irish Free State:* M. Michael MACWHITE,  
Representative of the Irish Free State accredited to the  
League of Nations.
- Italy:* His Excellency M. Vittorio SCIALOJA,  
Senator, Italian Representative on the Council of the  
League of Nations.  
Substitute: M. Massimo PILOTTI,  
Member of the Court of Appeal, attached to the Ministry  
for Foreign Affairs.
- Japan:* M. Isaburo YOSHIDA,  
Counsellor of Embassy in London.
- Latvia:* M. Charles DUZMANS (unable to attend).  
Permanent Latvian Representative accredited to the  
League of Nations.  
M. Peter WELPS,  
Delegate *ad audiendum*.
- Liberia:* His Excellency Baron Rodolphe LEHMANN,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to His Excellency the President of the French  
Republic, Permanent Representative accredited to the  
League of Nations.  
Substitute: M. N. OOMS,  
First Secretary of Legation.
- Lithuania:* His Excellency M. V. SIDZIKAUSKAS,  
Envoy Extraordinary and Minister Plenipotentiary  
accredited to the President of the German Reich.
- Luxemburg:* M. Charles VERMAIRE,  
Consul at Geneva.
- Netherlands:* Jonkheer W. J. M. VAN EYSINGA,  
Professor at the University of Leyden.  
Assisted by: Baron F. M. VAN ASBECK,  
Professor of the Academy of Law at Batavia (Dutch  
East Indies).
- New Zealand:* The Right Honourable Sir Francis Henry Dillon BELL,  
G.C.M.G., K.C.,  
Member of the Executive Council of New Zealand.  
The Honourable Sir Christopher James PARR, K.C.M.G.,  
High Commissioner in London.
- Norway:* Dr. Frede CASTBERG,  
Adviser in International Law to the Ministry for Foreign  
Affairs.
- Panama:* His Excellency M. Guillermo ANDREVE,  
Former Minister of Panama in France and Colombia.  
His Excellency Dr. Eusebio A. MORALES,  
Minister of the Treasury.



- Persia:* His Highness Prince ARFA,  
First Delegate of Persia accredited to the League of Nations.
- Poland:* Professor Count Michel ROSTWOROWSKI,  
Rector of the Jagellons University, Cracovia.  
M. Léon BABINSKI,  
Legal Adviser to the Ministry for Foreign Affairs.  
Substitute: Dr. Titus KOMARNICKI,  
Ministerial Counsellor.
- Portugal:* His Excellency Dr. Auguste DE VASCONCELLOS,  
Minister Plenipotentiary.
- Roumania:* M. Démètre NEGULESCO,  
Substitute Judge of the Permanent Court of International Justice, Associate Member of the Institute of International Law, Professor at the University of Bucarest.
- Kingdom of the Serbs, Croats and Slovenes:* Dr. Lazare MARKOVITCH,  
Deputy, former Minister of Justice.
- Siam:* His Highness Prince CHAROON,  
Envoy Extraordinary and Minister Plenipotentiary accredited to His Excellency the President of the French Republic.
- Spain:* His Excellency M. Emilio DE PALACIOS,  
Ambassador accredited to His Majesty the King of the Belgians.  
Substitutes:  
M. Ramirez MONTESINOS,  
Chef du Cabinet diplomatique at the Ministry for Foreign Affairs.  
M. DE ARENZANA,  
Consul at Geneva.
- Sweden:* His Excellency Professor O. UNDEN,  
Former Minister for Foreign Affairs, Professor at the University of Upsala.  
Substitute: M. A. E. M. SJÖBORG,  
Envoy Extraordinary and Minister Plenipotentiary.  
Secretary-General of the Ministry for Foreign Affairs.
- Switzerland:* M. Paul DINICHERT,  
Minister Plenipotentiary, Head of the Division for Foreign Affairs in the Federal Political Department.
- Uruguay:* His Excellency Dr. Enrique E. BUERO,  
Envoy Extraordinary and Minister Plenipotentiary accredited to the Swiss Federal Council.
- Venezuela:* His Excellency M. César ZUMETA,  
Envoy Extraordinary and Minister Plenipotentiary accredited to His Majesty the King of Italy.  
His Excellency M. Diogenes ESCALANTE,  
Envoy Extraordinary and Minister Plenipotentiary to His Britannic Majesty.  
His Excellency M. Caracciolo PARRA-PEREZ,  
Former Special Plenipotentiary accredited to the Swiss Federal Council, Chargé d'Affaires at Berne.
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## FIRST MEETING

*Held at Geneva on Wednesday, September 1st, 1926, at 11 a.m.*

President: M. VAN EYSINGA.

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### 1. Election of the President and Vice-Presidents.

Sir Cecil HURST (British Empire) proposed the appointment of Jonkheer van Eysinga, delegate of the Netherlands, as Chairman of the Conference.

M. YOSHIDA (Japan), M. ZUMETA (Venezuela), Count CLAUZEL (France), Baron LEHMANN (Liberia) and M. NEGULESCO (Roumania) supported Sir Cecil Hurst's proposal.

M. VAN EYSINGA (Netherlands), *having been elected President by acclamation*, took the chair.

The PRESIDENT thanked his colleagues for the great honour which they had done to him personally and to his country by electing him President. He particularly thanked Sir Cecil Hurst and the delegations which had supported the proposal of the delegate of the British Empire.

The Netherlands would appreciate at its real value this first resolution adopted by the Conference which had wished to choose as its President the representative of the country in which the Permanent Court of International Justice had its seat.

He also thanked the officials of the International Labour Organisation on behalf of the Conference for having placed at its disposal the room in which it was meeting (Annex 1).

On the recommendation of the PRESIDENT, *the Conference decided to appoint two Vice-Presidents.*

M. PILOTTI (Italy) proposed the name of His Excellency M. Cesar Zumeta, delegate of Venezuela.

M. BUERO (Uruguay) proposed the name of Sir Francis Bell, delegate of New Zealand, as second Vice-President.

*These proposals were adopted by acclamation.*

M. ZUMETA (Venezuela) expressed his thanks for the honour done to his country by his appointment as Vice-President.

### 2. Rules of Procedure of the Conference.

The PRESIDENT thought that it was unnecessary to appoint a committee to draw up rules of procedure, as the delegates who were present had already often had occasion to work together at international conferences, and he proposed that the present Conference should use, if necessary, the rules of procedure of the Assembly of the League of Nations.

*This proposal was adopted.*

### 3. Verification of the Credentials of Delegates.

The PRESIDENT asked the members of the Conference whether they thought it necessary to appoint a committee for the verification of credentials. He thought that such a committee would be superfluous, as the Secretary-General of the Conference had a very full list of all the communications of the various Governments which had sent representatives to Geneva. A provisional edition of this list had already been distributed; a second and final edition would be issued later.

*It was decided not to appoint a committee on credentials.*

### 4. Publicity of the Meetings.

The PRESIDENT asked the members of the Conference whether they desired that the plenary meetings should be public. Personally, he was definitely in favour of publicity, as he considered that the subject with which the Conference was dealing was one of great importance and was of interest to many countries. The best way of preventing the dissemination of false news was to admit the Press and thus to ensure the speedy distribution of accurate information. Publicity was all the more desirable inasmuch as the discussions which had taken place in Washington and which had led up to the present Conference had themselves been public. It would be clearly understood that the Conference retained the right to hold a few private meetings if it thought fit, or to appoint committees or sub-committees which would not be public.

Sir George FOSTER (Canada) said he entirely agreed with the views expressed by the President. He thought that the Conference should not be subjected to the disadvantages which arose from conducting affairs in private. The world at large was waiting for news, and if it did not get it first hand reports which might not be correct would be spread broadcast

throughout the world. He lived in a country which was a near neighbour of the United States of America, where the discussions had been public. He thought it was very necessary that the Conference should adopt the same procedure.

*It was decided that the plenary meetings of the Conference should be public. The Conference reserved the right, however, if need be, to hold private meetings.*

*(The meeting was then opened to the public.)*

##### 5. Programme of the Conference.

The PRESIDENT said that, before the Conference began its real work, he would like to make certain preliminary observations. It was scarcely necessary to recall the events which had led up to the present Conference. All the members knew that at the beginning of this year, on January 27th, 1926, the Senate of the United States of America adopted a resolution (Annex 2) in which it declared itself in favour of the adhesion of the United States to the Protocol of Signature of December 16th, 1920, concerning the Statute of the Permanent Court of International Justice, while formulating a certain number of reservations which formed the basis of the future discussions of the present Conference. The resolution required the written acceptance of the five reservations formulated by the Senate of the United States on the part of each of the States signatories of the Protocol of Signature of the Statute of the Court.

In consequence of this resolution, the Secretary of State of the United States of America approached the various signatory Governments and asked them to give the desired reply in writing. A letter was also sent by the United States Government to the Secretary-General of the League of Nations. It was as a result of this communication that the Council of the League discussed the matter and that certain observations were made by the British representative. The British representative laid stress, in particular, on the fact that it was desired to make certain modifications in a multilateral instrument Act and that consequently a new Agreement was necessary. As a result of this discussion, the Council adopted a resolution (Annex 3) in which it proposed to the Governments signatories of the Statute of the Court and to the United States Government that they should send delegates to a Conference whose duty it would be to solve the problems raised by the United States reservations (Annexes 4 and 5). This invitation had been accepted by almost all the States signatories of the Protocol. The Washington Government, however, had decided, for the reasons set forth in its reply to the Secretary-General (Annex 6), to decline the invitation.

It might therefore be said that the present Conference was incomplete. The work for which it was summoned must nevertheless be carried out. In what spirit should that work be taken in hand?

He thought that Sir Austen Chamberlain had characterised it very happily in the observations to which he (the President) had just alluded when the British representative had said that satisfaction ought to be given to the wishes of the United States Government.

If the Conference required a *Leitmotiv* for its deliberations, it could not do better than to take its inspiration from these words of Sir Austen Chamberlain. For what reason? It appeared to him to be unnecessary to emphasise the great importance of the resolution of the Senate of the United States of America for the future life of the Court — the United States, which had, so to speak, been the pioneers of the great modern arbitration movement, so characteristic a phenomenon of contemporary world history; which had carried out this idea in its policy, especially as regards the settlement of the oftentimes very serious difficulties which had arisen between it and its former mother-country; which during the whole of the nineteenth century had stood at the head of the movement in favour of the development of arbitration institutions, international enquiries, conciliation and international jurisdiction; which, when the need arose to find new forms for the development of these institutions, had so often shown the way to the rest of the world; the United States of the Conventions of Knox and Bryan, whose noble effort in the matter of international jurisdiction at the two Peace Conferences of 1899 and 1907 had not been forgotten; the America of Elihu Root and John Bassett Moore, that worthy representative of the American people on the Permanent Court of International Justice — that was the country which had now made it known that it was prepared to adhere to the Statute of the Protocol of the Permanent Court of International Justice. The manifestation of that desire on the part of the United States of America sufficed to bring home to the Conference the importance of the problem which it had to solve.

Desirous as the Conference might be to follow the line recommended by Sir Austen Chamberlain, it could not lose sight of the fact that the constitutional law of the League of Nations also had its exigences. Some of the reservations formulated by the Washington Senate presupposed a modification of certain provisions of that constitutional law. It was therefore necessary to consider in what form such modification would be possible and to endeavour to reconcile the wishes of the United States of America with that constitutional law.

He finally reminded the delegates to the Conference that they were there solely as representatives of the States signatories of the Protocol of December 16th, 1920, concerning the Statute of the Permanent Court of International Justice. They were present in no other capacity. This was indeed the idea which was indicated in the reply from the Secretary of State of the United States of America to the Secretary-General of the League, in which he contemplated that the States signatories of the Protocol of Signature of December 16th, 1920, might desire to confer together. He would, moreover, point out that the Conference

was not even sitting at the headquarters of the League of Nations, and he would take this opportunity of renewing his thanks to the officials of the International Labour Organisation for their hospitality.

The President observed that the Conference had to consider five reservations. He proposed that it should first consider their substance and then the legal form in which any resolutions adopted by the Conference, with a view to meeting the wishes of the United States of America, might be drawn up.

#### 6. Examination of the First Reservation formulated by the United States Senate.

The PRESIDENT read the resolution of the United States Senate, which was drawn up in the following terms :

" Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923, asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the Optional Clause for compulsory jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

" Therefore be it

" Resolved (two-thirds of the Senators present concurring) that the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for compulsory jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely : "

The first reservation read as follows :

" That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles. "

He asked the Conference to express its views with regard to the substance of this reservation. He, for his part, considered that there was a close connection between the Permanent Court of International Justice on the one hand and the League of Nations on the other. The United States of America, which did not desire, for the moment at any rate, to become a Member of the League, had manifested its intention of signing the Statute of the Court. In these circumstances, it was comprehensible that the Government of the United States of America should have desired to emphasise the fact that its relations with the Court would not imply any legal relation to the League of Nations.

M. ROLIN (Belgium) thought that this reservation would not give rise to any difficulty. If the Conference referred to the resolution concerning the establishment of the Permanent Court of International Justice, it would see that the Protocol of the Court had been opened for signature not only by the States Members of the League but also by the States mentioned in the Annex to the Covenant. The United States reservation therefore merely expressed the legal situation. The United States of America (a State not a Member of the League) could adhere to the Protocol of the Court without its adhesion involving any acceptance or recognition of the League of Nations.

The PRESIDENT thought that all the members of the Conference would share this opinion. In these circumstances, the Conference could but accept the first reservation.

*The President's proposal was adopted.*

#### 7. Examination of the Second Reservation formulated by the United States Senate.

The PRESIDENT read the second reservation as follows :

" That the United States shall be permitted to participate, through representatives designated for the purpose and upon an equality with the other States Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies. "

The President observed that the appointment of the judges and deputy-judges of the Court had been provided for and regulated in Articles 4-8 of the Statute of the Court. The United States desired to be able to collaborate in such appointments on a footing of equality with the States Members of the League of Nations.

If there were no difficulty as regards the substance of the reservation, it would be a question of modifying certain provisions of the constitutional law of the League.

M. ROLIN (Belgium) desired to make a reservation with regard to the view expressed by the President. He quite agreed that, in principle, the adhesion — which was in fact provided for in the Protocol — of a State not a Member of the League of Nations involved, in all fairness, participation on a footing of equality in the election of the members of the Court.

He did not think that this would necessitate a modification of the constitutional rules, but as the President had stated that the present debate concerned only a question of form he would not enter into any further discussion on the point.

The PRESIDENT asked the Belgian delegate whether he desired to put forward any objection to the substance of the reservation.

M. ROLIN (Belgium) replied in the negative.

Sir Cecil HURST (British Empire) said he would like to make it clear that for the purposes of the present discussion any action taken by the Conference in connection with any one of these reservations — by the term "reservations" he meant the paragraphs of the Senate resolution — would not preclude its returning, if necessary, in the course of the discussion to those already examined. He supposed that the Conference was at present undertaking a first reading or preliminary discussion of the various paragraphs of the resolution, and it would be able, after having passed on to another reservation, to return, if necessary, to one already considered.

There was a close connection between the successive paragraphs of the resolution, and it might be necessary, when discussing the details of one of the later reservations, to return to an earlier passage. He wished to be sure that, if he made no observations for the moment, he would be able to do so later, if necessary.

The PRESIDENT thought that Sir Cecil Hurst had rightly interpreted the views of the Conference. It was at present engaged on a first reading and each delegation would have the right to revert to the reservations which had already been discussed.

He asked whether Sir Cecil Hurst had any observation to make with regard to the substance of the second reservation.

Sir Cecil HURST (British Empire) replied that he saw no serious objection in principle to the paragraph of the United States resolution then under discussion. It appeared to him that if a State desired to participate in the work of the Court so closely as to become a member and to bear a part of the expenses, it was reasonably entitled to ask for a share in the election of the judges and the deputy-judges of the Court. This matter would, of course, require very careful consideration when the Conference came to discuss the question of the form in which effect could be given to the resolution. As regards the question of principle, however, he saw no serious objection to the adoption of the rule that the United States of America, if it adhered to the Protocol and participated in the expenses of the Court, should be allowed to participate in the election of the judges and deputy-judges.

The PRESIDENT asked if any other members of the Conference had any objections to raise to the second reservation.

As no other member expressed a desire to speak, he announced that the substance of the second reservation of the United States Senate had, at the first reading, given rise to no objection.

#### **8. Examination of the Third Reservation formulated by the United States Senate.**

The PRESIDENT read the third reservation as follows :

" That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States. "

The President thought that this paragraph, which could hardly be called a reservation since it consisted in an offer to participate in the expenses of the Court, gave rise to no objection.

*Agreed.*

#### **9. Examination of the Fourth Reservation formulated by the United States Senate.**

The PRESIDENT read the fourth reservation as follows :

" That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States. "

The President pointed out that this paragraph dealt primarily with the denunciation of the Protocol of December 16th, 1920, concerning the Statute of the Court and the modification of the regulations contained in the latter instrument. The United States desired to have the right to withdraw its adherence to the Protocol at any time. It also desired that the Statute of the Court should not be modified without its consent.

The President invited the members of the Conference to express their opinions.

M. OSUSKY (Czechoslovakia) observed that in the Statute of the Court no reference was made to the question of denunciation. The Conference must remember, however, that

the Statute was an international convention and that every international convention of the same type as the Statute of the Court implied the right of denunciation, even if no formal provision were made for it. In the absence of any provision to the contrary, the same rule applied to the right to participate in any amendments that might eventually be made in the Statute, since an international convention could not be amended without the consent of all the signatories.

He therefore had no objection of principle to raise.

Sir George FOSTER (Canada) said that the reservation under consideration fell into two parts, and he proposed to raise a question with reference to the second part.

As regards the first part of the reservation, namely, the right of the United States of America to withdraw at any time its adhesion to the Protocol, there could be no doubt that it had such a right. He saw no objection to this.

The effect of the second part of the reservation would be to prevent the League of Nations from ever making a change in the Statute without the consent of the United States of America. The distinction between the United States of America and the States Members of the League was perfectly clear.

According to the first reservation, the United States, quite naturally and with perfect right, contracted itself out of any obligation or duty imposed upon the States Members of the League in carrying out the purposes of the League. The States, however, which assumed the responsibility of carrying out the purposes of the League were called upon to consider ways and means and methods of action. This was a question with which they were continually faced. The United States of America was entirely outside the League and did not take any part in carrying out the obligations of the League. Members of the League of Nations would, therefore, if the extreme interpretation were placed upon the reservation, be giving the United States the power to prevent by its refusal any future change in the Statute of the Court.

If the Conference accepted this situation without any explanation or reservation, would not the League, if ever it became patent to its fifty-five Members that some change should be made in the Statute of the Court, be prevented from making that change, owing to the absence of consent on the part of the United States of America? If, however, the situation were such that, so long as the United States of America was a member of the Court, there should be no change without its consent, nobody would object. He thought that some explanatory note should be made concerning the question whether it was possible for the United States of America to prevent any amendment to the Statute either by protesting against such a change or by refusing its consent thereto. This was a very important point and he would like to hear some lawyers' opinions on the matter.

M. ROLIN (Belgium) reminded the Conference that it had just heard M. Osusky's opinion with regard to the first point, namely, denunciation. He thought that his colleagues would be agreed in recognising that, if the United States of America were free to adhere to the Protocol, it was equally at liberty to withdraw its adhesion. The general opinion expressed by M. Osusky, namely, that any signatory State had the right of denunciation, ought not to be recorded without protest, because the utmost prudence was required when discussing matters in public.

The Protocol of the Permanent Court of International Justice was twofold in character. First, it was an international Convention of the ordinary type, but it was also an international Convention constituting a Court of Justice expressly provided for in Article 14 of the Covenant of the League. The Assembly of the League itself settled the expenditure of that organisation, its budget, the fees of the judges and the allocation of the expenditure. There would be terrible complications if Members of the League, who had recognised the Court of Justice as the organ provided for in the Covenant and who had, during a certain number of years, contributed to the expenses of the Court, were suddenly to declare that the Court at The Hague was not the organisation contemplated by the Covenant of the League, were to denounce their adhesion to the Protocol, and, as Members of the Council or of the Assembly, were to refuse to agree that requests for advisory opinions should be addressed to that Court. This would mean destroying one of the most essential organs of the League.

M. Rolin was therefore of opinion that, if it were understood that the right of denunciation could be granted to a State not a Member of the League, the present Conference was not called upon to give an opinion with regard to the infinitely more serious question whether a State might remain a Member of the League and yet denounce the Protocol of the Permanent Court of International Justice. With regard to that point he wished to make formal reservations.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) stated that he had no objection to raise to the first part of this reservation. Even if it should place the United States in an exceptional situation, and if it should mean that its adhesion might be withdrawn at any moment, he would accept it, as he realised how necessary it was that the United States of America should adhere to the Permanent Court of International Justice. He agreed entirely with the Belgian delegate's view that the States Members of the League did not possess the option of withdrawing at any moment their adhesion to the Protocol.

With regard to the second part of the reservation, he agreed with the Canadian delegate. According to M. Osusky's statement, the question involved was the right claimed by the United States to take part in discussions concerning any amendments to the Statute of the Permanent

Court of International Justice; but, according to the text of the United States reservation, the question involved was that of its consent to any amendments which might be made to the Statute by the competent organ. If the latter were the case, he did not think it would be possible to accept the reservation in its present form. On the other hand, if the United States Government claimed the right to take part in discussions with a view to amending the Statute at any time, that right would naturally be granted. What remained to be settled was the highly important question of form: By what formula could a State not a Member of the League be permitted to participate in discussions taking place within the League? He reserved the right to revert to this question.

M. ERICH (Finland) entirely agreed with the reservations formulated by M. Rolin with regard to the position of a Member of the League and that of a State signatory to the Statute of the Permanent Court of International Justice. He also supported the argument put forward by the Belgian delegate concerning the consequences which would arise from the right to denounce the Statute of the Permanent Court.

M. BUERO (Uruguay) asked for information concerning the fourth reservation. He said that M. Rolin's statement with regard to the difference between the position of States adhering to the Court which were Members and non-Members of the League accurately defined the situation. But what would be the position of a Member of the League which had adhered to the Protocol if modifications were made in the Statute of the Court? Could any Member signatory of the Protocol prevent an amendment being made? Had any country the right of veto? Could a majority impose its views on the remainder? It was essential that these points should be clearly settled before considering the position of the United States of America, for, if a Member of the League of Nations had the right of veto, it must also be granted to the United States of America.

M. OSUSKY (Czechoslovakia) observed that if he had heard only M. Rolin's remarks he would have thought that the question under discussion was that of the adhesion of the United States of America to the League. That, however, did not seem to be the case. The duty of the Conference was to determine the situation and the position of members of the States which had adhered to the Statute of the Court and not the duties of the Members of the League.

He thought that any State, having adhered to an international Convention like the Statute of the Court, had the right to withdraw its adhesion; that was an elementary principle of common law. If the States which had adhered to the Statute of the Court were at the same time members of an association called the League of Nations, and if, in consequence, certain duties were imposed upon them, that question was outside the scope of the present Conference. Accordingly, M. Rolin's protest and reservations could not apply to the statements which he (M. Osusky) had just made.

With regard to the second part of the fourth reservation, and more especially to Sir George Foster's remarks concerning the right to participate in the amendments, M. Osusky considered that every State which had adhered to the Statute of the Court had that right so long as it remained a member of the Court. But, naturally, as soon as a State withdrew its adhesion, as soon as it denounced its signature to the Protocol of the Statute of the Court, it thereby forfeited all right to participate in the business of the Court or to take part in any amendments to its Statute.

M. DE VASCONCELLOS (Portugal) agreed with the opinion generally expressed by the members of the Conference with regard to the first part of the fourth reservation.

He desired, however, to raise another very important question. If a State Member of the League were now to propose an amendment to the Protocol of the Court, and if that amendment were adopted by a majority, had any State the right to oppose the decision of the majority? It had not. The case would be different if amendments could only be adopted by a unanimous vote. Since, however, a majority was sufficient, no one had the right to oppose the decisions of that majority.

M. DINICHERT (Switzerland) observed that the consideration of the fourth American reservation had raised an extremely complex question — that of the exact position of States Members of the League with regard to the Statute of the Court. This was to some extent a preliminary question upon which the attitude which the Conference might adopt towards the reservation would depend. The most widely different views had just been expressed, but it seemed to him that, although they appeared to be divergent, it would be possible to reconcile them. His hope was based upon the very origin of the Statute of the Court, which was the result of a unanimous resolution adopted by the Assembly of the League of Nations, followed by ratification on the part of the individual States Members of the League. The Permanent Court of International Justice provided for in the Covenant of the League had been established by a unanimous vote. It was therefore an accomplished fact.

Adhesion to the Statute by the individual States was another matter and, indeed, the Assembly, in adopting the Statute by a unanimous vote, had decided that it would have no legal effect until the majority of the States Members of the League had ratified it. The Assembly might obviously have chosen another method. It had adopted this one for reasons of expediency which could be readily understood. Consequently, a State could be a Member of the League without being a member of the Court, but a State, as long as it was a Member of the League, was bound, in relation to the Statute of the Court, by the provisions of the Covenant itself, even if the State in question had not ratified the Statute of the Court.



It would appear that the Statute was an international Convention of the collective type and could be denounced. As long as there were no provisions to the contrary, a State might withdraw at will, after having given reasonable notice of its intention. There was a further guarantee inherent in participation in a collective treaty, namely, that such a treaty could not be amended without the consent of each of its signatories. Speakers had referred to a veto, but the word did not appear to be very appropriate. What was necessary for the amendment of a treaty in the absence of express stipulations to the contrary was the consent of all the signatories.

Finally, he thought that the States signatories of the Statute had the right to withdraw when they desired, but that, as long as they had not done so, the Statute could not be modified without their consent.

M. BUERO (Uruguay) wished to point out that, with regard to the question under discussion, he had only asked for information and had not expressed his final opinion as regards the principle involved.

He reserved the right to reply to the Swiss delegate at the next meeting.

*The meeting rose at 1.35 p.m.*

## SECOND MEETING

*Held at Geneva on Wednesday, September 1st, 1926, at 4 p.m.*

President: M. VAN EYSINGA.

### 10. Examination of the Fourth Reservation formulated by the United States Senate. (Continuation.)

The PRESIDENT summed up the discussion begun at the morning meeting on the fourth reservation. He repeated that there were only two fundamental points under discussion at the moment: (1) could the United States of America, when it had become a signatory of the Statute of the Court, withdraw its adhesion to the Protocol? (2) Would the United States of America, after it had adhered to the Protocol, be on a footing of perfect equality with the other States signatories of the Statute of the Court when any question of amending the Statute arose? Those were the two fundamental questions which the Conference had now to discuss.

So far, no difficulty had arisen in the Conference in regard to the first question. As regards the second, there was no essential opposition to it but explanations had been asked for concerning two points. In the first place, it had been said that the United States of America should co-operate on a footing of perfect equality with the other signatory States when any amendment of the Statute was contemplated, but that it should be clearly understood that, if the United States of America denounced the Convention, its right to co-operate would cease after that denunciation. Further, it had been stated that the word "consent" would perhaps seem rather ambiguous, but that it would, nevertheless, not give rise to some difficulties if it could be interpreted in the sense of "collaboration".

The President reminded the Conference that certain other general questions which had been raised during the morning meeting, interesting though they might be, were not, for the moment, on the agenda. He would merely remind the Conference, in this connection, that it was a fundamental principle of international law that no Power could withdraw from its obligations under a treaty nor modify its provisions except with the consent of the contracting parties obtained by means of a friendly agreement. This declaration, in the Protocol of London dated January 17th, 1871, covered the two points dealt with in the fourth reservation.

M. PILOTTI (Italy) merely wished to mention a few points which seemed to him of some importance.

It was difficult to distinguish between the form and the substance of the question. He thought that, in the reservation under discussion, the form was more important than the substance and that the form should be discussed first in order that a conclusion might be reached with regard to the fourth reservation.

The Conference should first consider what form the adherence of the United States of America to the Court should take. If it were to take the form of a bilateral convention between the United States of America on the one hand and the States at present signatories to the Protocol on the other, the reservation put forward by the United States of America would be wholly acceptable, because it was obvious that the United States of America could make the right of withdrawal a condition of its adherence to the Convention. This right might, of course, be limited by a stipulation requiring notice to be given, but the other party could not accept the adherence of the United States of America without at the same time accepting the reservation regarding its possible withdrawal.

The amendment of the Statute of the Court was another question which would be decided automatically if the adherence of the United States of America took the form of a bilateral convention. The United States of America would always have the right to say: "We agree to take part in the work of the Court, but we only accept the Court in its present form and with its present Statute".

The United States of America would constitute one of the parties, and all the other States would form the other party, to a bilateral contract. The final solution of the question of principle would depend on the form taken by the adherence of the United States of America to the Protocol. It therefore appeared to him difficult to consider the question of principle independently from that of the form chosen to satisfy the United States of America.

The President had suggested that questions which to a certain extent led the Conference away from its goal — very interesting points, raised in the course of the morning's discussion, affecting the relations between the States which had already signed the Protocol — should be dropped. These questions could, of course, be left out of the discussion, because they did not really concern the United States of America; they had, however, been brought up because their solution might throw a certain amount of light on the problems raised by the request of the United States of America. For example, the question of denunciation had been formulated as follows: The United States of America could withdraw its adherence to the Court on the ground that any Member of the League already adhering to the Court had that right according to international law. He had no intention of discussing the validity of this argument, but pointed out that the very fact of its having been put forward showed that the discussion of the relations between Members of the League of Nations adhering to the Permanent Court of International Justice was of some importance in connection with the decision to be reached concerning the request of the United States of America.

He then reminded the meeting that, in connection with the Protocol of the Court, the general question of the right to denounce international conventions had been raised that morning. The Protocol was certainly an international Convention, but it took the following form: The Members of the League of Nations recognised the Statute approved by the Assembly, which constituted, so to speak, a document for consideration, which had been seriously recommended to the States concerned, but which was not yet legally binding on those who had signed it. Accordingly, these States recognised the Statute and declared that the jurisdiction contemplated by the Covenant of the League was precisely that established by the Statute. Hence, the Protocol was a Convention concluded between the Members of the League for the application of the Covenant. Under these circumstances, he did not quite see how it was possible for one of the States which had signed the Protocol to declare at any moment that it no longer recognised the Hague Court and that it denounced the Convention. The only possible way was for it to withdraw from the League of Nations; that was to say, that it should lose its position as a Member of the League — the position in virtue of which it had become a party to the Convention.

M. BUERO (Uruguay) wished to amplify the statements he had made that morning. He observed, in the first place, that up to the present the Conference had arrived at no decision with regard to the principle of the question; it was not discussing the United States reservation but studying it. For this purpose, it was first of all necessary to make clear what the present position was.

Uruguay was a country which would welcome the co-operation of the United States of America. It would make every effort to enable the United States of America to adhere to the Permanent Court of International Justice. The Government of Uruguay had indeed submitted the question to its Parliament, and he hoped that a solution would be found.

He agreed with the Chairman's proposal that the fourth reservation alone should be discussed at present, but, in order to arrive at a decision, it was first necessary to make clear the present position of the States Members of the League adhering to the Statute of the Permanent Court of International Justice. Various points of view had been put forward that morning, and the question did not appear to be so simple as might be supposed. The United States reservation raised two questions which were essentially different — that of denunciation and that of amendments.

As regards the first question, the Conference was not fully in agreement with regard to the position of Members of the League who had adhered to the Protocol. How could the Conference decide on the attitude to be adopted with regard to reservations made by a country which, while not a Member of the League, might adhere to the Statute of the Court until the position of the Members of the League adhering to that Statute was made clear?

Secondly, there was the question of amendments to the Statute of the Court. Had Members of the League the right to prevent the alteration of the Statute by their own single vote, or was their only alternative to withdraw when an alteration was made against their will by a simple majority?

It was essential, he thought, to decide these various questions before pronouncing on the reservations of the United States.

With regard to unanimity, which had been asserted to be necessary for amending the Statute of the Court, his view was that, when once the League of Nations had approved the Statute of the Court, it was no further concerned as such with that organisation and could not be called upon to modify its Statute. The Statute constituted an international Convention, signed and ratified by the various Governments, and any amendments should be made by the States as signatories of the Protocol of Signature of the Statute of the Court and not as Members of the League.

Obviously, the League of Nations might submit draft amendments, but such drafts would have to be submitted for the approval of the States signatories of the Statute, in whose hands the decision lay.

M. Buero apologised for having digressed, but he thought the points he had raised ought to be considered, in order that the Conference might come to a decision with a full knowledge of the facts.

Sir Cecil Hurst (British Empire) stated that he was in the happy position of a previous speaker in that the considerations which he desired to offer to the Conference had in great part already been stated by the President far better than he could have stated them himself.

There remained only one point about which he would like to make some remarks. He referred to the question on which the Canadian delegate had spoken at the morning meeting, namely, the relation between the two parts of the fourth reservation; on the one hand, that the United States of America might at any time withdraw its adherence to the Protocol and, on the other, that the Statute of the Court should not be amended without the consent of the United States of America.

If Sir Cecil Hurst understood Sir George Foster's meaning aright, the latter was afraid that the second half of the reservation would give the United States of America the right to collaborate in amending the Statute even after it had signified its withdrawal from the Protocol and, therefore, after its accession to the Statute of the Permanent Court had terminated. Sir Cecil Hurst could not think that this was the correct interpretation of the reservation, but it certainly was a point on which the Conference should be quite clear.

If the Senate's resolution as a whole were examined, it would be seen that it embodied the desire of the United States Government to adhere to the Statute of the Court subject to certain conditions which were enumerated in that resolution. The Conference was, at the moment, dealing with one of these conditions; it had already agreed at the morning meeting that the first three reservations appeared to contain nothing unreasonable. The Conference had agreed provisionally to the second reservation, which stated that the United States of America should be allowed to participate in the election of the judges and deputy-judges. It had also agreed that morning that it saw nothing unreasonable in the proposal that the United States of America should bear a fair share of the expenses of the Court.

He could not help thinking that in the minds of all present there was an understanding that those clauses would only operate during the period when the accession of the United States of America to the Protocol establishing the Court was in force — that, for instance, if the United States of America made use of its power to withdraw its adherence to the Protocol, it would from that moment cease to participate in the election of the judges and deputy-judges, and would also cease, from that moment, to bear any share in the expenses of the Court. If that principle were true in regard to the second and third reservations of the Senate, it seemed to Sir Cecil Hurst that it must also be true of the second half of the fourth reservation; that was to say, that, from the time when the United States of America withdrew its adherence to the Protocol, it would no longer have any right to collaborate in amendments to the Statute and would not at any rate claim that the Statute could not be modified without its consent. In Sir Cecil Hurst's view, this was the reasonable interpretation of the document taken as a whole. If this were the correct interpretation, it was clear that the position of the United States of America was a reasonable one. Personally, he thought that this fourth reservation should not be accepted unless it were specified that, if the United States of America withdrew its adherence to the Protocol, it would no longer have the right to require that the Statute should not be amended without its consent.

M. CASTBERG (Norway) also wished to make some remarks with regard to the first part of the fourth reservation concerning the right of the United States of America to withdraw from the Court at any time.

He could not agree with the opinion expressed by several delegates, according to which a convention which contained no provisions relating to denunciation might, as a general rule, be denounced by one of the signatories at any time without previous notice or with such previous notice as it might care to give. That was a dangerous theory, which would tend to make the privileges conferred by conventions of this nature practically valueless.

He was of opinion that the Protocol of the Permanent Court could not be denounced by a signatory State, whether that State was a Member of the League of Nations or not. In accepting this reservation made by the United States of America, the Conference would be creating a privilege in its favour.

The adherence of the United States of America to the Protocol of the Court was of such importance, however, that the Norwegian Government was ready to accept that reservation; but, in doing so, it fully realised that the United States of America would be less strictly bound thereby than the other States signatories to the Protocol.

M. ROLIN (Belgium) thought that the members of the Conference had of necessity been obliged again to depart from the limits set for the discussion by the Chairman, namely, the consideration of the United States reservations and the situation of the United States of America with regard to the Protocol.

Members of the Conference had been led to consider the situation of their own countries when they were considering the situation of the United States of America, because the latter, according to the discussions in the United States Senate, seemed to have considered the question from the point of view of the principle of strict equality of treatment with nations already signatories to the Protocol of the Permanent Court of International Justice and Members of the League of Nations. It was therefore inevitable that the Conference should consider to what extent this principle, which appeared to be accepted by the United States of America, involved the acceptance of its reservations also.

It was now possible, he thought, after the remarks made by his colleagues, to come to a decision on the fourth reservation.

In the first place, in regard to denunciation, he had noticed that a large number of delegations had made formal reservations with regard to the principle, which indeed had been somewhat too definitely stated, that international treaties might be denounced unilaterally. This principle, put forward that morning, would clearly have serious effects on the present international organisation of the world.

As far as the Members of the League of Nations were concerned, it was not, he thought, indispensable for the Conference to decide whether or no they had the right to denounce the Statute of the Court, in view of the fact that this denunciation would have no effect as regarded those who remained Members of the League. As Members of the League, they would continue to pay their share of the expenses of the Court, and they would continue, in the Assembly and the Council, to take part in the election of the members of the Court. Even if such denunciation were allowed, he did not see what its practical effect would be.

The opinion upheld by M. Pilotti, by the Norwegian delegate, and by the speaker himself, that to accept the first part of the fourth reservation would be to confer a privileged position on the United States, made it clear that this situation was perfectly legitimate.

What the United States wanted was the right to regard its adherence as revocable. In so doing it was in no way endangering an institution which was necessary to the League, nor was it limiting the freedom of action of the Members of the League. As, on the other hand, it would confer a certain additional authority and influence during the period of its adherence to the Statute of the Court, he saw no objection to granting complete satisfaction to the United States on this point.

As regards the second part of the reservation, concerning the consent of the United States of America to any amendment of the Statute of the Court — the only point on which there might be a difference of opinion — he thought that the Conference might take as a basis M. Buero's proposal made at the morning meeting. It might be wondered whether, by demanding this right, the United States of America was really claiming a position different from that of the Members of the League themselves. It was true that the League could take decisions unanimously in certain cases and that it could revise its Covenant without requiring unanimity of votes and ratifications; but a previous question arose, which needed a clear answer: Could the Statute of the Court be revised by a majority of the Members of the League or even by a unanimous decision of the Assembly?

Although he regretted this, he was of opinion that the Statute could only be revised with the formal consent and ratification of all the Members signatories of the Statute. The Assembly could indeed take unanimous decisions on questions within its competence; but, in the matter of the Statute of the Court, Article 14 of the Covenant laid down formally that the Council " shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice ". Thence it appeared that Article 14 required the formal consent of the Members of the League of Nations in the usual form, that is to say, by signatures and ratifications.

He thought, therefore, that neither the Assembly nor the Council could modify the Statute of the Court, either by a majority or a unanimous vote, without a diplomatic instrument duly signed as had been done in 1920.

Perhaps one day, with the concurrence of the United States of America, it would be realised that this constituted an omission likely to raise difficulties and would make it necessary to modify the Statute of the Court; but, under present circumstances, when the United States of America required that the Statute of the Court should not be modified without its consent, he honestly thought that the United States of America was only asking for what was the common right of members adhering to that Statute. In view of this fact, he considered that an affirmative answer might be given to the second part of the fourth reservation.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) thought that the discussion had completely elucidated the situation. It seemed to him, however, that it would be useful to sum up the debate on the fourth reservation, as the Belgian delegate had touched on the real point at issue.

If the Covenant laid down the rule that every decision of the Assembly concerning the Statute of the Permanent Court of International Justice must be taken by a unanimous vote, any State was undoubtedly entitled to object to the amendment of the Statute, and the United States reservation could thus be accepted without difficulty. The whole point to be decided was whether this rule was or was not laid down in the Covenant. The 1920 Assembly had passed the existing Statute by a unanimous vote.

On the other hand, the first part of Article 5 of the Covenant constituted an argument in favour of the Belgian delegate's view. It was necessary to decide, therefore, whether the Statute was a matter of procedure or a political or material question covered by that clause. The Conference would thus have to deal with the interpretation of the Covenant, and he questioned whether it was competent to do so without reference to the Council or Assembly.

He desired to bring this point to the notice of the Conference, although he was prepared to agree to the conclusions of the Belgian delegate, should M. Rolin's argument be supported by the Covenant, particularly by Article 5.

Count CLAUZEL (France) did not propose to take part in the exceedingly interesting and delicate legal discussion: first, because so many eminent jurists were present and, secondly, because he intended to leave that task to M. Fromageot. Sir Cecil Hurst had stated that the present proceedings amounted only to a discussion, on a first reading, of the United States reservations, and that, on the second reading, in view of the interrelation existing among all the reservations, further observations might be made. He (Count Clauzel) desired, however, before the conclusion of the discussion on a first reading of the first four United States reservations, to express his satisfaction with the excellent results obtained on this first day of the Conference, thanks to the authority and competence with which the President had directed the proceedings. He did not doubt that these results would be duly appreciated by the United States of America, which might regard them as a proof of the desire of all the Members of the League to collaborate with the United States of America so far as lay in their power.

The PRESIDENT recalled the fact that certain delegates had raised some broad questions of international law before expressing an opinion on the United States reservations. M. Rolin, with his usual lucidity, had given a reply which the President regarded as settling those questions beyond dispute.

He noted that no objections had been raised either to the first or the second part of the fourth reservation. All these delegates, moreover, seemed to be in agreement with Sir Cecil Hurst's view of the question raised by Sir George Foster, according to which the right to collaborate in the amendment of the Statute of the Court would lapse directly the United States of America ceased to be a signatory to that Statute. It was essential, moreover, to bear in mind M. Markovitch's observation made that morning concerning the word "consent", which was to be interpreted in the sense of "collaboration".

In these circumstances, he noted that, at the first reading — subject to the right to revert subsequently to the details of the fourth reservation — no objection had been raised to either of the two parts of the reservation in question, it being agreed; as M. Pilotti had pointed out, that the question of form, as in the case of the other reservations, was to be regarded as one of prime importance.

#### 11. Examination of the Fifth Reservation (First Part) formulated by the United States Senate.

The PRESIDENT proposed that the Conference should confine itself, in the first place, to an examination of the first part of the fifth reservation, which he read:

"That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States, and after public hearing or opportunity for hearing given to any State concerned . . ."

He noted that the reservation required, in the first place, that every advisory opinion should be read in public, a practice already established; secondly, the Washington Senate desired that all States adhering to the Court and all interested States should have an opportunity of expressing an opinion and discussing the question on which the Court had been asked to give an advisory opinion. In this connection, he directed the attention of the Conference to the amendments made by the Court in its own Rules. Articles 73 and 74 were of particular interest from this point of view, and he was under the impression that the amended text would satisfy the desiderata named by the United States Senate in the first part of the fifth reservation.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) questioned whether the United States Government intended to demand that the proceedings of the Court should be public. Its proceedings had hitherto been held in secret, and only its decisions were announced in public. If the United States reservation implied that the proceedings were to be public, this would necessitate an amendment of the Statute of the Court.

The PRESIDENT pointed out that the English text of the Senate's resolution was quite clear. The first sentence of the fifth reservation read: "That the Court shall not *render* any advisory opinion . . ." The word "render" applied, he thought, only to the pronouncement of judgment.

Sir George FOSTER (Canada) confirmed the President's view. He mentioned that in Canada, and probably in the United States of America, the word "render" applied only to the pronouncement of the judgment and not to the proceedings, which always took place in private.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) expressed himself satisfied with these explanations.

*The Conference accepted the first part of the fifth reservation.*

**12. Examination of the Fifth Reservation (Second Part) formulated by the United States Senate.**

The PRESIDENT read the second part of the fifth reservation as follows :

" . . . nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

The President pointed out that this second part of the reservation was perhaps the one most closely affecting the constitution of the League. It appeared — and this was the opinion of a number of delegates — that the United States of America desired nothing more than to be placed on a footing of equality with the States Members of the Council. It remained to be ascertained whether this desire had been sufficiently clearly expressed. Here, again, it was a matter for regret that no United States delegates were present, as they might have been able to give useful explanations to the Conference. On the other hand, as the reservation touched on the Council's method of procedure, delegates acquainted with its practices could certainly give the Conference very helpful information.

The reservation laid down that the consent of the United States of America was necessary before the Permanent Court of International Justice could give effect to certain requests for an advisory opinion, but the question when that consent could or should be given was not dealt with in the reservation itself. This point, which was of prime importance from the point of view of the Council's activities, must be examined by the Conference, should the latter decide to comply with the requirements of the United States.

*The meeting rose at 6 p.m.*

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**THIRD MEETING**

*Held at Geneva on Thursday, September 2nd, 1926, at 10 a.m.*

President : M. VAN EYSINGA.

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**13. Examination of the Fifth Reservation (Second Part) formulated by the United States Senate (Continuation).**

Count ROSTWOROWSKI (Poland) thought that the second part of the fifth reservation should be examined in the same spirit as had guided the discussion of the earlier reservations.

He pointed out, in the first place, that the fifth reservation referred to the question of advisory opinions. No reference whatever was made to these in the Statute of the Court, and they were only mentioned in Article 14 of the Covenant. Consequently, for the United States of America, which would only adhere to the Protocol and the Statute, this matter had a somewhat different legal aspect from that in which it presented itself to the States Members of the League of Nations, which were bound by the Covenant.

The fifth reservation did not take this circumstance fully into account. It dealt with advisory opinions, and indeed sought to make rules for the procedure in that respect. This meant that the United States of America recognised the procedure of advisory opinions and admitted that it could be applied ; this was undoubtedly an advantage. On the other hand, it seemed that the reservation would make the advisory procedure subject to certain guarantees — which indeed appeared to be its object.

The guarantees required by the first part of the reservation were that advisory opinions should be rendered " publicly and after due notice to all concerned " . . .

In the second part, the guarantee desired was of a somewhat different kind. It apparently depended upon an expression of the will of the United States of America — that was to say, on its consent, which was held to be necessary in such a case.

The question at issue was whether that guarantee was intrinsically justified.

In the United States Senate, and even more in the Press, the reservation had been upheld by an argument based on the necessity of placing the United States of America on an equality not merely with the States Members of the League but specifically with the States represented on the Council. The passage from Senator Walsh's speech, which had been quoted in the newspapers, would be generally remembered.

Owing to the unanimity rule, the States represented on the Council had it in their power to obstruct this advisory procedure, and the United States of America ought to be in a similar position. At the same time, that argument, in the form in which it was presented, seemed to him : (1) not to be based upon a very exact legal foundation, (2) to be somewhat specious, and (3) to lay chief stress upon considerations of international prestige.

In his opinion, the argument did not entirely cover the terms of the fifth reservation. The form of words employed in the reservation was certainly more comprehensive and general and embraced more than the argument put forward by Senator Walsh and in the Press. It

was therefore necessary to go into the matter a little more thoroughly and to ask what was the value, to the United States of America, of being placed on an equality with the States represented on the Council. What was the point of this demand to be consulted whenever it was proposed to set the advisory machinery in motion in cases which concerned the United States?

The underlying reason for this reservation appeared to be that in adhering to the Protocol of Signature the United States did not adhere to the Optional Clause regarding compulsory jurisdiction; in other words, it accepted the jurisdiction of the Court only as an optional jurisdiction. Having thus secured itself against the possibility of being cited against its will before the Court, the United States of America was endeavouring to secure itself against the other possibility of being involved against its will in the non-contentious procedure represented by the advisory opinion.

It was to be observed that this advisory procedure might be in respect of a dispute (to which the United States of America was a party) similar to those which were treated by the contentious procedure. Through this fifth reservation, however, the United States of America was endeavouring — the contentious procedure having become inapplicable for want of its consent — to guard against the substitution of any procedure to which it did not agree. An opinion was not a judgment, but, at the same time, an opinion relating to a dispute or to a point of international law might in practice affect a country, and that country might in certain cases be the United States of America. The effect of the opinion might be that the attitude and conduct of the country in question would be qualified, from the legal point of view, in a disadvantageous manner. Regarded in this light, the fifth reservation merited not merely the Conference's attention but its sympathy. It was founded upon a reasonable idea and must therefore be dealt with by the Conference and received as favourably as the first four.

M. FROMAGEOT (France) said that the United States Government's fifth reservation called for certain observations. What actually happened in the Council when a disputed question was brought before it if that question concerned a country which was not a Member of the Council? That country was invited to send a representative to state its views before the Council. If, after hearing those statements, the Council thought it desirable to apply to the Permanent Court for an opinion on the question at issue, it had to vote upon the proposal. Consequently, if the United States Government were involved, or declared that it was involved, in a dispute which came before the Council, that Government would be asked to attend the Council and state its views. It would thus have a voice in the decision as to the reference to the Permanent Court of the question concerning which an opinion was to be sought.

The difficulty became greater when one came to consider what attitude the United States Government could take up in the Council or, rather, under what conditions the Council's decision or resolution would be taken.

If Article 5 of the Covenant, under which only questions of procedure could be decided by a majority, were to be interpreted as meaning that a resolution to refer a dispute to the Permanent Court for an advisory opinion was not to be considered as a question of procedure because, in practice, it would almost certainly lead to the settlement of the dispute, and that for this reason the Council's resolution had to be unanimous, it was very clear that the United States Government by itself could prevent unanimity being reached unless, to take a more optimistic view, it would consent to the reference to the Court.

If, on the other hand, Article 5 were to be interpreted in the sense that reference to the Court should be regarded as a matter of procedure to assist the Council in forming an opinion on the question submitted to it, leaving it free thereafter to accept or reject the Court's opinion as it thought fit, the Council's resolution would in that case be adopted on a majority vote, and the dispute could be referred to The Hague in spite of the opposition of the United States Government, whose reservation would thus be infringed because, in opposition to the wishes of the United States Senate, the Court would then be giving an advisory opinion without the consent of the United States Government.

The first question to be discussed or settled was, therefore, under what conditions the Council should decide to refer a question to the Permanent Court for an advisory opinion. The acceptance or rejection of the United States reservation depended on the manner in which this question was decided.

M. ROLIN (Belgium) said that the two interesting opinions which had just been given by Count Rostworowski and M. Fromageot approached the question from two different but complementary points of view.

M. Rostworowski had stated that the United States of America was chiefly desirous of preventing the Permanent Court of International Justice from giving an advisory opinion against its will in a dispute in which the interests of the United States Government were at stake. The means by which the United States of America desired to protect itself against such advisory opinions were something in the nature of a right of veto, or at any rate a participation in the Council's decision on a footing which that country believed to be one of equality with the Members of the Council.

The argument put forward by the United States of America consisted in requiring not merely equality of treatment with Members of the League of Nations but most-favoured-nation treatment, that was to say, equality of treatment with the States Members of the Council.



M. Fromageot had been considering that aspect of the question when he had stated that, in order to appreciate the force of the United States request, the Conference ought to consider whether any individual Member of the Council actually had the right to obstruct the Council when it wished to ask for an advisory opinion from the Court of Justice. In other words, was the request for an advisory opinion a matter of procedure ?

He thought that, even if the last question raised by M. Fromageot could be settled by a decided negative, the latter part of the United States reservations still appeared to be unacceptable.

The essential point for the United States of America was that the Permanent Court should not give advisory opinions on questions in which the interests of the United States of America were involved. If there were no doubt as to the existence of those interests or whether they were really at stake, the United States Government might rest assured, for, in the well-known case of Eastern Carelia, which concerned Finland and the Soviet Government, the Permanent Court of International Justice had refused to give an advisory opinion at the request of the Council, considering that, as the Soviet Government was not a Member of the League and had not accepted the compulsory jurisdiction of the Court, it could not agree to the Court pronouncing judgment by a roundabout method, and by default, on a matter regarding which it was not in any way bound to accept that jurisdiction.

Hence, the Conference was justified in satisfying the United States of America, at any rate with regard to that point, and in stating that, in conformity with the ruling of the Permanent Court of International Justice, if United States interests were recognised to exist by that Court, the latter would not give an advisory opinion to the Council without the consent of the United States of America.

The whole difficulty was whether, in doubtful cases, the existence of United States interests could be established — however distant might be the connection between the question which the Council wished to put to the Permanent Court of International Justice and the essential United States interests — by a mere declaration on the part of the United States Government, though those interests were admitted neither by the Council nor by the Court, and whether such a declaration would be enough to hinder the Council in its discussions and prevent the Court giving the requested advisory opinion.

In point of fact, it was probable that no difficulties would arise, and he was convinced that the United States Government could be relied upon. However, he took as an instance the contingency that, in considering a minority question, the Council might have to decide what treatment should be accorded to racial minorities ; the United States Government might be of opinion that this was a question upon which it was not desirable to appeal to the Permanent Court of International Justice, because the latter's opinion, though not directly affecting the United States, might be cited in conceivable disputes with neighbouring countries having racial minorities in United States territory.

This example gave an idea of the very serious difficulties which might arise if the right of veto or suspension were definitely accepted, thus enabling the United States of America to impede the essential work of the Court, namely, to give advisory opinions. The United States of America, however, had brought forward an argument. He had before him a passage from Senator Walsh's speech, to which M. Rostworowski had referred. Senator Walsh, whom many delegates had had the privilege of meeting at Geneva, had certainly approached the question under discussion with genuine good-will and liberalism. After having shown the difficulties involved in the United States request, when considered from the point of view of the Conference, it was certainly necessary to point out the lines on which Senator Walsh defined the fifth reservation. He said :

" Under the Covenant of the League of Nations, each of the great nations had a representative on the Council of the League ; and any one of them, therefore, because the Council proceeds by unanimity, can prevent submission to the Court of any request for an advisory opinion which it does not want to have submitted. This reserve gives to the United States exactly the same power by denying to the Court the jurisdiction to entertain the request for an advisory opinion with respect to any question concerning which the United States claims an interest. "

The United States Government had formulated this reservation for the sake of the principle of equality, being convinced that it was asking for no greater privilege than that already enjoyed by any State Member of the Council. Thus, as M. Fromageot had shown, it was logical — and public opinion in the United States of America had no ground for surprise — to consider whether there were not a weak and dubious link in the argument of those who had defended the fifth reservation in the United States Senate — a link which should be rejected — namely, as M. Fromageot had shown, the question whether the Council really needed unanimity in asking for advisory opinions.

The Permanent Court of International Justice had itself shown that the question left room for doubt, and had reserved it, without arriving at a solution. In the case of Eastern Carelia, the Court had expressly reserved the question whether the Council need or need not be unanimous when asking for advisory opinions. The Council itself had never decided



whether unanimity was required in such cases. He thought that, although a large number of delegates to the League of Nations considered it indisputable and essential that the Council could ask for and take legal advice, either from the Court or from experts in matters concerning which a legal point appeared to arise, there were others who were in doubt on the point and considered it uncertain whether requests for advisory opinions, inasmuch as they might sometimes prejudice the settlement of the main point at issue, could always be classed as questions of procedure. Did the Conference consider itself competent to solve that problem? He begged it to realise the delicate nature of such a decision. Could it in the absence of the United States of America — seeing that the United States Senators who had defended this reservation and secured its adoption were convinced that the Council should be unanimous even when asking for advisory opinions — give even a unanimous opinion contrary to that of the United States Senators and declare that — as he himself thought — the latter had been in error on the point?

If the Conference could prove that there had been an error, and if it could show that the United States Government, when believing it was asking merely for equal treatment, had in point of fact claimed a privilege in a matter of vital importance to the League and one which could not, without grave danger to the League, be granted to any one of its Members or to any State non-Member — if it could be proved to public opinion in the United States of America and to the United States Senate that, in the statement of reasons upon which the adoption of the fifth reservation was based, there was an inaccuracy — though the error was perfectly excusable, seeing that the organs of the League themselves had never arrived at a decision with regard to the matter — then he thought that, in all good faith, the United States Government would probably be the first to ask to be allowed to reconsider the fifth reservation in the light of that new development.

If the Conference really hoped — since it accepted the basis of the United States reservations, namely, equal treatment with the most-favoured nations in the League — that the application of the principle of unanimity could be corrected, ought it not to suggest that application should be made to the jurisdiction of the Court — the complete impartiality and competence of which the United States recognised when proposing to adhere to it — and that the Court, which had hitherto reserved its judgment on the question, should be asked to deal with it, and to state definitely whether, in its opinion, the rule of unanimity in the Council was of such universal application that it must also apply to requests for advisory opinions addressed to the Court, or whether such requests could be classed as questions of procedure and decided on a majority?

He felt that, whatever might be his own convictions, it would be extremely difficult for him to agree to a reply which crudely accused the United States Senate, after its conscientious consideration of the question, with having committed an error; the more ardent his defence of the principle of a majority vote, the more scruples he felt in setting up his opinion as an article of faith, so to speak, against that held by the United States Senate. If there were really no other way out of the situation, he thought that the Conference was in loyalty obliged to throw light on the matter in the only way in which that light could be recognised and accepted by public opinion in the United States of America and by the United States Senate itself, namely, by asking the Permanent Court to decide whether an error had crept into the reasoning of the United States Government concerning the unanimity rule.

He concluded that the Conference ought to recommend to the Council that the question should be cleared up by asking the Permanent Court of International Justice for an advisory opinion. No action should be taken pending the reply from the Court, so that if the latter confirmed the view that a majority of the Council was sufficient for taking an advisory opinion, the Conference might reply to the United States Government with regard to the majority of the reservations, and indicate that, on this particular point, while it accepted the principle of the United States Government and recognised that when United States interests were directly involved a request for an advisory opinion could not be made against the wishes of the United States Government, it felt that, in determining whether such an interest existed, it was not possible to grant a privilege to the United States Government.

The United States Government, he believed, had never wished to claim such a privilege. The Conference would then request the United States to comply with the majority rule and particularly to accept the opinion of the Permanent Court of International Justice, before which it could then freely bring forward its arguments in support of the alleged United States interest.

Sir Cecil Hurst (British Empire) said that three most interesting contributions had been made that morning towards the subject under discussion, a subject which the Chairman himself had stated on the previous day to be one of great difficulty. It was clear, he thought, from the speeches which the Conference had heard that morning, how very serious were the difficulties with regard to the acceptance of the second part of the fifth reservation formulated by the United States Senate. If he understood correctly the passage which the Belgian delegate had read from the speech delivered by Senator Walsh in the Senate, the purpose of the United States of America in formulating this reservation must have been to give itself the same position as that which was enjoyed by the States represented on the Council of the League. There was nothing in the words which had been read to indicate that the United States of America wished to obtain a more favourable position or, at any rate, one which was more privileged than that enjoyed by other States whose representatives sat on the Council.

There was one point to which he would like to draw attention, as he would be very glad to hear subsequent speakers express an opinion upon it. In his view, there seemed to be a great deal to be said in favour of — and perhaps a good deal to be said against — accepting this reservation, even upon the basis that it was not intended to do more — and even if it were accepted in a form that would not do more — than give to the United States of America the same position as that occupied by the States Members of the Council. The arguments in favour of accepting it upon that basis were, of course, that it would be an advantage that the United States of America should participate in the work of the Court and should sign the Protocol; it was not unreasonable, therefore, that that country should occupy the same position as that enjoyed by the States whose representatives served on the Council.

On the other hand, there was a point which must be borne in mind, and it was upon this point that he would be glad to hear the views of other members of the Conference. It must be remembered that the representatives of States Members of the Council of the League sat on the Council as representatives of Members of the League, and that the Members of the League were burdened by all the obligations and duties that were attendant upon their membership. But a State whose representative was to enjoy the same or similar privileges, the same or similar rights, as those enjoyed by the States Members of the League, would, in reality, enjoy a more favourable position, because its representative would be free from the burdens, obligations and responsibilities that membership of the League entailed. To accept the reservation, therefore, even upon the basis that it would only confer upon the United States of America similar privileges to those enjoyed by States Members of the Council, was nevertheless to confer upon it a more favourable position, and the Governments, therefore, before agreeing to it, must be clear in their own minds that it was reasonable and right to do so. In his view, all the arguments for and against inclined in the direction of accepting the reservation, for, even though the United States representative would not be burdened by the duties and responsibilities incumbent upon the Members of the League, the advantages of accepting the reservations outweighed the disadvantages, and, despite the situation which would thus be created, he thought the reservation ought to be accepted. This was a point, however, to which subsequent speakers would, he hoped, devote some attention.

He then passed to the questions which had been dealt with, particularly by M. Fromageot. If it were correct to interpret the statement from the speech of Senator Walsh which M. Rolin had read as meaning that the desire of the United States of America was to enjoy a position similar to that enjoyed by States whose representatives sat on the Council, it certainly would appear from what had been said by M. Rolin, and also, he thought, from what had been said by M. Fromageot himself, that the reservation must have been based upon a misconception.

If his view were correct as to the deductions which must be drawn from the advisory opinion given during the previous year by the Permanent Court at The Hague on the question of the Iraq frontier, the Council, when dealing with the dispute under Article 15 of the Covenant, dealt with it on the basis of a unanimous decision, the parties to the dispute being excluded; if, again, he were correct as to the deductions to be made from the opinion of the Court, it must follow that if the Council, when dealing with such a dispute, desired to be fortified by an opinion of the Permanent Court, the votes of the parties to that dispute — apart altogether from the question of a unanimous or a majority vote — would not be counted in any decision upon the question whether or no an advisory opinion should be taken. He might be wrong on that point, but such was the conclusion which seemed to him to follow from the opinions that the Court had already given regarding the Iraq frontier case.

Apart from this conclusion, which to his mind was fairly clear, a very great difficulty arose with regard to the question whether a decision requesting an advisory opinion must be taken by a unanimous or by a majority vote. M. Rolin, realising that the position was obscure, had suggested that the Conference should forthwith ask the Court itself to advise upon this point. Sir Cecil Hurst thought it would be useful to hear the views of other speakers on the matter. Perhaps his Anglo-Saxon temperament was responsible, but he doubted whether what might be termed the jurisprudence of the Court — and also its working and, particularly, the working of the League — had advanced sufficiently to make it wise at present to try to obtain an opinion which must to a great extent be regarded as binding for the future. He was not sure that it might not be better to leave the matter in some obscurity and allow the cases with which the Council would have to deal in the future to indicate the correct rule, perhaps by successive opinions given by the Court on disputes or other matters referred to it. It would, in fact, be better to wait for the rule of law to develop out of practical cases rather than to ask the Court to give a binding opinion upon a problem which at present was not ripe for solution.

Sir Cecil Hurst would not have ventured upon a suggestion which ran counter to the proposal of M. Rolin had it not been that he conceived it possible that the Conference might with equal, or perhaps with even greater, advantage take a slightly different line. If it were right in thinking that the desire of the United States in formulating its reservation had been merely to obtain for itself a similar position to that which was enjoyed by the States Members of the Council, he was not clear that the intrinsic fairness and the intrinsic reasonableness of the United States would not lead it, if a willingness were expressed by the States signatories to the Protocol, to agree to participate on that footing. He wondered whether this solution would not suffice and whether it would not lead the United States of America to participate on these terms, the question of a unanimous or majority vote being left to be decided gradually as the working of the Council progressed in the future.

There was one last point upon which he would like to express an opinion in the hope that other speakers would also deal with it. Any decision taken by the Conference must be one which the Governments would feel able to recommend to their peoples as a proper course to follow. He would like to return to the indication of the United States views as explained in the statement from Senator Walsh's speech. That statement, coupled with the first paragraph of the resolution which had been dealt with on the previous day, under the terms of which the United States carefully guarded its participation in the work of the Court from resulting in any juridical obligations towards the League, showed, he thought, that it could not have been the intention of the United States, by means of the reservation, in any way to interfere with the proper functioning of the League of Nations as an organisation.

The United States had not seen fit to join the League; nevertheless, the League was a very potent international machine operative among all the States which were parties to it. He could not conceive that it had been the intention or the desire of the United States of America that it should, by joining the Court, in any way interfere with, or hinder, the proper working of the League. Upon no other footing, he thought, would it be possible for the Governments of the Members of the League to accept the participation of the United States of America in the work of the Court.

If this were the right understanding of the position, by what means would such rights as were given to the United States of America by the acceptance of the fifth reservation be exercised? At the moment, any State with a representative on the Council and which was in a position to vote and, thereby, to exercise a right of veto in a matter requiring a unanimous decision, must of necessity participate in the meeting of the Council and there register the vote. The great advantage of this procedure was that any vote registered which might have the effect of exercising a veto must at least be registered after all the difficulties of the situation had been explained, after, in fact, the representative of that State had had the opportunity of appreciating the difficulties attendant upon the question with which the League of Nations was faced.

He took it that it could not be contended by the fifth reservation that a right should be claimed for the United States of America to exercise a veto in cases where unanimity was required unless it at least participated in the meeting of the Council at which the decision was taken. If, without participating in any way in such a meeting, the Government of the United States claimed the right to interpose a veto in cases where unanimity was required, it would indeed be claiming a privilege which was very different from that enjoyed by the States Members of the League. Such a decision would, indeed, place the United States of America in a privileged position, and, in his view, it was not reasonable that the other States should agree to it, nor did he believe that the United States of America desired it.

Such were the matters to which he had wished particularly to draw attention. There were, of course, several other difficulties with regard to the reservation now in question. Some of them had already been mentioned. There was, for example, the difficulty arising out of the wide scope of the phrase used about "the claiming of an interest"; there was some difficulty as to what the word "interest" actually entailed. Was it an interest of a juridical or of a purely administrative nature? Was it meant to imply anything larger than that which was covered by Article 4 of the Covenant, in which, in the last paragraph but one, it was stated:

"Any Member of the League not represented on the Council shall be invited to send a representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League."

These matters seemed to him for the moment, however, to be of less immediate importance than the others towards which his principal remarks had been directed. He repeated that he had made those remarks in the hope rather of eliciting opinions from other delegates than of expressing a final and definite view himself.

The PRESIDENT reminded the Conference that Sir Cecil Hurst, in his remarkable speech, had requested the members who had yet to speak that morning or afternoon to give their opinions on the points to which their attention had been specially called.

M. YOSHIDA (Japan) said that, as far as he understood, the Council had never decreed that its decisions could be taken by a majority vote. He thought that it was beyond the competence of the present Conference to decide whether the Council should act by a unanimous or a majority vote when seeking an advisory opinion from the Court.

M. PILOTTI (Italy) seconded M. Rolin's suggestion. If it were a question of an interpretation of the Statute of the Court, it was obvious that a Conference of representatives of States signatories of the Protocol could give an opinion on the matter. But the essential point of the United States fifth reservation was a question involving the interpretation of the Covenant of the League and was therefore beyond the competence of the Conference of States signatories, as the Japanese delegate had just said. Nevertheless, the question had arisen and an answer must be found if the Conference were to arrive at an understanding regarding the reservation.

He thought that the best solution had been suggested by M. Rolin. According to a provision in the Covenant, the Council had the right to consult the Court on any point or all points, and therefore on any point of law which might arise to impede its action. If the Conference recommended the Council to take advantage of that faculty, *i.e.*, to consult the Court on the particular point under discussion, it remained within the scope of the Covenant.

There would be an additional advantage in so doing : its action would have the effect of hastening the establishment of a jurisprudence which did not yet exist, and the lack of which Sir Cecil Hurst had regretted. It would, of course, be far better to wait until that jurisprudence were evolved in the natural course of events — until a certain number of cases had been brought before the Court — without obliging the latter to give a definite opinion on the matter immediately. That could not be done, however, when the Conference was confronted with the difficulty which had just arisen out of the United States reservations.

That difficulty must be settled in one way or another, unless the United States of America agreed to accept Sir Cecil Hurst's proposal ; this would be a better solution, but he did not think it was a possible one.

In his view, M. Rolin's proposal could in the main be reconciled with Sir Cecil Hurst's in the following manner : the Conference might make a report to the Council recommending it to give a reply to the United States of America pointing out the difficulties attaching to the fifth reservation, drawing attention to the fact that that reservation gave rise to a question involving an interpretation of the Covenant which was difficult to settle by reason of the arguments on either side, and adding that the only guarantee which could be offered to the United States of America was that it should be treated on a footing of equality with the other States. If the United States of America were satisfied with such a declaration, the difficulty would be removed.

If, however, this declaration did not satisfy the United States of America another solution would have to be found. This could only be done by acting upon M. Rolin's suggestion.

The question in its present aspect was even more difficult than at the outset. If the advice of the Court were asked, account would have to be taken, as Sir Cecil Hurst had reminded the Conference, of the provision in Article 15 of the Covenant whereby final decisions of the Council concerning disputes referred to it must be unanimously adopted (after the Court had given its opinion), except for the parties concerned. But Article 15 also provided that the decision of the Council on the facts of the dispute could be taken by a majority vote ; in that case, less force was attached to the decision than if it had been adopted unanimously, except for the parties concerned.

The complex aspect of the problem was yet another reason why an authority as universally recognised as the Permanent Court should be asked to give its opinion on the matter.

There was no question of consulting the Court as to the expediency of accepting or rejecting the United States reservations. According to his interpretation of M. Rolin's proposal, the Council, using its power of consulting the Court upon any given problem, would consult it on the question whether a request for an advisory opinion could be made upon a majority vote of the Council or Assembly, without thereby involving the Court in the present issue, namely, the United States reservations. The Court, in virtue of the new ruling, would naturally proceed to make the widest possible enquiry ; it would ask the opinion of all States Members of the League. That consultation would to a certain extent supply the need of a jurisprudence referred to by Sir Cecil Hurst.

Moreover, even if the Court were consulted, the final decision of the States which had adhered to the Protocol would in no way be prejudged. As had been pointed out to the Conference, the United States of America would in any case hold a favoured position, even if it were agreed that a request for an advisory opinion could be decided upon by a majority vote.

That fact would have to be taken into account when the request for an advisory opinion was submitted to the Court. In other words, when consulting the Court, it should not be understood that, its opinion having been obtained, the reply to the United States of America would necessarily correspond with it. The preliminary step, consisting of a request for an advisory opinion, should not prevent full freedom of discussion concerning the purport of the answer to be given to the United States of America, even when the opinion of the Court had been read.

M. FROMAGEOT (France) desired to add a few further remarks. There was an initial question of fact with regard to the nature of advisory opinions of the Court. It appeared to him certain that, if the Court asked the opinion of an expert or other third person concerning any question, the request for that opinion would appear as a step in the enquiry into the matter, and consequently as a question of procedure. Theoretically, this was the case with opinions required from the Court, but, in practice, experience had shown that advisory opinions were tantamount to a decision, because of the procedure adopted at The Hague in such cases, because of the high authority attaching to the Court, and because of the appeal which was made to all interested Members of the League to express their views on the case ; the words " legal award " had even been used in the course of the discussion.

The United States of America had apparently based its contention that a unanimous vote was necessary on the assumption that advisory opinions of the Court had the character of decisions. It had just been shown, however, and it was generally agreed, that that assumption was doubtful, and that it was not definitely correct to say that the opinions of the Court should be asked for by the Council unanimously any more than it was definitely correct that they need only be asked for by a majority.

In addition to this question of a majority or a unanimous vote, there was another which might serve as an argument for a unanimous vote and equally well as an argument for a majority vote. He referred to the question of exclusion, that was to say, that the parties which were specially concerned in a dispute had no right to vote. This right to exclude the

parties was admissible when a question of principle was at stake. It was open to doubt whether this right also existed when it was a question of a preliminary enquiry and a matter of procedure, and whether it existed for those who considered that the request for an advisory opinion was only a matter of procedure, while, on the contrary, it was understood that the right existed if a request for an advisory opinion were a matter of principle.

In a word, if a unanimous decision by the Council were necessary, a question of principle was involved and the parties concerned were excluded. If, on the other hand, the question was merely one of procedure and of investigation, no question of principle was involved and the parties were not, therefore, excluded. This point, he thought, should also be taken into consideration.

M. Rolin had proposed that this very troublesome question — which M. Fromageot had been careful not to declare within the competence of the present Conference, merely stating that it should be examined — should be settled by the Permanent Court, which was entrusted as one of its duties, as had been said, with the interpretation of the Covenant. If the question were dealt with calmly and without reference to other difficult problems, there was every likelihood of its being settled wisely and sensibly, and more serious difficulties would thus be avoided. M. Fromageot therefore thought it quite desirable in principle that the opinion of the Court should be asked, but he questioned whether this would serve any useful purpose.

If the Court declared that the request for an advisory opinion were a matter of principle, to be decided by the unanimous vote of the Council, the issue would be clear. In that case, the United States of America, if concerned in the question, would not be entitled to vote, and its claim that its consent must be obtained would then be ruled out. If the Court declared, however, that the request was a mere question of procedure or investigation, a majority vote would be sufficient. Here, again, the "consent" of the United States of America would not be necessary. Thus no purpose would be served by laying the question before the Court, since in the matter under consideration by the Conference the object in view would not be attained. Such being the case, it followed that, in the end, with the best will in the world — he desired to emphasise how anxious the French Government was that the United States of America should participate in the work of the Permanent Court — the soundest plan would be simply to adopt the formula proposed by Sir Cecil Hurst and to explain to the United States Government that it might adhere to the Permanent Court and accede to the Protocol, but that it could only at most be put on a footing of equality with the Members of the League represented on the Council.

M. Osusky (Czechoslovakia) said that he would like to make some remarks with regard to the suggestion made by M. Rolin that the Conference should suggest to the Council that it should ask for an advisory opinion from the Court on the question whether, when asking for advisory opinions, unanimity or a simple majority was necessary. That question seemed to him to raise a serious question of the interpretation of the Covenant.

Who had the right to interpret the Covenant in that way? The Covenant itself was silent on the point. M. Osusky was aware that Article 14 of the Covenant provided that the Council might ask for an advisory opinion on any dispute or question which it might see fit to submit to the Court, but he wondered whether questions of interpretation of the Covenant itself were covered by that provision in Article 14.

Could the Council delegate to somebody the right to interpret the Covenant, which had been signed not only by the Members of the Council but by all the Members of the League of Nations? He wondered whether the right of interpretation and the delegation of that right to someone did not belong more to the Assembly than to the Council itself. Further, he would remind the Conference that the Covenant had not been adopted by the Assembly but signed by the States.

M. Osusky had raised this question only because M. Rolin's suggestion seemed to raise it. It was true that the suggestion related only to an advisory opinion which had no obligatory force; but still an advisory opinion has a capital value, so that in reality the question involved was a question of the interpretation of the Covenant.

As regards the real meaning of the second part of the fifth reservation, M. Osusky confessed that he found it somewhat difficult to get at it. If the United States of America had in view the objects indicated by Senator Walsh in his speech, it would, he thought, be much easier to find the solution. It was possible that a misunderstanding had arisen. It was possible that, had the United States of America known the actual legal situation as regards the question of unanimity, this reservation would have been drafted differently — that was to say, in the sense of Senator Walsh's speech quoted by M. Rolin.

Under the circumstances, M. Osusky found it very difficult to express a definite opinion, as he did not know whether the United States of America meant what Senator Walsh had said or something else. He would suggest that before taking a decision the Conference should do everything in its power to ascertain the position.

*The meeting rose at 12.20 p.m.*

#### FOURTH MEETING

*Held at Geneva on Thursday, September 2nd, 1926, at 4 p.m.*

President: M. VAN EYSINGA.

#### 14. Examination of the Fifth Reservation (Second Part) formulated by the United States Senate (*continuation of the discussion*).

Sir George FOSTER (Canada) said it had been a great satisfaction to him, as he was sure it had been to all the members of the Conference, to note the expressions of good will with regard to the action of the United States of America in passing its resolution of adherence to the Court, together with its various reservations. The result was probably not all that had been expected from the United States, and it was quite within the bounds of truth to say that much more had really been expected after the Peace Treaty had been signed. The United States, however, in the exercise of its own national rights, had come to the conclusion that it could not enter the League of Nations and undertake the obligations which would thereby have been imposed. That decision was a source of great disappointment to all those who had participated in the Peace Conference and, he might say, to the world in general.

Such disappointments, however, had to be borne, and criticisms which arose out of disappointments and which sometimes tended towards a bitterness of expression had no real merit and ought not to have any real existence. Every nation had the right to carry out its own conceptions, and although disappointments might occur and thoughts might arise as to a different plan which might have been followed, the expression of those thoughts should be, and, he thought, very generally had been, made in a very moderate tone and manner. No one questioned the right of any nation to take its own course even though disappointment to others might ensue.

Seven years had passed and the national attitude of the United States towards the League of Nations had not altered. Sir George Foster was anxious to make that assertion. He wanted to make it clear in his own mind and to the minds of all present that this gesture now made by the United States of America in connection with the World Court did not indicate any change in the national attitude. It was a matter for congratulation that a great country like the United States, in spite of the attitude that it had adopted with reference to the League as a whole, had, after some years of thought and reflection, changed its point of view to this extent, that in one branch at least of the work which had been initiated by the League the United States considered that it had a duty to perform and an obligation which it might well undertake. The League was thankful for that gesture, but it must not be concluded that that gesture and that action indicated a change in the national and official attitude of the United States towards the League.

There might be many reasons which might call for the adoption, with sympathy, of the reservations which had been made by the United States Senate, but the Conference might as well dismiss now as later any thought that its sympathetic attitude towards those reservations should be influenced by the idea that this was the first step of the United States towards joining the League as a whole. Sir George Foster held the view that this question must be approached and decided on its merits alone, and that the decision to be taken should not be influenced by extraneous considerations or optimistic thoughts as to what effect this might have towards a changed attitude on the part of the United States in the future.

In the first place, Sir George Foster wished to repeat, in corroboration of the statement he had just made, what he had mentioned the other day. The first of the series of reservations was a caution. The United States Government said: "We propose to enter the Permanent Court of International Justice, but" — and here is the caution — "do not run away with the idea that our decision should be considered in any way as a change of attitude towards the League of Nations as a whole or as the first step towards our entrance into the League."

That idea having been removed, the Conference could pass to what he thought was the main object to be discussed. Sir George Foster, unfortunately, had not had a legal education, and he would not put forward his opinion with reference to legal matters which might arise during the discussion of the reservations. He left that duty to the legal lights themselves. He would, however, put forward the idea that it might be the first and simple duty of the Conference to decide whether in principle it could adopt and make good these reservations. When that point was decided it could devote its attention to whatever might be necessary to clear away certain difficulties which would have to be removed before the reservations could have their full effect. While it might be necessary some time of other to have these legal questions examined and settled, the Conference would not have to examine or settle them if it came to the conclusion that it could not accept the reservations.

First, then, the Conference must decide whether it would accept the reservations. His own view and, he thought, the view of everyone present was this: if it were possible to accept these reservations and, by accepting them, to obtain the powerful adherence to the Court of a great country like the United States, then they ought to be accepted. The United States



had many lines of influence. Although the United States had not yet made up its mind to join the League of Nations, it was possible to look back upon a wonderful work which the United States had done in contributing to the primary and central idea embodied in the League of Nations itself.

The Conference could look back over the six or seven years since the Armistice and consider what the United States had done. It had contributed much of its lavishly generous output of material wealth to relieve the terrible consequences resulting from the war. What nation in the whole horizon could compare with the United States in that? It had given wonderful assistance in material — scientific, technical and humanitarian. The United States had sent men and women into all parts of the world which had been afflicted by the Great War and they had done splendid service in the humanitarian field. Into many fields, financial and economic, the United States had sent her best men and women, who had worked in the spirit of and along the lines adopted by the League of Nations. Such a contribution showed in the people of the United States a kindred spirit with the Members of the League and a unity of thought and action towards the great primary purpose of relieving the world from the incubus of war and bringing in the reign of peace.

One step more had now been taken by the United States in proposing, if the reservations put forward as conditions for her entrance were accepted, to become herself a portion of that very important branch of League effort which was to introduce, in place of the old methods of war and force, the reign of law and the methods of judicial action. The Members of the League of Nations must take the most sympathetic view of this gesture on the part of the United States and must examine its meaning thoroughly.

The League had, however, another duty to perform. Fifty-five nations were banded together to work for peace and against war. They had undertaken responsibilities and obligations which required not only national but individual sacrifice and the consecutive work and sympathetic co-operation of the citizens of the different nations with their Governments. This work was founded upon a great idea. It was carried out according to methods which at first were largely theoretical but were now becoming practical, as the difficulties which had been found in the path were removed. The Conference had a trust to discharge, and that trust imposed upon it the duty of making a thorough and careful examination of the reservations which have been attached to the proposal of the United States.

No man in the United States could cavil against that statement. Everybody wished to be open and above-board. The United States wished to guard its rights and privileges, and it was granted the full right to do so. The Members of the League had their duties also, and those duties compelled them to see that the primary principles and objects of the League and the methods by which an endeavour was being made to carry them out were not prejudicially affected by the reservations. That was the point to which the United States and the League had to come. That was the duty which both had to perform; that was the duty of the United States to itself and of the League of Nations to its special undertakings and to its Members.

Sir George Foster now wished to examine briefly but, if possible, consecutively the changes which would be brought about if the reservations were accepted as they stood. He proposed to ascertain, if possible, whether in the majority of the cases or in any one of them they would prejudicially affect the methods which the League of Nations, as a result of experience, had put into operation in order to carry out its obligations and the obligations of the associated nations. To accept the reservations would, of course, necessitate certain changes.

He would call attention to the fact that the reservations were not directed either towards the Assembly of the League or the Council. As regards the fifth reservation, he found, in looking over the records of the discussions in the United States Senate; that certain changes had taken place during those discussions. The fifth reservation read as follows:

“ That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest. ”

Under that reservation the Assembly and the Council of the League retained all the powers they had ever had. The powers of neither of them were attacked or limited in any way by this reservation. The reservation, then, was not directed towards the Assembly or the Council of the League, but towards the Permanent Court of International Justice. It was, in fact, a legislative measure by the United States of America which would become effective if the reservation were accepted. In the Senate of the United States legislation had been enacted, which stipulated in a direct and mandatory way that the Court should not do certain things. Such a direction had never been given even by the League of Nations itself. It would be going very far to admit that a country outside the League of Nations could pass what would become, if approved, a mandatory order directed to a court of law set up by the League of Nations and saying to that court that, under certain circumstances, it should or should not do certain things.

The Council and Assembly of the League could make any request they pleased for advisory opinions. They were not limited except in so far as they would be advised of the fact that this prohibition existed when request was made to the Court for an advisory opinion.

They would probably first ask themselves whether certain things should or should not be done before the request was sent, but the inhibition took effect when the Court itself received the request for an advisory opinion. A different state of things would therefore be created from that which existed to-day. At present, when a request for an advisory opinion was sent to the Court, the Court acted upon it without further investigation. But when the reservations came into force, the Court, on receiving a request for an advisory opinion, would have to ask itself the primary question whether or not it could take up the matter, since, if the United States had an interest or claimed an interest in it, the Court would not be able to deal with it. It was therefore quite clear that the first duty of the Court would be to seek information on the question whether the United States had or claimed to have any interest in the matter. How was it to obtain an answer to the question? The Council and the Assembly of the League could not give it the answer. The Court must go to the source and must ask the United States Government itself if it had any interest. The question would be put through the proper channels, through the Secretary of State to the Executive.

Upon this matter it was necessary to be very clear; otherwise it would not be possible fully to appreciate the position. If the reservation read to the effect that there must be a statement of claim or of interest by the President of the United States it would be a very different matter, but the reservation read that the consent of the United States itself had to be obtained. What did that mean? Sir George Foster had before him an illustration of what it might mean, an illustration taken from a speech made in the United States Senate during a discussion on this subject.

Senator Willis, in the course of the discussions on the matter, made use of the following language in reference to the fifth reservation:

"These reservations, in effect, provide, as before stated, that our country declines to accept the optional clause for compulsory jurisdiction. This in effect is tantamount to a declaration that the Court shall have, so far as our country is concerned, no jurisdiction over any case unless our Government by action of the President and the Senate shall submit the case to the Court voluntarily and thus give it jurisdiction."

That passage related to the reference to the Court of cases in which disputes arose, and in connection with which a judgment was sought. The same definition would, in the opinion of this Senator, apply to the case of a request for an advisory opinion. The Court, when seeking to know whether it could proceed, and when seeking an answer, must get the answer from the constitutional source provided. Was the reply of the United States to be accepted as sufficient if given by the President himself as the Executive of the nation?

This opened up a very different interpretation of what constituted the "United States", and of what would be necessary for a statement from the "United States" to have authority with the Court. He could not find, from the discussions that had taken place, that any objection had been raised to that statement of what constituted the proper authority.

There was something else to be noted from the discussions in the Senate to which Sir George Foster had referred. Reservations were proposed in the President's message, and amendments were made to those reservations during their passage through the Senate. The original text of the fifth reservation read as follows:

"The United States shall be in no manner bound by any advisory opinion of the Permanent Court of International Justice not rendered pursuant to a request in which the United States shall expressly join, in accordance with the Statute for the said Court adjoined to the Protocol of Signature of the same to which the United States shall become signatory."

This was very different from the reservation in its final form. No one in the League of Nations could have the least objection to the United States making a declaration that she should not be bound by any advisory opinion from a Court unless she herself had acceded to the request for that advisory opinion. Such a text was very different from that ultimately adopted, which took the form of a mandatory direction to a Court not established by itself, requiring that Court to refuse to give any advisory opinion asked for by the Council of the League on a question in which the United States of America had or claimed to have an interest.

What sort of answer would the Court accept as a satisfactory reply to its question whether the United States had or claimed to have an interest? If the United States said, through its proper authority, that it had or claimed to have an interest in a particular question, had the Court any right to require proof of that interest? Could it of itself go into the matter, examine it and come to its own conclusion on the question whether the United States had an interest? It seemed to Sir George Foster that the answer to both questions was in the negative. What the Court would have to do would be to accept a statement from the United States that it claimed an interest, and that would settle the matter. That question, therefore, could not be pronounced on by the Court.

The Conference might look at previous experience and the methods suggested by that experience. It would be seen what an immense difference there would be if the reservation were accepted. The first thing that would happen, under the best of circumstances, would be great delay. If an advisory opinion were required on a question which had arisen suddenly and which called for an almost immediate decision, or one which should be taken as quickly as possible if success were to be achieved, the first thing that would occur would



be delay. If the Congressman whose words Sir George Foster had quoted had given a proper idea of what constituted the United States authority, that authority was not the President of the United States, but the President in conjunction with the Senate. Interminable delays might result from a situation of that kind. The Senate was a very important authority in the United States and claimed very important powers with reference to all foreign affairs. If, therefore, the Court had to wait until it obtained from the United States a reply drafted as a result of consultations between the President and the Senate, the delay might be almost interminable. This was the situation which had to be faced. There might be a counterbalancing advantage, but it was necessary to know exactly what would happen, and then in the light of that knowledge it would be possible to decide whether the advantages outweighed the disadvantages. Advisory opinions were authorised by the Covenant, had been used to great advantage in the operations of the League, and apparently would be more largely used in the future. Could the League afford to be unduly hampered in their use or to be virtually deprived of that use?

There was a further point which was important. The League of Nations was an experiment built up on certain principles which had been accepted by the nations composing it, in pursuit of an ideal which could only be realised after long effort. It was found as experience was gained that certain rules or statutes laid down early in its work might beneficially be changed, and, having thus ascertained what changes were necessary, it desired to make them as occasion arose. If experience showed that these continuous changes were necessary, a difficulty would result. If these reservations, which would become binding, were accepted no provision was made for their modification should such modification be shown by experience to be necessary. On the contrary, any change became contingent upon the consent of the United States. In Sir George Foster's view, experience would demand changes in the future as regards questions of procedure, many of which would not need to be decided by unanimity. But this reservation, if adopted without any qualifying clause, would be binding and would hinder the progress of the League in the future; as a result, fifty or sixty world nations, upon whom fell the burden and responsibility of carrying on the work of the League, would be unable to modify and change its methods except with the permission of one nation which stood outside, free from all responsibilities, and which naturally was not in sympathy with its work.

This ought not to be the case. If the League of Nations were to make progress and to attain its ideal, the present reservation, if accepted, should be drafted in such a manner as not to hinder the evolution necessary for the realisation of that ideal.

These were two of the principal objections which Sir George Foster had to the reservations now under discussion. He took his stand upon the general principle — and in that respect he would reply, to a certain extent, to a suggestion made by Sir Cecil Hurst — that the Conference should face some of the practical questions which he had mentioned.

It was necessary to take the United States presentation as given in these reservations and start from their basic idea. Those reservations must be taken as honest, straightforward expressions of the spirit of the United States. The main idea of the United States, the common basis upon which Senator Walsh founded his argument in that short extract which had been read, was that there should be equality of treatment. Upon that basis of equality of treatment Sir George Foster was prepared to accept, and to accept most cordially, the participation of the United States of America in the Court. The United States must be put on exactly the same level and on the same plane, as regards rights, privileges and conditions, as a Member of the League. The Members of the League were collaborators in the institution known as the League of Nations and accepted the obligations involved therein. The United States was not a participant in this institution; it was free from all the obligations and duties of the League. This being so, the United States had, as Sir Cecil Hurst had said, really a preferential position. Sir George Foster would willingly give it that position, and he thought that everybody would. But it was necessary to return to the question of these conditions of equality.

He was confident that the real intention of the United States was to obtain this equality of treatment and no more. It had stated that it did not wish to have anything to do with the League of Nations — neither to assume its obligations nor to participate in its activities. If, then, certain things were different from what the United States had believed were opposed to this equality and hurtful to the spirit and activity of the League, it must be stated in all frankness and loyalty. Let us accept a situation of true equality, let us face the difficulties that have caused the formulation of these reservations and consider what steps can be taken to eliminate all inequality and at the same time preserve the necessary powers of the League.

Such were the thoughts to which Sir George Foster felt he should give his attention, to which all the members of the Conference ought to give their attention without any spirit of opposition and with no idea of trying to keep the United States at a distance. Everyone desired the adhesion of the United States; of this there was not the slightest doubt. Everybody would be delighted when the United States adhered to the Court and when it formed a part of this important organisation. But everyone had a duty to perform and, in Sir George Foster's view, the United States should be asked to examine the difficulties — difficulties which were not theoretical but practical and which were not questions of dignity or prestige, but which concerned purely and simply the normal activity of the League. The United States should be asked to re-examine the question of real difference and to see

if it were not possible to obtain the equality of treatment for which it asked without endangering the activity of the League and of the Court itself.

M. BUERO (Uruguay) apologised, first of all, for taking part in the discussion, as he felt some diffidence in entering into the debate after hearing the lucid statement made by the Canadian delegate. He thought, however, that his personal point of view might perhaps be of some use to the Conference.

He was in favour of accepting even the fifth reservation, because he considered that the substance of the question, that was to say, the claim of the United States, had been perfectly clearly explained by speakers that morning and by Senator Walsh. It seemed to him that the United States claimed nothing beyond equality of treatment; the sympathetic attitude of the Conference towards the acceptance in principle of the United States reservations was therefore perfectly justified.

He reminded his hearers that, at the first meeting on the previous morning, the President had suggested that, in his view, the method of procedure to be adopted during the discussion should be as follows: the substance of the question would be discussed, the consideration of points of detail being postponed to a later meeting.

The Conference now appeared to have overcome the difficulties presented by the first, second, third and fourth reservations.

In dealing with the fifth reservation, the procedure had been slightly modified, and the wise counsel of the President had not been very strictly followed. If the Conference had dealt with the other reservations as they were now dealing with the fifth, it would have seen more clearly how it was possible to overcome the difficulties which arose in the election of the judges by the Council with the participation of a country that was not a Member of the League and did not form part of the Assembly, which became an electoral body when appointing the judges.

It seemed to him that the problem should have been considered: this would have carried the Conference a long way, for it would have been possible to state that such a reservation could not be adopted without modifying not only the Statute but the Covenant of the League of Nations. He considered that the procedure advocated by the President, from which the Conference appeared to be departing, was the only fair method and the only one likely to enable it to complete the first stage in its important work. He considered that the moment had not yet arrived for studying in detail and from the practical point of view the consequences involved by the adoption of the United States reservation.

Sir Cecil Hurst had stated that morning that one important point should be cleared up: if the United States formed part of the Council and its reservations were taken into consideration, a situation of inequality would be created between the United States on the one hand and the States Members of the Council of the League of Nations on the other, because the latter had obligations towards the League which were not incumbent upon the United States.

Opinions might differ; that would depend on the ultimate form of the United States reservation, if it were accepted in principle.

The moment did not seem opportune for discussing the other points raised by Sir Cecil Hurst, points which were full of interest and which bore evidence of the extraordinary acumen and legal talent of the British delegate.

Supposing that an advisory opinion must first be asked. Members of the Council who felt obliged to oppose such a request would have to explain their point of view, and all parties would have to be heard, whereas, according to the United States reservation and Sir Cecil Hurst's statement, it would be sufficient for the United States merely to say, "We claim an interest in the question", for the procedure connected with the advisory opinion to be stopped.

That was a question of form, and he concurred with his Italian colleague in wondering whether it would not finally be necessary to admit that the form took precedence over the substance. It seemed to him that the Conference should consider whether, according to the fifth reservation, there was inequality between the situation of the United States and that of other countries signatories of the Statute of the Court.

In his opinion, that was a matter of principle.

In order to examine this question, one highly important point was missing, namely, what was the extent of the rights of Members of the League of Nations signatories of the Statute of the Permanent Court of International Justice? If the scope of these rights and obligations was not quite definitely fixed, it would be difficult to arrive at any conclusion. To draw a distinction between these two points, a basis for comparison was required. It was therefore essential, in the first instance, to arrive at a definite decision concerning the position of the various countries Members of the League which had adhered to the Protocol with regard to a request for an advisory opinion from the Permanent Court. Must the request be made unanimously or would a simple majority of the Members of the Council suffice for the request to be proceeded with in the normal manner?

He regretted the absence of M. Fromageot, who that morning had expounded with that precision which only the French language permitted his original interpretation of the question, which interpretation had been supported by M. Rolin. That method of procedure appeared to be perfectly in harmony with the ideas expressed concerning the fourth reservation and appeared to have been adopted by a large majority of the present Conference.

M. Buero laid stress on the fact that he was referring to M. Fromageot's first speech, for it seemed to him that M. Fromageot in his second speech had slightly veered from his original opinion and had seemed less categorical in his views. M. Fromageot, when voicing his disagreement with M. Rolin's proposal to submit the question of principle to the Permanent Court of International Justice for consideration, had stated that such a step would lead nowhere, because, if the Court decided that requests by the Council for an advisory opinion must be decided upon by a majority, the United States, if it insisted on its claims, would create a quite exceptional situation. He had also stated that, if the Court, pronouncing on the question, should decide that all requests for advisory opinions must be submitted to it unanimously, the United States could not prevent that unanimity unless a formal reservation had been made to that effect. Further, M. Fromageot had stated that Members whose interests were at stake in any question should have no right to vote. The fifth reservation would thus establish a difference between the rights of the United States and those of States Members of the Council.

M. Buero agreed that if M. Fromageot's conclusions were correct, his (the speaker's) point of view would be greatly modified. If he accepted the reservation, it was because it contained nothing which could destroy the position of equality or modify the situation of the United States as compared with that of Members of the League of Nations. His ideas and attitude with regard to the fifth reservation led him to a totally different conclusion from M. Fromageot.

He entirely concurred with M. Fromageot's proposal that it was essential in the first instance to consider, with regard to requests for advisory opinions, the position of Members of the League of Nations who were at the same time signatories of the Protocol of the Statute of the Court. Should advisory opinions be treated as mere matters of procedure? In other words, should the majority rule be applied, or was unanimity essential? He had many reasons for believing that unanimity should be the rule in this matter, the chief of these being the importance of advisory opinions.

In this connection, M. Buero would refer to the dispute which had arisen between France and Switzerland concerning free zones. He recalled the fact that this question had been submitted to the Court at The Hague, which would have, in the first instance, to give an advisory opinion to be communicated to the two parties concerned. It was understood that only if the two parties could not reach an agreement based upon that opinion would the Court have to pronounce a judgment. That example showed, therefore, the importance of advisory opinions.

He thought it would be difficult to decide whether advisory opinions could be considered as questions of procedure or not. That would depend upon circumstances. It seemed, therefore, that this question should be settled first of all, so as to enable the Conference to take a decision with a full knowledge of the facts and without fear of making a mistake.

As regards the question of the necessity for an interpretation of the Covenant, M. Buero thought that the Committee appointed to examine the whole question would have to determine whether or not such an interpretation was necessary.

Referring to the last point raised by Sir George Foster, he considered that the Conference ought to investigate it with an open mind. If the legal texts to be examined were clear, there was no necessity for an interpretation. It seemed to him that the Conference should confine itself to considering the question from a strictly legal point of view.

He agreed with the Canadian representative, who declared that the States had rights and obligations towards the League of Nations, both in their capacity as Members of that organisation and as signatories of the Protocol of Signature of the Court. It was true that the United States reservations could in no way alter the relations of the States Members of the League towards the Protocol of the Court which they had signed.

M. Buero was not sure if he had clearly understood the Canadian representative's meaning when the latter had explained in detail what would be the result if the fifth reservation as formulated by the United States Senate were accepted. He thought this reservation referred exclusively to advisory opinions. The last part of it was worded as follows:

“ Nor shall it, without the consent of the United States, entertain any request for an advisory opinion. ”

The question whether a State could be summoned without its consent depended on the non-acceptation of the Optional Clause No. 36 of the Statute of the Court. There could be no doubt therefore with regard to that matter. Consequently, and if M. Fromageot's proposal were accepted, the Committee thus constituted should only examine the question concerning requests for advisory opinions submitted by the Council to the Court of Justice.

In conclusion, he could only repeat what he had stated on the previous day as to the importance of placing the United States on a footing of equality with the other States signatories of the Protocol.

M. MOLLOFF (Bulgaria) thought that, in view of the vast number of opinions which had been expressed on the substance of the question, it was time to decide upon a method of procedure. The Conference was discussing the question of principle at a first reading, and could appreciate the significance of the fifth reservation.

He thought that, in the first place, the preliminary question which had been raised, *i.e.*, what the duties and rights of States Members of the League of Nations were in relation to the United States reservations, could be discussed so as to pave the way for a decision; but it was not possible for the Conference to interpret the Covenant of the League of Nations. This was beyond its competence.

A further preliminary question arose; that of an enquiry, or rather of a request, to be addressed to the Council of the League asking it to apply to the Permanent Court at The Hague for an advisory opinion.

He felt that such a request for an advisory opinion would constitute a danger, since it would to a certain extent run counter to the fifth reservation of the United States. Should the United States be consulted first and its consent obtained on this point, since it was certainly one that concerned it? He preferred not to insist on such an argument.

Secondly, the difficulties which would certainly arise after the possible adhesion of the United States to the Permanent Court of International Justice and which had been set forth in so masterly a fashion by Sir George Foster — who claimed to be no jurist but who nevertheless adduced his arguments with legal acumen — would have to be considered at a later date.

If the Conference could agree to accept the reservations formulated by the United States Senate, for which object it had been appointed, the best way would be to refer the settlement of the difficulties created by the fifth reservation to a later date; these difficulties appeared insuperable at the present juncture, but would be much more easily cleared up after the adhesion of the United States to the International Court and with its participation. For the time being, it was necessary to be far-seeing; it was necessary to pave the way for the participation of the United States in this international work. The substance of the question was this: the United States was firmly resolved to remain outside the League of Nations. That was its fundamental reservation and must always be borne in mind. The Conference had, moreover, accepted it without discussion.

All the other reservations, the second, the third, the fourth, which had been discussed on the previous day, and also the fifth, were only the direct or indirect consequence of the first reservation. The United States declared, in a negative form, that, as it was not a Member of the League of Nations, it could not allow an advisory opinion which directly concerned it or bore upon a question in which the United States considered its interests involved, to be asked or given, since the United States held that the advisory opinion of the Court at The Hague was a means provided for by the Covenant and regularly resorted to by the League of Nations. The United States was anxious to hold aloof as far as possible from the application of measures and means provided for in the Covenant. That was the situation at the moment. The United States might in course of time adopt another attitude. By participating in the great work of international justice it would certainly have opportunities of considering a number of advisory opinions which would be given by the Court at The Hague, and it would perhaps eventually become accustomed to see in it not a danger but an institution of great importance in certain kinds of international conflicts arising between States.

He thought that the decision suggested by Sir Cecil Hurst and supported by M. Fromageot was the only acceptable one, *viz.*, that the reservations should be accepted in the sense that the United States should receive the most-favoured-nation treatment.

Sir Francis BELL (New Zealand) said he desired only to remove the suggestion that any serious weight, in the argument on the matters before the Conference, ought to be attributed to the question whether the Council or the Assembly must be unanimous in referring a question for an advisory opinion. There were only two matters for decision, but they were matters of great importance. The two questions which the Conference had to determine when deciding on this fifth reservation were: first, whether the terms of the second part of the fifth reservation granted exceptional privilege and superiority to the United States in the matter of the jurisdiction of the Court or not; if they did, the second question was whether it was wise and safe to grant that exceptional privilege and superiority.

Sir Francis Bell did not propose to express his opinion on the second question, but as regards the first it was absolutely beyond dispute, in his view, that the terms of the second part of the fifth reservation did confer exceptional privilege and superiority upon the United States, a privilege which was not possessed, and would not be possessed, by the other nations adhering to the Court, and a superiority which separated the position of the United States entirely from that of the other nations subject to the jurisdiction of the Court. It was suggested that the question whether special superiority and privilege were conferred could be tested by deciding whether the Council must be unanimous in referring a question for an advisory opinion, and, therefore, whether there did not already exist in the States represented on the Council a power of veto.

It was the desire of the Conference, evidenced yesterday and to-day, that the United States should not be under a disability by reason of its not being a Member of the League. The United States, so it was said, was not asking for any position superior to that possessed by the States which had already adhered to the Statute of the Court. It was manifest, of course, that if the Council could, by a majority vote, obtain an advisory opinion, then an exceptional privilege and power were demanded by the United States. But it had been suggested in the arguments brought forward more than once, during that morning, and

especially by one of the delegates of France, that if it were true that the Council must be unanimous in preferring a request for an advisory opinion, then it was demonstrable that the United States would be granted no greater power than was already possessed by each State represented on the Council.

That was the point to which he wished to call the attention of the Conference. Assuming it to be the fact that the Council must be unanimous in preferring a request for an advisory opinion, it was not true that on that assumption the fifth reservation did not demand and grant an exceptional privilege and right to the United States, for "power" was not synonymous with "right"; one word was not the expression of the other. Sir Francis Bell did not want to use the word "demand" but this was a proposal for the concession and admission of a right to the United States to veto any proposal for an advisory opinion which in its opinion was inadvisable from its point of view as affecting its interests. The right which it asked to have conceded and admitted was not a right possessed by any Power now a Member of the Council.

Assuming the necessity for unanimity, any Member of the Council had power to veto the reference of any question to the Court, but it was not true that any Member had the right to do so. Such an exercise of the power of veto would be absolutely contrary to the spirit of the Covenant of the League. The members of the Council were not there to guard the interests of their respective countries and to prevent the discussion of matters which might affect those countries; they were there to guard over and to govern the interests of the League and of all the nations. If a State not at present represented on the Council were now seeking election and that country were to declare, through its representative, that, if elected, it intended to exercise its power of veto to prevent advice being given to the Council on any matter affecting the interests of that country, what chance would it have of being elected to the Council? If any country having a permanent seat on the Council used its power of veto on the question of an advisory opinion — assuming it to have that power — in order to prevent the discussion of or the taking of a decision concerning matters affecting the interests of that country, it would break up the League.

Sir Francis Bell only wanted to show that the question whether a State represented on the Council had the power of veto on advisory questions was no test of the question which the Conference had to decide. In his opinion, the Conference was undoubtedly faced with a request for an exceptional privilege and superiority, and he would ask the members of the Conference to consider his view. He would also ask them if they did not agree that the question of unanimity in the Council had no bearing upon the point whether the United States was or was not asking for a right of veto and not a mere power of veto.

As regards the second question, namely, how far, taking into account those considerations, it would be wise and safe to agree to the reservation, he would offer no opinion. That was a matter upon which there were many others who were better qualified to speak than himself. But upon the first question he felt qualified to express an opinion and he did not see how that opinion could be contradicted.

M. UNDÉN (Sweden) stated that, when he had studied the report of the discussion on the present question which had taken place in the United States Senate, he had been struck by the fact that several speakers, when explaining the meaning of the fifth reservation, had emphasised the fact that it was intended only to confirm the principle established by the Court itself in the affair of Eastern Carelia.

Members of the Conference would no doubt remember that the Court, when refusing to comply with the request of the Council, had made an important general statement concerning its attitude towards a request for an advisory opinion on a dispute between a State Member of the League of Nations and a non-Member State.

He preferred not to say whether the intentions by which the Senate had thus been animated had been perfectly expressed in the wording of the reservation. In any case, the fact that the United States Government had reserved the right to interpret and apply the reservation itself constituted a considerable difficulty. He thought, however, that the principles on which this reservation was based might be retained in order that an exact idea of its scope might be obtained.

If account were taken of the connection between the fifth reservation and the principle established by the Court in the affair of Eastern Carelia, the wording of the reservation was more easily explained. In the Carelian affair it was the Court and not the Council which received Russia's protest against the competence of the Court, and the Court had decided not to give an advisory opinion.

The fifth reservation had been based upon a principle laid down by the Court itself.

Even if the reservation were interpreted in the most favourable sense, viz., as contemplating only the application of the principle established by the Court in the affair of Eastern Carelia, it seemed hardly possible to admit an unlimited right on the part of the United States Government to decide whether it should or should not claim to be concerned in an advisory opinion.

M. Undén did not think it was possible to admit that the United States — even in theory — had an unlimited right to oppose every advisory opinion. He wished to emphasise the point of view set forth by the President, that the reservation affected the constitutional right of the League of Nations, seeing that the Council and the Assembly, and not the States represented at the present Conference, enjoyed the right, recognised by the Covenant, of asking for advisory opinions.

M. Undén thought that M. Rolin's suggestion that the Council should be requested to ask the Court to inform the Conference whether unanimity was required for a request for an advisory opinion or not was very interesting.

It was obvious that the Council could address such a request to the Court, and it seemed to him that the objections raised against the legality of this procedure were not justified. The Court was competent to give its opinion on the interpretation of the Covenant if the Council so desired, and had repeatedly had occasion to give decisions with regard to such interpretations.

What would be the use of an interpretation given by the Court on this point? If the Court pronounced in favour of the unanimity rule, he admitted that perhaps the Court's opinion would not provide the elements of a solution for the problem, seeing that the States represented on the Council were in any case in a situation differing from that of the United States, as Sir Cecil Hurst had pointed out. Under the Covenant they were bound by their general obligations. But if the Court — as was highly probable — replied in the contrary sense, the Conference could approach the United States Government with a full knowledge of the facts and point out the difficulties which would arise if the fifth reservation were accepted.

After so detailed a study of the problem, the Conference was justified in suggesting a solution to the United States. It would perhaps be unnecessary to ask that the reservation should be changed. It might be possible, in agreement with the United States, to consider other means, and he would suggest a reservation by the States represented at the Conference regarding a right of denunciation on the part of these States, or, rather, a right to withdraw their acceptance of the United States' reservations in the future if a divergence of opinion should arise as to the scope of the fifth reservation. Such a right of denunciation would correspond with the right to withdraw its adherence provided for by the United States in its fourth reservation. In either case, it was a question of reserving the right to reconsider a decision, the consequences of which were difficult to foresee.

It was necessary to reserve such a right, because the United States Government had officially declared that it was not authorised to interpret the reservations adopted by the Senate. While noting this declaration, the Conference would maintain the right to withdraw its acceptance of the United States reservations, should its interpretation of the fifth reservation not be in conformity with that required by the United States.

Finally, he stated that the remarks he had just made were intended merely as suggestions.

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#### FIFTH MEETING.

*Held at Geneva on Friday, September 3rd, 1926, at 10 a.m.*

President: M. VAN EYSINGA.

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#### 15. Examination of the Fifth Reservation (Second Part) formulated by the United States Senate (*continuation*).

The PRESIDENT said that, before the Conference resumed the discussion on the substance of the second part of the fifth reservation, he would like to make some observations with regard to the programme for the remaining hours — or it might be days — of the Conference. A desire had been expressed in several quarters that the general discussion on the first reading should be finished before the Assembly.

He thought that this desire was not merely justified but that the discussion could certainly be concluded on that day. The Conference would no doubt finish that morning the general discussion on the second part of the fifth reservation. After that, certain general observations would be necessary with regard to the questions connected with the five reservations and which he had ventured to describe as questions of form. In his view, the debate on these general observations would not take up much time as it would have been preceded by an exhaustive discussion of the substance of the reservations. In these circumstances, he thought that the general discussion would be completed that evening, even if it was necessary to sit until a late hour. The members of the Conference would then have the following day at their disposal.

He intended, at the end of the general discussion, to submit a definite proposal for the work to be carried on, possibly by a smaller body, so that the present members might attend the meetings of the Assembly from the beginning. The foundations of the work had now been laid, and in this way it could be continued in a practical manner.

M. ROLIN (Belgium) said that he shared the President's desire for an early conclusion of the debate.

He thought that real progress had been made on the previous day, in that all the members of the Conference had examined the problem thoroughly, had discovered new aspects of it, and had formed clearer ideas of the methods by which it might be solved.



One point should be clearly borne in mind, namely, that the Conference was not discussing the whole of the fifth reservation, since, as regards the first part of it (as the President had observed without any voice being raised in dissent), the Court of Justice had anticipated the United States requirements.

M. Rolin urged that the second part of the fifth reservation could and should also receive a large measure of satisfaction. It had incidentally been pointed out — and sometimes forgotten — that, if the United States really had an interest in a question on which the Court was desired to give an advisory opinion, such advisory opinion could not, according to the precedents established by the Permanent Court of Justice, be given except with the consent of the United States.

It was clear that if the United States had failed, by inadvertence or otherwise, to object to an advisory opinion of the Court in a question which even remotely affected its interests, such an opinion, given in the absence of the United States, would be in no way binding upon it.

That consideration should materially allay certain apprehensions on the part of the United States and it ought most decidedly to be embodied in the conclusions of the Conference.

It was important to note, at the outset, that the right of the United States to come before the Court and claim its legal interests in a problem on which the Council had requested an advisory opinion connoted a right of intervention on the part of the United States before the Permanent Court of Justice. The Court itself had provided for such procedure. It had provided for the communication of the requests and the relevant documents; it permitted States which might consider themselves interested to intervene and submit their arguments, and, in the special case of the United States, such arguments might be directed to proving the incompetence of the Court, just as the Soviet Government had done in connection with the request made by the Council on the initiative of the Finnish Government. That in itself was therefore a substantial right — nay, a privilege — which the United States would enjoy; a privilege, because no other Member signatory of the Protocol and also Member of the League could prevent the Court from giving an advisory opinion upon the pretext that its interests were concerned. Sir Cecil Hurst had indeed been the first to remind the Conference that — leaving on one side the question whether unanimity was required or not — Members of the Council could not, when judging of the substance of a dispute (and *a fortiori* in regard to a request for an advisory opinion), object to the Council submitting a question to the Permanent Court of Justice. The United States, the Soviet Government, as also other States not belonging to the League of Nations, were therefore able to do what Members of the League of Nations could not do even if they were Members of the Council: they could prevent the Permanent Court of Justice from rendering at the request of the Council an opinion in their absence. There was no question of contesting or refusing that privilege. It was not being granted to the United States; that country was simply being allowed to retain it. This privilege was derived from the special legal situation which the United States enjoyed as a non-Member of the League and therefore not bound by certain stipulations in the Covenant. The Conference had accepted the first reservation; it was therefore perfectly clear that the United States could be a signatory of the Protocol of the Court and yet retain its present legal situation, and more especially the right of coming before the Court and demanding that it should declare itself incompetent.

M. Rolin then turned to the second part of the reservation, which he considered was summed up in one single word, "claims". The United States — if its reservation were taken literally — was asking not only for the right to intervene and to claim that its interests were concerned but that the mere fact of its intervention and the mere declaration that it had an interest in the question should be sufficient to compel the Court to declare itself incompetent without even considering how far the claim and this declaration of incompetence were justified.

It was at this point that it was necessary to consider whether it was possible to go so far as that. Sir George Foster, in his very striking speech, had pointed out that, as a matter of fact, the request of the United States was not addressed to the Council nor to the Assembly but to the Court; and that the United States was requesting the Court itself to refuse to give an advisory opinion if the United States declared that it had an interest in the question referred to the Court. It was manifest that, stated in that form, the request of the United States would indisputably give that country a privileged position, since none of the States Members of the League was entitled to claim that the Court was incompetent solely on the ground that the State in question was interested in the matter which had been submitted by the Council. All that the States could do was to adduce arguments in favour of one or other solution of the question submitted by the Council to the Court.

Why was it, then, if the United States reservation was addressed to the Permanent Court of Justice, that the speakers in the debates in the United States Senate, to which reference had frequently been made, wished to know what were the rights of Members of the Council? It was because it was believed in America that the object which Members of the League of Nations could not attain directly could nevertheless be attained indirectly by those States which were represented on the Council by refusing assent to a proposal, moved in the Council, to submit a question for an advisory opinion, thus preventing a unanimous decision. In this connection, M. Rolin had thought that Sir Francis Bell's observation was pertinent and subtle when he had said that, in reality, the analogy established by Senator Walsh in his speech in the United States Senate was not a comparison between

a right claimed by the United States and a right enjoyed by the Members of the Council, but between a right claimed by the United States and a power which Members of the Council might exercise improperly. Members of the Council could not indeed claim that their interests were concerned in order to oppose a request for an advisory opinion, since the Members of the Council which claimed to have an interest in the question would by that very claim be excluded from the unanimous vote which the Conference was assuming to be necessary.

But what Members of the Council had it in their power to do, if unanimity were essential, was to conceal their interest in some question — an interest which might be indirect, or due to sympathy with one or other party, or to some other cause — and adduce arguments of expediency, etc., in order to prevent unanimity and to make it impossible to ask for an advisory opinion. The United States was accordingly, in its fifth reservation, seeking to transform into a right, so far as it was concerned, that which, in the case of Members of the Council, was the abusive exercise of a power, supposing always that unanimity was necessary before a request for an advisory opinion could be preferred by the Council.

Having arrived at these conclusions, in the light of the explanations given on the previous day, he was the first to recognise that the question, as he had regarded it after M. Fromageot's statement — namely, whether the Council need or need not be unanimous when deciding to request an advisory opinion — had lost much of its importance, since any Members of the Council which might dissent from such a motion would be debarred from adducing their interest in the question, and could not therefore find themselves in the position, claimed by the United States, of being able to oppose a request for an advisory opinion by merely declaring that they were interested in the question. However, he thought that the Conference might with perfect fairness confine itself to saying, in its reply to the United States, that it admitted that, if that country had a legal interest in a question, the Court was not competent even to give an advisory opinion without its consent; that it admitted that, if the Council had not perceived that the question directly concerned the United States, the latter country was entitled to represent to the Permanent Court of International Justice that it claimed an interest and to plead that the Court was incompetent; and that, if the Court of Justice recognised the validity of that interest, it would have to declare itself incompetent. He thought, therefore, that if the present wording of the reservation were very slightly modified so that it read: if the United States "claim and have an interest", the reservation could be accepted. Was that not the essential point which the United States wished to secure? Could not the Conference hope that, after the question had been fully stated, as a result of the present discussion, such a proposal might appear acceptable to the United States?

Personally, however, he would be prepared to go further and to put forward his former suggestion as a sort of subsidiary proposal and to say to the United States: "If your position is that, in view of the power which Members of the Council of the League of Nations are said to possess to misuse the requirement of unanimity (which you believe to exist even in connection with requests for advisory opinions), you claim that the United States should be officially accorded, in order to safeguard its interests, a right similar to the power which is enjoyed by Members of the Council — supposing that unanimity is requisite — we reply that, as doubts are entertained in the League regarding this essential point of unanimity, we are prepared, in order to give you complete satisfaction, not only to accord you equality of rights (though that amounts in your case, owing to your position as a non-Member of the League, to giving you a preferential position) but also to give you equality *de facto*, by asking the Court to say whether or not, and in what cases, the Council should be unanimous when asking for an advisory opinion". By so doing, the Conference would have gone as far as possible along the road to agreement and to acceptance of the United States reservations. M. Rolin pointed out that he was not putting his suggestion in a definitive form, because he was aware that the question would have to be reconsidered by the Drafting Committee or the Sub-Committee which would probably be appointed. His object had merely been, in view of the fresh explanations given on the previous day — in particular, by Sir Francis Bell — to reopen the question and show to what extent he himself had been led to modify his former conclusions.

He was anxious to add a few words concerning the legality of a request to the Court for an opinion. Doubts had been expressed on this point, and it seemed well to remind the Conference that the step which the Council was now being asked to take was one that it had already taken on various occasions on behalf of the International Labour Organisation. On three occasions of once, at the request of the Organisation itself, in regard to the validity of the nomination of the workers' delegates; once at the request of the French Government in regard to the application of the provisions of the Treaty of Versailles concerning agricultural labour; and quite recently at the request of the employers' group of the Labour Organisation in regard to the validity of the supplementary regulations for employers' work — the Council had simply transmitted to the Permanent Court of International Justice the requests for an advisory opinion which had been forwarded to it and which it had considered reasonable, and it had transmitted to the organisations or Government which had requested the advisory opinions the replies given by the Permanent Court of International Justice, without taking any decision as to the substance of those replies.

He did not think it possible to push legal scruples so far as to deny the Council's right to adopt, in regard to a clause in the Covenant which was expressly concerned with these



very methods of deliberation, the same procedure which it had adopted with the approbation of the Permanent Court of International Justice in questions relating to the Labour Organisation.

He thought, therefore, that the Conference need have no scruple in following M. Undén's suggestion and adopting the proposal which he had previously made.

M. ZUMETA (Venezuela) said that, for the same reasons which led the Conference to welcome any step taken by the United States or its institutions to co-operate in the work of an organisation of the League of Nations, Venezuela would spare no effort to ensure that the adhesion of the United States to the Permanent Court of International Justice should become an accomplished fact. During the discussion, in which principle and form had been confounded, reference had been made to the privileged position in which the United States would find itself upon its adherence. Did not that privileged position result from the high moral and political importance attendant upon the adherence of the most powerful democracy of the present age — and indeed of any age — rather than from the text of the reservations submitted for the consideration of the Conference?

It seemed to him that the acceptance of the proposed reservations must be considered as closely connected with all that the first of those reservations implied, namely, that the obligations and rights established by the Covenant of Versailles for its signatories and adherents were not, and could not be, in any way modified, according to that first reservation, by the conditional adherence of the United States to the Court. Nor could the relations between the League of Nations and the Court be modified by an adherence which was thus expressly effected outside the Constitution of the League. The rights and mutual obligations of the associated States remained intact. The reservations would only have effect when a question of interest to the United States arose, and in that case, if he understood rightly, the United States asked to be admitted on a footing of perfect equality and to enjoy, in the matter of procedure, the provisions of the Statute and Rules. The United States could ask no less, and there seemed to be no doubt that it was not seeking to exact more. It might certainly be found expedient to arrange a special procedure for the application of certain of these reservations.

As the United States was not a Member of the League of Nations, nor bound by any obligation or right arising out of the Treaty of Versailles or the Covenant, it seemed necessary to consider whether, in the event of the United States declaring that it did not consent to a request for an advisory opinion from the Court, this declaration might not hamper the right of two or more States, Members of the League and signatories of the Protocol, to go before the Court and comply with its decisions, as far as they were concerned, independently of any third State. It seemed to him that this point required consideration, as well as several others of equal interest which had been brought forward by his colleagues.

M. DINICHERT (Switzerland) thought that the Conference had reason to be proud of the amplitude and profundity of the discussion which had taken place during the previous two days, and in which some of the leading experts on international law and other persons of exceptional ability had taken part. As he could not claim a position in either of these categories, he preferred to listen, without contributing to a debate on problems which others were far better fitted to elucidate. However, the British representative, Sir Cecil Hurst, and the President had earnestly appealed to all the members of the Conference to explain their point of view. In view of that appeal, he felt it his duty to set forth the Swiss point of view as succinctly as possible — if one could really speak of a national point of view in the present stage of the discussion.

He wished to take up the thread, or rather one of the threads, of the discussion, starting with the argument developed by the eminent French delegate, M. Fromageot. In order to judge the question with a full knowledge of facts, it would be useful to know exactly the position of the States signatories and Members of the League of Nations themselves. Up to the present, that position had not been clearly defined. M. Fromageot had observed that an enquiry into that point appeared to him all the more essential because one of the underlying ideas of the United States reservation was the legitimate expectation that, on adhering to the Statute, the United States would be placed on a footing of equality with other Members of the League and even with the Members of the Council. M. Fromageot had concluded by stating that this question ought to be carefully studied, perhaps by a special committee of enquiry.

The Belgian representative who followed M. Fromageot had taken the same view and proposed that this enquiry should be carried out by the Permanent Court itself. M. Dinichert wished to support that proposal. It seemed to him logical that the investigation of so complex a question should be entrusted to the Court of Justice; it was a question with which the Court must be familiar, which touched it so very closely, and concerning which it possessed the experience of several years. But it was also natural that the organs of the League of Nations should take part in the enquiry, especially as regards such an essential function of the Court as the giving of advisory opinions.

He imagined that such a course would be welcomed by the United States itself, which, it was universally hoped, would give convincing evidence of its confidence in the Court of Justice by taking part in its work in the future. It was true that certain objections had been raised against the proposed course; he could understand them, but he did not regard any of them as decisive. In particular, the question of competence had been raised. He did not think, however, that this question need give rise to serious apprehensions. Of course, everybody knew that the interpretation of the Covenant devolved either upon the

Council, in a particular matter, or upon the Assembly, which could give to certain texts an interpretation which all were agreed to accept. Now, precisely because no doubt could exist as to the organ which was competent to interpret the Covenant, the Court of Justice would realise that the organs of the League of Nations were requesting it to assist in this task of interpretation, and that its opinions would have to be considered by the Assembly and consequently by all the States represented at the Assembly. The Court was well aware that, in spite of the great value attached to its opinions, the Assembly would remain free to adopt a real interpretative commentary by virtue of a unanimous resolution.

There could therefore be no room for misunderstanding on that point, and no one would suspect the Conference of trying to shift the burden of responsibility and competence on to the wrong shoulders.

If any apprehensions were felt — this could be quite well understood — with regard to the advisory opinion, he would suggest that, in making the request to the Court, the questions should be framed in such a way as to enable the Court to observe a certain elasticity in its replies, so that the Assembly and the States represented in the Assembly would feel that they gave no ground for apprehension.

He was not in favour of merely asking the Court to say whether an advisory opinion was a question of procedure or of substance, or whether the decision to ask for an advisory opinion should be taken unanimously or by a majority vote.

He thought that the Court should be led to state definitely that whenever an opinion concerned a dispute — and that was not always the case — in which, in consequence, parties were concerned, it would be in conformity with the spirit and even with the letter of the Covenant that the votes of the parties should not be counted when such a request for an advisory opinion was made. He would even go further and suggest that the Court might be asked whether there were not two kinds of advisory opinions: those concerning procedure and those concerning the substance of a question.

In parenthesis, M. Dinichert stated that the sole aim of his observations was to suggest as many means as possible for arriving at an agreement. On the other hand, he must say frankly that Swiss opinion was strongly in favour of regarding all advisory opinions as questions of procedure. It would take too long to explain the reasons for that opinion and that was hardly the place in which to do so. He would, therefore, do no more than develop the point briefly.

He held that an advisory opinion was a question of procedure, because the opinion did not amount to a decision. An advisory opinion was, to some extent, the antithesis of a decision. It might be objected that an advisory opinion was really a matter of such legal and moral importance that when it was requested, or rather after it was received, there ought to be no further discussion of it: that argument did not appear to him to be quite just, for, after all, advisory opinions were asked for by just those organs — the Council or the Assembly — which were political in character. They had to deal with questions, more especially disputes, which had to be considered not only according to strict law but also in the light of political expediency. If the questions were of a purely legal character, all that would have to be done would be to find the means of sending them directly to the Court of Justice to be settled by that tribunal. If the questions were not of that kind, if they had to be solved by the political organs of the League — the Council or the Assembly — it followed that other considerations might intervene. These political organs therefore had to take into account elements other than strictly legal considerations.

There was yet another point. It did not appear logical to require unanimity; in other words, to treat a decision involving a request for an advisory opinion as a question of substance when the issue itself could be settled by the Assembly by a majority vote. Would it not be paradoxical to say that the Assembly must be unanimous when deciding to ask the opinion of the Court on a question the substance of which must, under the terms of the Covenant, be settled by the Assembly by a majority vote?

Returning to his main argument, M. Dinichert again urged the desirability of asking the Court whether, according to its own opinion, it would not perhaps be expedient to agree that there was a distinction between the various kinds of advisory opinions which it might be called upon to render. If a discussion arose within an organ of the League as to the true character of an advisory opinion upon a given question, who would decide the point? If questions were put to the Court in that way it might see its way to making useful suggestions.

Referring to the discussion on the fourth reservation of the United States, he suggested that, if the Court were going to be asked for its views, this might provide an opportunity, if necessary, for obtaining its opinion upon its own Statute, from the point of view then under consideration. This question might assume special importance if a reservation had to be considered which seemed to involve a modification of the Statute.

Turning next to Sir Cecil Hurst's proposal, M. Dinichert thought that it was most interesting and attractive. Would it not be possible to offer the United States an assurance that, in the matter of advisory opinions, it would always — both now and in the future — be treated on the same footing as permanent Members of the Council? That was the essence of Sir Cecil Hurst's proposal and it deserved the most careful attention of the Conference. It would provide an opportunity for again adjourning the discussion and the decision on the substance of the question — a course which at first sight had much to recommend it. He would readily concur in such a plan if it were not that he felt grave doubts as to the ultimate fate of this proposal.

He was, nevertheless, in favour of the suggestion made on the previous day by M. Pilotti, namely, that these two questions — the proposal to be made to the United States and the investigation, if need be, by the Court of Justice — might be combined and submitted in the first instance to the United States; then, if they failed to give satisfaction, the Conference would not find itself, so to speak, facing a blank wall, as it would have provided, in such a contingency, for resorting to the Court for an opinion.

Finally, M. Dinichert would refer briefly to M. Undén's suggestion of the previous day. The Swedish delegate thought that it would not be a bad idea to inform the United States that, as it insisted on the right to withdraw at any moment, the other contracting States might, by an agreement on their part, reserve the right to withdraw at any time from the agreement which had been reached, when they considered that it could no longer work so as to produce the desired results. The Swedish suggestion was exceedingly interesting and deserved consideration; but, to appreciate its full value, he thought it would be necessary to know the terms of the agreement to which this reservation might apply.

M. CASTBERG (Norway) thought that, before the Conference could arrive at a decision concerning the fifth reservation, a distinction ought to be drawn between cases in which the United States was a party to a dispute and those in which it was not.

In the former case, if the dispute were brought before the Council of the League of Nations, no advisory opinion could, according to the precedents established by the Court, be rendered without the consent of the United States. He saw no objection to giving formal confirmation to that rule, quite independently of the question whether the resolution of the Council to submit a dispute to the Court for an advisory opinion might, or might not, be taken by a majority vote. It appeared perfectly reasonable that the United States, which was not a Member of the League of Nations, should not be willing to allow the Council to submit to the Permanent Court a dispute to which the United States was a party, without the consent of that country.

Thus, the fifth reservation seemed perfectly acceptable in cases in which the United States was a party to the dispute. It had, however, wider effects. As worded, it also covered disputes to which the United States was not a party. In that case it seemed to be more difficult — especially for those who held that the Council could decide by a majority vote to ask for advisory opinions — to recognise the right of veto thus claimed by the United States.

In any case, it was important to ensure that the right claimed under the fifth reservation should be so exercised as not to hamper the work of the League of Nations.

It seemed to him that the course proposed by the Swedish delegate might safeguard the League of Nations against the difficulties and dangers resulting from the acceptance of the fifth reservation. It did not seem, however, to be necessary for the States signatories, on their side, to draw up a reservation to safeguard their collective right to break, if need be, the legal bond between the United States and themselves; for the United States, in the fourth reservation, had reserved the right to withdraw its adherence to the Court at any time. It followed that the other States signatories of the Protocol, which, between themselves, did not enjoy such a right, should consider themselves entitled also to withdraw collectively, at any time, their acceptance of the United States reservations. This legal consequence of the acceptance of the fourth reservation could be regarded as arising from the conditions postulated by the United States and there seemed no necessity for stating it in a reservation. There might be other ways in which the views of the States signatories on this point would have to be expressed, so as to be clear to all parties.

M. ERICH (Finland) said that, notwithstanding the general wish to meet the desires of the United States, the legal incompatibility of the last part of the fifth reservation with Article 14 of the Covenant was none the less evident. The discussion which had taken place had only contributed to making this clear. To add to the conditions provided in Article 14 of the Covenant a further condition, viz., the individual consent of the United States of America — which might be granted or refused on grounds of political expediency on the part of a State which was not a Member of the League of Nations — would amount to distorting the real meaning of Article 14 as it now stood. No possible doubt could exist as to the intentions of the authors of the Covenant on this point. The Covenant considered the request for an advisory opinion as a step taken within the Council or the Assembly, and the Court would act upon it, unless it found it impossible to do so. The real point at issue, therefore, was whether, without first revising the Covenant itself, there was any justification for interpreting Article 14 in a manner which differed both from its actual terms and the original intentions, but which might perhaps appear justified by a fresh situation, not foreseen at the time when the Covenant was drawn up.

Nobody would contest the extreme importance of advisory opinions. It should not be forgotten, however, that the Covenant had distinguished very clearly between advisory opinions and awards. That point was made clear, for instance, in Articles 62 and 63 of the Statute. A State had the right to intervene in a case, or in proceedings regarding a dispute, when it had therein an interest of a legal nature; in the same way, it might exercise a certain right of intervention when it was a case of interpreting a multilateral convention to which it was a party.

As regards advisory opinions, the Statute had not provided similar facilities for intervention; this was perfectly natural, in view of the real nature of these opinions. It was

only in virtue of the Rules of the Court (Article 73) that any State entitled to appear before the Court was also entitled to present statements of fact and to furnish information. Whether a State had or had not made use of this right, there could be no question, so far as it was concerned, of the effects of the judgment. The scope of Article 63 of the Statute, which provided that the interpretation of a multilateral convention should be binding upon a State which had intervened in a case in order to defend its interests or its point of view, was strictly limited to the awards of the Court. It was also very significant that paragraph 4 of Article 38 of the Statute, in enumerating certain additional means of determining the rules of law, included "judicial decisions" among such means, subject to the reservation contained in Article 59 of the Statute, and made no mention of advisory opinions. Therefore, however great might be the value of advisory opinions, it would be wise not to exaggerate their scope and effect, if it were desired to abide by the fundamental and decisive provisions themselves.

With regard to the States which were not Members of the League of Nations nor signatories of the Statute, the Court had, indeed, in its reply — which was not an advisory opinion — on the question of Eastern Carelia, maintained the view (which was adopted only by a very small majority of the judges) that a State which found itself in the position indicated, and which contested the competence of the Court, which had not given its consent to the opening of proceedings or had refused to take part in them, was justified in demanding that an opinion should not be rendered in a matter in which it had a direct interest. On the other hand, it was an indisputable fact that, in 1925, in the affair of the Iraq frontiers, the Court itself had not strictly observed that rule.

In any case, the Court itself must be left to judge whether it was legally possible, in fact and in law, to give an advisory opinion on any given case. The decision of the Court on such a point would clearly be determined both by considerations of principle and by legal considerations. On the other hand, if any given State must be allowed to form an *individual* judgment, without any rule to limit its discretion, on the question whether a request for an opinion affected its own interests, and if it were granted a real right to veto the request or to veto the acceptance of the opinion, considerations of expediency would become the determining factor. He thought it very doubtful whether the Court would be prepared to accept — so long, of course, as the provisions of the Covenant and of the Statute remained in force — an interpretation which would limit its power to determine its own competence in regard to the conditions requisite for an advisory opinion.

Sir Cecil Hurst had very fittingly emphasised the importance of the fact that a State Member of the Council or of the Assembly, when determining its own attitude towards a request for an advisory opinion, was guided more or less decisively by considerations of a general character, and was conscious of the duties and mutual responsibilities of the Members.

The country which the speaker had the honour to represent was anxious to develop international organisation and was prepared to go to the utmost limit in the matter of concessions in order that the initiative taken by the United States might lead to ultimate success. His country fully recognised the importance of the adherence of the United States to the Statute of the Court, and he even believed that it would abandon arguments of utmost weight in order to assist in attaining such an important end. On the other hand, it was perfectly natural that, in the first place, it should be the secondary and smaller States, earnest supporters of the League of Nations, which considered it their duty to press for the maintenance of the legal rules which had been adopted and accepted — in particular, with regard to the observance of the Covenant, many of the fundamental provisions of which had, as experience had shown, more than once been endangered by doubtful interpretation.

For his part, he concurred with the view that it was desirable, and might even be almost essential, to obtain an opinion from the Court on certain points which the Conference was discussing.

M. NEGULESCO (Roumania) began by paying tribute, in the name of Roumania, to the United States Senate for the resolution in favour of adherence to the Protocol of Signature and the Statute of the Permanent Court of International Justice.

He desired to say that he saw no difficulty in accepting the first four reservations, in which the Washington Government stated: that its adherence should not be taken to involve any legal relation between the United States and the League of Nations or the assumption of any obligations under the Treaty of Versailles; that the United States would participate on a basis of equality with the other States Members of the Assembly or of the Council in the election of judges to the Permanent Court of International Justice; that it would contribute to the expenses of the Court; that it might at any time withdraw its adherence and that, as long as it had not done so, the Statute of the Court should not be amended without its consent.

With regard to the fifth reservation, by which the United States stipulated that the Court should not render any advisory opinion touching any dispute or question in which the United States had or claimed to have an interest, several speakers had considered that the United States had purposed, by its veto, to prevent a decision of the Council to ask for an advisory opinion from taking effect and to paralyse the normal working of the Court.

Other speakers, without going so far, were prepared to accept the fifth reservation, but upon one condition: they considered that it had been shown that, under Article 5 of the Covenant, Members of the Council, acting individually, had the power to prevent the Council from adopting a decision to ask for an advisory opinion, and that the United States could claim the same right of veto as stipulated in the fifth reservation. M. Rolin,

who supported the latter view, wished the Conference to ask the Permanent Court of International Justice for an advisory opinion on the question whether a decision of the Council to ask for an opinion was a question of substance or a question of procedure; for it would depend on the reply of the Court whether a decision of the Council to ask for an advisory opinion had to be adopted unanimously or by a majority vote.

It could hardly be supposed that the United States had, by its fifth reservation, desired to paralyse the Council and the Court. M. Negulesco thought that an interpretation should be found which would be compatible both with the desire of the American people not to recognise the Council and the Assembly and with its desire to recognise the Court.

Before seeking an interpretation of the fifth reservation, he wished to state the legal grounds on which he believed that it would be difficult for the Conference to apply to the Court for an interpretation of Article 5 of the Covenant, or rather for an interpretation of the fifth reservation.

M. Rolin had based his view — that the United States had put forward the fifth reservation in the desire to exercise a right of veto on the decision of the Council — upon the words of Senator Walsh, who had said, in effect, in his speech in the United States Senate, that, by the terms of the Covenant, any of the Great Powers could, under Article 5, prevent a question from being submitted for an advisory opinion. And the American Senator had desired that the United States should be assured of the same right.

M. Rolin had said that Mr. Walsh had given utterance to an incorrect view, which had led the United States Senate to put forward the fifth reservation. It was true that Article 5 of the Covenant required unanimity in the Council when a question of principle was under consideration; whereas, in questions of procedure, a majority was sufficient. When the Council sent a question to the Court for an advisory opinion, it was not adjudicating on the substance of the question, but was employing a method of procedure which enabled it to obtain the opinion of the Court. It was only the decision of the Council, following upon that opinion, which could determine the substance of the question, and it was that decision which required unanimity. M. Rolin had pointed out Senator Walsh's mistake and had desired to have the opinion of the Court on the interpretation of Article 5.

Personally, he agreed with M. Fromageot that it would be useless to ask for such an opinion. There were two possible alternatives: either it was a question of procedure, and in that case the Council decided by a majority as laid down in the final part of Article 5, and the United States veto had no longer any weight; or it was a question of substance, and the Council, according to Article 5 of the Covenant, must decide unanimously. In that case, the States interested sat as Members of the Council, but their vote could not be reckoned in determining unanimity. The United States veto could not therefore have any effect. There were other considerations, besides the uselessness of such a course, which persuaded him that it was not possible to ask the Court for an opinion on this point. The duty of the Court, in virtue of Article 14 of the Covenant, was to give advisory opinions with regard to any dispute or any point referred to it by the Council or the Assembly. The opinion, when rendered, was sent to the Council, which might or might not be guided by it; but it was always the Council which decided. M. Rolin had desired to proceed otherwise: the Council would only serve as an intermediary and would not even receive the reply from the Court, since it would have to be addressed to the Conference. Even supposing that the Court could accept such a method of procedure, it would have to make sure that the States concerned were agreed in asking for its opinion. But, apart from the States represented there, which composed the Conference, the United States had an interest in the matter, in that it would wish to know what interpretation was being placed on its reservation, and to give its consent to the proposal that the Court should be asked for an opinion.

It must be noted that it had not been proposed that the Conference should merely ask for an opinion from the Court as to the meaning and scope of the fifth reservation, but that the Conference should already seek to interpret it; for, to refer this point to the Court would be to assume that the United States, in putting forward the reservation, had wished to exercise its right of veto at the moment when a question was referred for an opinion. Supposing that the Conference adopted M. Rolin's proposal, what would be the position of the States represented at the Conference if the United States declared that the interpretation given was incorrect, that it had not wished to exercise the right of veto, but to make use of a right which belonged to any State not a Member of the League of Nations?

Certain delegates at the Conference had wondered whether the United States, by its fifth reservation, would not be acquiring a preferential position as compared with the States Members of the League and signatories of the Protocol. It appeared to him that the question should have been stated differently, and that it should have been asked whether the United States had desired to claim a preferential position in comparison with States which were not Members. A distinction must be drawn between States Members of the League of Nations and signatories of the Protocol and States non-Members of the League which had signed the Protocol. In virtue of Article 14 of the Covenant, States Members were prevented from making any opposition if the Council, when examining a dispute which concerned their interests, should decide to refer it to the Court for an advisory opinion. On the other hand, since Article 14 of the Covenant did not apply to States non-Members, the Court could not give an advisory opinion without their consent.

The act of signing the Protocol could not alter that position, for the Statute of the Court did not refer to advisory opinions but purely and simply to the juridical functions of the Court. By signing the Protocol, States recognised the optional jurisdiction of that

organ. They had the right to appear before the Court. But by merely signing the Protocol the position of States Members and non-Members was not altered as regards advisory opinions, for as regards advisory opinions only Article 14 of the Covenant was applicable, and it was a restriction upon the former but not upon the latter. Two perfectly distinct ideas, therefore, were involved: on the one hand, it was impossible for States Members whose disputes were brought before the Council to prevent the Court from giving an advisory opinion under the terms of Article 14 of the Covenant; on the other hand, it was possible for States non-Members to prevent the Court from giving an advisory opinion, since Article 14 of the Covenant was not applicable to them.

The United States, in its first reservation, had clearly specified that, by signing the Protocol, it did not wish to alter its position as a non-Member; consequently, the Court could not give an advisory opinion without its consent in cases in which its interests were involved. The fifth reservation merely confirmed the decision of the Court in the affair of Eastern Carelia. Finland, which was a Member of the League of Nations, had cited the Soviets before the Council; the latter body had asked the Court for an advisory opinion, but the Soviets had not wished to appear either before the Council or before the Court. In those circumstances, the Court had considered that a non-Member State could, by its opposition, prevent the Court from giving an advisory opinion. The Court had been of the opinion that the pacific means placed at the disposal of the Council for settling international disputes should be accepted by the parties concerned, and that consequently, if one of the parties refused its consent, the Court could not render an advisory opinion in a matter in which that party was concerned.

It must, however, be admitted that the wording of the fifth reservation might give the impression that the United States had wished to reserve the right to prevent the Court from giving an opinion whenever it was, or declared itself to be, interested.

But such an interpretation could not be accepted, for the words "if the Court so decide" were implicit in the text. It seemed difficult to believe that, at such an historic moment in the annals of the Court of International Justice, one of the greatest Powers of the world, which was prompted by its love of peace to adhere to the Court, should be seeking to paralyse the authority of the Court and to prevent it from functioning in the future.

The words "if the Court so decide" would, moreover, establish equality between all States and assure the normal working of the Court.

The Conference could accept the fifth reservation if it were interpreted to mean that the United States desired to exercise the same rights as a State not a Member of the League of Nations — in other words, that it wished the Conference to confirm in its case, in a permanent form, the rule which the Court had once recognised in the affair of Eastern Carelia. He therefore proposed that a committee should be appointed to draw up a report on the five United States reservations, the first four of which could be accepted without difficulty, while the fifth required to be interpreted in a sense which would be compatible both with the principle of equality between States and with the normal working of the Court.

Prince ARFA (Persia) said that his part of the discussion was one of the pleasantest and easiest. It was, moreover, short and clear.

The instructions which he had received from his Government were to endeavour to draw the attention of his colleagues to the great advantages which the League of Nations would derive if the Conference facilitated the adhesion of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

It would be a very happy augury for the close co-operation of the United States with the League. The members of the Conference knew this better than himself and there was no need for him to remind them of it. But there was a Persian proverb which said that if a remark were wise, one should never be afraid to repeat it.

He hoped that the members of the Conference would excuse his carrying out this duty to his Government and to the League of Nations.

The PRESIDENT stated that the list of speakers was exhausted.

He said he did not intend or presume to undertake a complete analysis of the general lines of the highly interesting discussion which had taken place on the previous day and that morning. He wished, however, to emphasise certain points which stood out from the rest.

First of all, he was glad to note the general feeling of sympathy with the views of the United States, even concerning the most difficult point, the second part of the fifth reservation. In that connection, also, the speakers had expressed, with great eloquence — more especially the last speaker, His Highness the Persian representative — and with remarkable unanimity, their sympathy with the standpoint of the United States. He hoped that the general attitude of sympathy would be appreciated and accepted at its full value on the other side of the Atlantic.

He thought he could also state that the discussions had testified to a unanimous wish — expressed by Sir Cecil Hurst, Sir George Foster, MM. Fromageot, Pilotti, Buero, Molloff, Negulesco, Dinichert and perhaps others — on the part of the Conference to declare that the United States would enjoy in this matter the same rights as the Members of the League which were represented on the Council, that was to say, that the United States would be treated on a footing of perfect equality. They had even gone so far as to admit the privileged position in which the United States would be placed by the fact that it was not a Member of the League of Nations and that, in consequence, it would be free from responsibilities.



This privileged position, moreover, was in conformity with the decision of the Court in the matter of Eastern Carelia. In this connection, M. Castberg had emphasised the necessity of distinguishing between cases in which the United States was a party to a dispute and cases in which it was not.

He also pointed out that the speakers had been agreed in recognising that most probably the intention of the United States, in drawing up the second part of the fifth reservation, had been to make sure of treatment on a footing of complete equality with the Members of the League of Nations.

Then inevitable difficulties had arisen. It had been asked whether the second part of the fifth reservation clearly expressed the intention which it had been understood to convey. It was useless to express again regret that it was not possible to consult a representative of the United States on that point. Several speakers, however, had emphasised the difference between the *ratio legis* of the second part of the fifth reservation and the wording of that reservation. Amongst them was one of the Vice-Presidents of the Conference, Sir Francis Bell, who had said that, if one of the Members of the League of Nations claimed a right such as was provided for in the second part of the fifth reservation, it would never be admitted to the Council.

The possible consequences of the application of the second part of the fifth reservation had then been carefully considered. The problem has first been investigated from the point of view of the wording of the reservation. In this connection, Sir George Foster had pointed out that the reservation was addressed to the Court itself. It was, so to speak, a national legislative measure bearing upon points entirely outside its competence. With great skill, Sir George Foster had brought to light the difficulties inherent in the situation and in such an interpretation.

Even regarding the text from that angle, the effect which such interference would have on the action of the Council could not be denied, even assuming that the United States was addressing itself to the Court and not to the Council. Various speakers, more especially Sir Cecil Hurst and M. Fromageot, had looked at the matter rather from the standpoint of the duties of the Council. They had pointed out that its work, which so often required prompt action, might be considerably delayed by a power of interference such as the United States wished to have.

In this connection, emphasis had been laid on the importance, for the solution of this problem, of the question whether a decision by the Council to request an advisory opinion from the Court had to be adopted unanimously or by a majority. This point had not yet been determined. In view of these two alternatives, M. Rolin had been led to suggest that the Court should be consulted on the point at issue; other members — in particular M. Pilotti, M. Dinichert and M. Erich — had spoken in the same sense. It had then been suggested that such a step was perhaps not really necessary, seeing that the two parties to the dispute would not vote, being under a disqualification, so that the question of majority or unanimity lost much of its importance.

From whatever angle the matter had been regarded, the discussion had shown how great would be the influence of the second part of the fifth reservation on the essential parts of the constitutional law of the League. With this in mind, M. Yoshida, emphasising the fact that the Conference was only composed of representatives of Governments signatories of the Protocol, had pointed out that it was not competent to discuss the constitutional law of the League.

The problem was complex, but it was a matter of satisfaction that every issue had been examined with the desire to arrive at a solution which, as Sir Austen Chamberlain had said, would give satisfaction to the wishes of the United States.

In order to get out of the difficulties, M. Undén had suggested an interesting solution.

In conclusion, the President wished to refer to a plan which had been outlined in a recent article in the *Journal de Genève* (August 10th, 1926) by Mr. Theodore Marburg, an American. In practice, he had written, the difficulties inherent in the second part of the fifth reservation might be largely mitigated if it could be arranged that the right of intervention claimed by the United States must be exercised within a specified period of time, before the request for an advisory opinion was submitted to the Court by the Council, and before the latter adopted a decision. He hoped that delegates would reflect on this suggestion.

Finally, the President recalled the fact that the Council, if it did not ask the Court for an advisory opinion, could always have recourse to a Committee of Jurists. He did not regard that method as an ideal one, but he pointed out that this procedure had been followed, more especially in the case of Corfu and in other lesser disputes concerning Danzig and Poland.

Various speakers, including M. Buero and M. Negulesco, had made the excellent suggestion that certain clearly defined points should be referred to a small committee which would carry on the work already begun. By that means it would be possible to produce some concrete result before the end of the Assembly of the League. He did not believe that M. Negulesco and M. Buero wished to have the committee appointed at once, and he intended, as he had already said, to submit a definite proposal in this sense at the end of the general discussion.

He concluded by expressing the hope that the general discussion on the remaining points might be finished that afternoon.

## SIXTH MEETING

Held at Geneva on Friday, September 3rd, 1926, at 4 p.m.

President: M. VAN EYSINGA.

### 16. Declaration by the Delegation of the Dominican Republic.

M. FRANCO (Dominican Republic) said that, having followed with great interest the discussions on the principle of the United States reservations, and being inspired by a genuine and fraternal desire to see the great American nation still further strengthening the authority of their international institutions by adhering to the Permanent Court of International Justice, the delegation of the Dominican Republic expressed a most sincere hope that the work of this Conference would lead to a satisfactory result.

The delegation was of opinion that the discussion regarding the principle of these reservations had not demonstrated that the United States of America was claiming any sort of privileged position with regard to the fundamental principle of the equality of States, but that, on the contrary, the five reservations of which this Conference had examined the essence were in reality intended to safeguard this principle.

Since, however, all the opinions put forward had shown that certain important questions of form did exist, it was sincerely to be hoped that the problem thus raised would be satisfactorily settled in a manner compatible with the essential rights of every State, so that they might shortly have the pleasure of welcoming among the signatories of the Protocol of the Permanent Court of International Justice that powerful democracy which the Dominican Republic wholeheartedly admired.

### 17. General Discussion of the Reservations formulated by the United States Senate.

The PRESIDENT summed up the discussion :

The Conference had accepted in principle the first four reservations and the first part of the fifth. It had carefully considered the second part of the fifth reservation. A certain number of questions of form still remained to be settled. For instance, how should the United States be informed of the acceptance of all or part of the reservations? Was it sufficient if the forty-nine States sent forty-nine letters of acceptance to Washington?

As regarded the procedure to be followed in accepting the first and third reservations, no particular difficulty would be found. The first reservation arose automatically from the fact that the United States was not a Member of the League of Nations. The third was an offer to participate in the expenses. That offer implied a certain contact between Geneva and Washington. The Financial Regulations of the League, however, expressly provided that a State non-Member might contribute to the expenses of any one of the organisations of the League.

As regarded the second reservation, it might be examined together with the fourth. The provisions of the Statutes of the Court would be directly affected by these reservations. Articles 4 *et seq.* of the Statute dealt with the election of the judges. The Conference would have to consider whether an amendment to the Statute would be necessary or whether a simple note accepting the United States request to take part in these elections would be sufficient. The same question arose as regards the matters dealt with in the fourth reservation.

It had been suggested that the Statutes would have to be altered. But between a formal alteration of the latter and a simple note there was room for a considerable number of solutions. It was these solutions that the Conference would have to consider in the afternoon.

As regarded the first part of the fifth reservation, the solution of the problem was to be found in the Rules of the Court. The Rules, as drawn up four weeks previously, met the desiderata of the United States as defined in the first part of the fifth reservation. Of course, it was true that the two articles of the Rules in question — Articles 73 and 74 — possessed the legal force of the Rules of the Court. If a reply were sent to the Washington Government to the effect that its wishes had already been met, the latter might answer that this was so but that the Court might alter its Rules any day. It was a question, therefore, of deciding whether it would be advisable to give to Articles 73 and 74 a conventional value which would be binding on the Governments.

As regarded the fifth reservation, the Conference had already touched on certain of the difficulties it raised and had only to continue its discussions.

The President declared the general discussion open.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) said he wished once again to urge that the Conference should make every possible effort to accept the United States reservations. He had spoken twice, and had, he believed, informed his colleagues that his Government, after carefully considering the reservations presented by the United States Government, had given him formal instructions with regard to their acceptance.

He thought that the Conference should examine the question in the spirit in which the United States Senate had framed its reservations. M. Markovitch reminded the Conference



that, in his letter to the Secretariat of the League of Nations concerning the present Conference, the United States Secretary of State had explained his Government's views with regard to the procedure to be followed; he had explained that the Senate was of opinion that this question should be settled by an exchange of individual notes between each State signatory of the Protocol and the United States Government; the latter had strongly urged the necessity of adopting this procedure and held that it could not be varied either directly or indirectly.

He thought that the Conference should conform to this view. The Government of the United States, however, had not objected to the States Members of the League conferring to settle their legal situation with regard to the League and the Permanent Court. This suggested the following question: If the States Members admitted the United States reservations, what would be their legal position with regard to the League of Nations and the Permanent Court? If the acceptance of these reservations would result in modifying the legal situation of the States Members with regard to the League and to the Permanent Court, the Conference should consider measures to regularise the new situation.

To be perfectly clear, he would suggest, therefore, that their task was, first to settle the relations of the signatory States with the Government of the United States, and, secondly, to examine the situation of the States Members of the League after they had accepted the United States reservations. Moreover, the Conference had to consider whether, by simply accepting those reservations, the wishes of the United States would be fully met; in other words, it would have to decide whether United States representatives would take part in the election of the judges.

To sum up, he would strongly urge the Conference to agree to the procedure suggested by the United States Government; if it decided on any other course, it might be met with a refusal on the part of that Government.

M. ROLIN (Belgium) said he thought that the Conference would find no difficulty in endorsing the suggestions of the representative of the Kingdom of the Serbs, Croats and Slovenes. After the very difficult discussions which had taken place on the previous day and that morning, it was almost with a sense of relief that the Conference approached these questions of form, on the optimistic supposition that all the other difficulties would have been eliminated. If most of these reservations were found in principle to be acceptable, the Conference would have to determine in what manner, by what resolutions or what agreements it could meet the wishes of the United States.

With regard to the second reservation, which the Conference had, at the previous meeting, held to be entirely acceptable, he wondered whether it would not be advisable to point out in the reply which might be sent to the United States that there was possibly an omission in this reservation. The Statute of the Court did not merely make provision, in the matter of elections, for deliberation by the Assembly and the Council. Article 3 laid down that the number of judges and deputy-judges might, if necessary, be increased by the Assembly at the suggestion of the Council. He thought it would be quite logical and, indeed, necessary that the United States, if it signed the Protocol of the Court, should also participate in these discussions, and it was even perhaps logical that the United States should take part in the discussions referred to in Article 32, which laid down that the annual stipend of the judges should be fixed by the Assembly on the proposal of the Council. Other decisions might be provided for in the Statute of the Court, to which the Conference should refer in its reply. The following question arose: When the Statute of the Court referred to "the Assembly and the Council", did those words exclude the participation, in the discussions of the Assembly or the Council of the representative of a State which was not a Member of the League of Nations? Although the Covenant made no express provision in this case, and did not expressly define any right, so far as questions of this kind were concerned, to invite representatives of third States to sit in the Assembly or the Council, it did not prohibit such action. Nay, far from prohibiting such action, it encouraged it.

In this connection he would quote the two clauses of the Covenant which, though not referring directly to the question now before the Conference, provided for an increase in the Council and the Assembly. First, there was the clause in Article 4, paragraph 6, which laid down that "any Member of the League not represented on the Council shall be invited to send a representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League". While Article 4 only referred to Members of the League which were invited to send representatives to the Council, Article 17 dealt with the case in which a dispute might arise between a Member of the League of Nations and a State which was not a Member of the League and in which the Council might invite the State not a Member of the League to accept the obligations of membership in the League upon such conditions as the Council might deem just. The Council had considered that it was just to invite these States non-members of the League, which accepted its good offices for the settlement of a dispute, to sit at the Council table on equal terms with the States Members of the League and to take part in discussions or negotiations regarding the dispute.

He suggested that Article 4 and Article 17 taken in conjunction led to the conclusion that, in reality, the Council might — of course, by a unanimous decision — invite a State which was not a Member of the League of Nations to sit as a Member of the Council or in the Assembly when a matter specially affecting the interests of that State was being discussed (and, as a signatory of the Protocol of the Court, the United States would be specially

affected). As evidence that the League had in fact already been led, quite naturally and logically, to accept such conclusions, he instanced various technical organisations of the League, commissions and conferences convened by the League, to which States which were not Members of the League had been invited to send — and had sent — representatives on the same footing as the Members of the League, without any objection having been raised. One advantage of that procedure was that it was simple; but it possessed another advantage of a moral order: the United States in its second reservation, recognising that the Permanent Court of Justice had been founded by the League of Nations, had not asked that the Statute of that organisation should be changed and that Members of the Court of Justice should be elected, perhaps simultaneously, by a small committee of great Powers including the United States, and by a larger Assembly of States signatories; but that in this respect the spirit and letter of the Statutes should be preserved and that the Council of the League and the Assembly should continue to be the competent bodies for the election of the Members of the Court. The United States merely asked to send its representatives to sit in the Council and in the Assembly as co-equals with the other Members of the League.

In these circumstances, would it not be extremely regrettable if it were not agreed that the Assembly and the Council could, in such a case, issue an invitation to the United States Government? He thought that the Conference might, without hesitation, simply give an undertaking, as requested by the United States, to consider that country as having a special interest in the matter and accordingly to invite the United States to take part in the discussions in the Council and the Assembly provided for in the Statutes of the Court.

M. OSUSKY (Czechoslovakia) said that the suggestion made by the Belgian representative, concerning the second reservation, with regard to the participation of the United States of America in the election of the judges of the Permanent Court, was really very ingenious. The only difficulty there might be in bringing this suggestion within the scope of Article 17 of the Covenant lay, he thought, in the opening words of the article:

"In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League."

According to Article 17, therefore, the Council could only grant to a State not a Member of the League the quality of a Member of the Council "in the event of a dispute", etc. M. Osusky did not wish to analyse this question in the absence of the Belgian delegate who had made the suggestion and he thought that the Committee which the Conference was about to appoint could consider it.

He had asked to be allowed to address the Conference, however, mainly in order to speak of the great and important fifth reservation and of the form in which this reservation should be accepted. The United States asked that the States which had received the note from the United States Government should reply thereto individually. What should the States signatories of the Statute of the Court reply? He thought that the substance of their reply should be as follows: "We understand your reservation to mean, when translated into the language of the Court, that you wish to be treated before the Court as a non-Member of the League, and that, as regards advisory opinions, you wish to be on a footing of equality with the Members of the League, represented either on the Council or on the Assembly". The United States would then say whether the reservation had been correctly interpreted in the language of the Court. If the reply were in the affirmative, he wondered whether such an exchange of individual replies would suffice to settle the matter, and whether it would not be necessary to do something more.

He thought that when the United States Government signed the Protocol of Signature of the Permanent Court of International Justice it would add its reservation. If his interpretation of the reservations was accepted by the United States, it would have to be added after those reservations. Would it not be better, then, to incorporate in an additional Protocol the reservations of the United States and the interpretation of them given by the States signatories of the Statute of the Court? M. Osusky added that he merely put forward this suggestion in the hope that it might help the Conference to discover the best means of solving the problem.

M. PILOTTI (Italy) thought that the question which the Chairman had just raised was very difficult to solve. It had already been seen that the first part of the fifth reservation was more or less met by the new Rules of Court. Was it possible, however, to assure the United States that those Rules would never be changed? What power had the signatory States to bind the Court in a matter which was exclusively within its domain?

The Conference might inform the United States Government that it considered it desirable — as did the United States — that the procedure to be followed in the matter of advisory opinions should always be as laid down in the present Rules. It would be difficult, however, to go further than that. Moreover, the United States was safeguarded by the fourth reservation, namely, by the right of denunciation. If the Rules of Court came to be changed, it could clearly exercise that right. He did not think it would be possible to say more than what the Court had already said in the exercise of powers which belonged to it and on which the Conference had no influence. The Conference could not prevent the Court from modifying its Rules. As a matter of fact, it was not going to modify them. The present Rules represented an advance on the old ones and that advance would be

maintained. He felt convinced that the United States would not make difficulties on this point, but he still thought that it would be hard to discover any formula which would bind the Court in relation to the United States.

Count ROSTWOROWSKI (Poland) said that the highly trained legal instinct of the Conference had led it to distinguish between the questions which could be answered by a simple affirmative and those which could not. In other words, in order to give complete satisfaction to the wishes of the United States, the affirmative, in the case of certain questions, must be accompanied by a legal formula and the latter must acquire force of law.

What conclusion was to be drawn from this fact ?

If an endeavour were made, by an effort of the imagination to visualise the procedure to be adopted, two stages were indicated. The first was that of the acceptance of the United States reservations. The second might be called that of codification. This was the final stage at which the changes introduced would receive confirmation in a formula which would give them force of law.

Dealing first with the final stage, that of codification, he asked of what it would consist ? It was a question, in reality, of introducing into the Statute all the provisions rendered necessary by the adhesion of the United States and by the concessions granted to it. These provisions and concessions could not remain in the air ; they must be stated somewhere.

He imagined that this work of codification would be undertaken by a subsequent Conference in which the United States would participate. To make the necessary enactments without the United States would be useless. The Americans must be there, co-operating with the other signatory States ; they must be the co-authors of the new rules which would bind both them and the other States.

In order to arrive at this final stage, the United States must be represented ; this could not happen, however, according to the letter of the Secretary of State, until the reservations had been accepted.

Turning next to the first stage, the speaker considered that this was of a transitory and preliminary character. It was the stage of acceptance, on which all the rest depended. The rest would not follow unless the first stage were completed.

As regards the reply to be given to the United States, if the Conference agreed on a common declaration, such declaration could be communicated by letter. That procedure would not be far removed from the system proposed by the United States.

The question was whether the reply to the United States could consist in a simple affirmative.

He thought that the work of the Committee would consist in drawing up the text of the reply. For this purpose, it would review all the United States reservations, one after the other, in order to decide whether a simple affirmative would suffice, or whether, on the contrary, the affirmative required to be accompanied by certain explanations and comments in order to explain to the United States the meaning which the Conference attached to the United States reservations and the meaning which it attached to its own. That was the procedure to be followed. It was impossible at the present time to enter on the second stage. That would be the task of a subsequent Conference. It sufficed for the moment to do what was feasible, namely, to find the necessary formula for replying to the United States and for making its adhesion possible.

Subsequently, as the result of its adhesion, the United States would be convened to a joint Conference charged with the duty of codifying all the rules necessary for fixing the relations between the signatory States and the United States.

Sir Cecil HURST (British Empire) said he would like to ask the Polish delegate, to whose observations he had just listened with great interest, to complete his explanation of the methods which he thought could be adopted. He had terminated his remarks by indicating that the proper procedure would be that, after the reservations had been accepted, a Conference (in which the United States would take part) would be convened to make the necessary alterations in the Statute. The Polish delegate went no further than this and had stated that the question would thus be placed upon a permanent or satisfactory basis. But how did he propose to arrange for the United States to have the power to denounce the arrangement — a power which the United States had claimed in one of its reservations ? What would be the position if the United States made use of that power ? The other States would be left with a Statute in which the amendments had already been embodied, and they would be obliged, he thought, to convene a new Conference to restore the Statute to its original form. He would be very glad if Count Rostworowski would kindly complete the very illuminating idea which he had begun to develop.

Count ROSTWOROWSKI (Poland) admitted that the situation was very complex. It was necessary above all to avoid moving in a vicious circle. In considering the path to be followed, he had always endeavoured to avoid a blind-alley. He had therefore made provision for a possible way out.

With special reference to the question raised by the British delegate, he thought that the Conference would first give the United States a reply, which would probably be favourable in principle. On receiving this reply the United States could become one of the group of nations which adhered to the Court.

The United States would not adhere to the Court, however, unless it received a favourable reply from the Conference. From the legal point of view, therefore, the only question was that of offer and acceptance. It was on the basis of this acceptance that the United States might become one of the adherents to the Court.

Evidently, such adherence would not be devoid of all risks, because it would still be dependent on the results obtained by the later Conference. Nevertheless, it would mark progress. Only when the United States had adhered could it be invited to come, and could it come, to the later Conference. To realise this, it was only necessary to read the letter from the United States Secretary of State, which showed that if practical arrangements had to be made — for instance, with regard to the election of the judges — such questions would naturally have to be considered afterwards. After what, he asked. After the adoption of the reservations and after the United States had become a party to the Statute of the Permanent Court of International Justice.

He thought that this letter gave some indication as to the procedure to be followed. It must be a gradual procedure, advancing from one stage to another.

The British delegate had referred to the right of denunciation which the United States reserved for itself. He thought that it was too early to discuss this question. In his opinion, it was hardly possible to consider the contingency of the United States leaving the Court at a time when that country was not yet a party to the Protocol and the Statute. He thought that this question might be considered at a subsequent Conference at which the United States would be represented.

He repeated that the Conference ought for the present merely to ensure the entry of the United States as a Member of the Permanent Court of International Justice.

M. DINICHERT (Switzerland) first asked the President whether he might be allowed, although other questions were now being discussed, to offer certain observations on the second reservation.

The President having agreed to this, he made the following statement :

When the Conference discussed the underlying principle of the second reservation, it had found no difficulty in accepting it. Now, when it came to consider the form which the acceptance of this reservation should take, it was confronted with the possibility of an amendment to the Statute of the Court being necessary. In his view, it was not possible to disregard the fact that the second reservation did involve the possibility of an amendment to the Statute.

He quite understood that M. Rolin had endeavoured to obviate this difficulty and, by clever reasoning, had sought to convince the Conference that it was not necessary to amend the Statute. M. Dinichert was strongly in favour of this conclusion, although he realised that it did not entirely relieve his conscience from every scruple. He thought that M. Rolin had not, perhaps, pushed his arguments to their conclusion and he ventured to submit the following considerations which the delegate of Belgium might have brought forward as his own.

The Conference had to consider not merely a State which was not a Member of the League but a State which was going to become a party to the Statute of the Court. If this argument were not in itself quite sufficient to obviate all difficulties, he thought it was nevertheless a very weighty consideration. It would be natural for the participation of the United States in the Court, as definitely contemplated by the Assembly's resolution of December 1920, to imply its participation in the elections and other similar activities of the Council and the Assembly for which provision was made, not in the Covenant but in the Statute of the Court to which the United States was proposing to adhere. It might therefore be concluded that the United States was only claiming rights provided in the Statute itself, a claim which no one would dream of contesting, since it had been unanimously agreed to admit the United States as a signatory of the Protocol to the Statute.

M. Dinichert thought that the Conference might well consider this question as a matter to be officially decided by the Assembly. This would not involve much difficulty since, in order to reply to the United States, it would be necessary for all the Governments to be in agreement. Why should not the Members of the Assembly agree to adopt an interpretative resolution in this sense ?

He was sure that the wishes of the United States with regard to this reservation could be met without any amendment to the Covenant.

He also desired to refer to an observation made by M. Pilotti regarding the first part of the fifth reservation. M. Pilotti had said that the reply to this reservation was to be found in the revised Rules of the Court. He doubted whether that would necessarily meet the wishes of the United States, for the Rules of the Court did not, in the strictest sense, afford much guarantee of permanence, since the Court could modify them when it wished.

There were three possibilities in this connection.

First, the United States might accept the present situation.

Secondly, the organs of the League of Nations — or, if it were preferred, the States which had to reply to the request of the United States — might, if necessary, come to an understanding with the Court of Justice to the effect that the latter should, if it considered such a course possible, undertake not to modify these provisions in its Rules. Although a new proposal, he did not think that this plan should be rejected without further consideration.

Finally, if, for any reason, neither method was applicable, there still remained one possible solution: the organs of the League, with the participation of the States, might make an addition to the Statute in the manner provided under the Rules of the Court.

He was not making a definite proposal; he was simply reviewing the possible methods of simplifying the task of the Conference.

The PRESIDENT said that, if no one else wished to speak, he would consider the general discussion closed.

He thought that this discussion had provided a very good groundwork of ideas for the eventual solution of the problem. Many speakers had put forward ideas, suggestions and explanations which would greatly facilitate the task of the Committee which it seemed desirable to set up.

18. **Appointment of a Committee to draw up the Final Act of the Conference.**

With regard to the continuation of the work, the PRESIDENT suggested that, if the Conference agreed, it should appoint a Committee which would work during the Assembly of the League and would submit its report to the Conference before the end of the Assembly.

On behalf of the Bureau, he proposed that the Committee should be constituted as follows:

M. ROLIN (Belgium);  
Sir Cecil HURST (British Empire);  
Sir George FOSTER (Canada);  
M. FROMAGEOT (France);  
M. PILOTTI (Italy);  
M. YOSHIDA (Japan);  
Count ROSTWOROWSKI (Poland);  
M. OSUSKY (Czechoslovakia);  
M. UNDÉN (Sweden);  
M. BUERO (Uruguay).

It was understood that the President and the two Vice-Presidents of the Conference should be entitled to take part in the work of the Committee.

M. DENDRAMIS (Greece) said that he had listened to M. Negulesco's remarks with great interest. He thought that M. Negulesco should be a member of the Committee.

M. NEGULESCO (Roumania) thanked M. Dendramis for his proposal but asked him not to press it. He (M. Negulesco) had asked the President not to include him in the list of members of the Committee in view of the fact that he was a Deputy-Judge of the Court.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) seconded M. Dendramis' proposal. He thought that it was precisely because M. Negulesco was a Judge at the Permanent Court of Justice that he ought to sit on the Committee. The office which he held had not prevented him from taking part in the Conference; how, therefore, could it prevent him from sitting on the Committee? On the contrary, his special knowledge was an argument in favour of his joining the Committee.

M. BUERO (Uruguay) said he thought that, if M. Negulesco was unwilling to sit on the Committee, the Conference should still adopt M. Dendramis' proposal in so far as it implied that the number of members of the Committee should be increased. If the Conference agreed to this increase, he would make a proposal.

The PRESIDENT said that the Bureau had only submitted these suggestions for the purpose of facilitating the work of the Conference, but of course the latter was entitled to constitute the Committee as it liked. If, however, the Conference desired to increase the size of the Committee, he suggested that not more than one member should be added.

*The Conference agreed to this proposal* and M. Buero proposed M. Dinichert, who had made a number of very interesting suggestions.

M. DINICHERT (Switzerland) said he highly appreciated M. Buero's proposal. He would ask him not to press it, however, first, because the Bureau had only made its proposal after careful reflection, and, secondly, because his duties would make it difficult for him to attend the Committee.

M. BUERO (Uruguay), however, maintained his proposal and finally M. DINICHERT accepted his nomination.

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## SEVENTH MEETING

*Held at Geneva on Thursday, September 23rd, 1926, at 10 a.m.*

President: M. VAN EYSINGA.

### 19. Consideration of the Draft Final Act of the Conference.

The PRESIDENT said that he regretted that so many days had elapsed between the last plenary meeting of the Conference and the present sitting. Everyone was aware of the reasons. Another great meeting was being held simultaneously at Geneva, and the Conference had rather suffered from the numerous calls made upon the time of its members. However, he could assure his colleagues that the Committee of Fourteen and the Drafting Committee had done as much work as possible.

He was glad to be able to state that the number of States represented at the Conference, which had at first been thirty-nine, was now forty, as the Estonian Government had now sent a representative.

All the delegations were in possession of the results of the work done; he was referring to the draft of the Final Act which was now before the Conference. (Annex 7.)

Before calling on the Rapporteur, M. Pilotti, to speak, the President said that he wished only to draw the attention of the Conference to the last paragraph of the Final Act which indicated the action to be taken, in the view of the authors of the draft. It was stated that "the Conference recommends to all the States signatories of the Protocol of December 16th, 1920, that they should adopt the above conclusions and despatch their replies as soon as possible". He hoped that the members of the Conference would all be able to sign this Final Act which, moreover, left the Governments perfectly free.

The passage in question went on to say that the Conference "directs its President to transmit to the Governments of the said States a draft letter of reply to the Secretary of State of the United States". The Final Act did not give the exact wording of that letter both for reasons of courtesy and also because some of the Governments might desire, for one reason or another, to add something to the letter — for instance, because they had already replied to the United States Government. In this respect, also, the Governments were entirely free.

He would now ask M. Pilotti, the Rapporteur, to address the Conference, after which, in the view of the President, it should endeavour to conclude its work as soon as possible. There had been a general discussion on the subject. He had requested any delegations who desired to send in amendments to do so in writing, and he thanked those who had submitted them. He thought the most practical course would be to discuss these amendments in turn and put them to the vote, if necessary. He thought, therefore, that it was no longer necessary to have another general discussion. If any delegation desired, however, to make a further statement, he would be happy to give it an opportunity of doing so.

M. PILOTTI (Italy), Rapporteur, then spoke as follows:

1. By its resolution of September 3rd, 1926, the Conference appointed a Committee consisting of the President, the Vice-Presidents and eleven delegates, and instructed it to consider what decisions should be taken by the Conference, having regard to the results of the general discussion.

The Committee had requested him to inform the Conference of the results of its work and to explain the proposals which it ventured to submit to the Conference. These proposals were contained in the printed draft which had been distributed to the delegates on the previous day.

2. The Committee had thought that the conclusions of the Conference should take the form of a Final Act, signed by the delegates, copies of this Act being forwarded to all States signatories of the Protocol of December 16th, 1920, concerning the Permanent Court of International Justice, and to the Council of the League which convoked the Conference. This would certainly carry greater weight than a simple resolution included in the Minutes of the closing meeting, and would be better calculated to emphasise the character of an agreement between the States represented at the Conference which its conclusions are intended to assume.

In the opinion of the Committee, these conclusions, as embodied in the draft Final Act, should serve as a basis for the diplomatic letter which the Government of each State signatory of the Protocol of December 16th, 1920, will subsequently send to the Government of the United States of America, in reply to the latter's letter communicating the United States proposal to accede, subject to certain reservations, to the Protocol and Statute of the Court. It will be seen that the Committee has abandoned the idea of a collective reply from the signatory States to the United States. The Committee has come to the conclusion that, since the letters from the Government of the United States were addressed individually to each of the signatory States, these letters call for individual replies; but, naturally, since the signatory States have adopted a common course of action by means of this Conference, their replies, which will be the result of a common agreement, should be as similar as possible. The Committee therefore proposes that the Conference should not merely recommend the various Governments to accept its conclusions as the

basis of their replies to the United States of America, but should also instruct its President to submit to those Governments a text reproducing its conclusions in their entirety, which could be utilised for the purposes of the individual replies.

3. It will now be desirable to explain the principles by which the Committee has been guided with regard to the substance of the reply to be given to the United States offer. In the first place, the Committee felt that it was the unanimous wish of the Conference to accept the offer, by satisfying the United States reservations as far as possible. The very creation of a Permanent Court of International Justice constitutes in itself, and irrespective of the existence of the League of Nations, so great a progress in the development of peaceful relations between States that every effort should be made to render that act fruitful of still further results.

The greater the number of States which have acceded to the Court, the greater will be the Court's authority. It is to the interest of the States which founded the Court that all the other States of the world should agree to become parties thereto, even if they feel unable to become Members of the League of Nations. In particular, the possibility of the accession of the United States of America, as a State mentioned in the Covenant of the League of Nations, was provided for in the Protocol of Signature of the Statute of the Court. It therefore seems quite natural that the States signatories of the Protocol, in presence of a proposal — even a conditional proposal — by the United States of America to accede to the Court, should adopt a favourable attitude.

On the other hand, the conditional character of the proposal is sufficiently explained by the fact that the United States of America is not a Member of the League of Nations and does not desire to change its attitude. This fact must be taken into account and an endeavour must be made to reconcile the working of the Covenant with the important object of increasing the number of States which have acceded to the Court and with the requirements of the position of the United States.

4. This having been admitted, the Committee recognised that it would be desirable simply to agree to the first three reservations, namely, those concerning the maintenance of the status of the United States of America as a Power which is not a party to the Covenant of the League of Nations and the Treaty of Peace of Versailles, its participation in future elections of judges and deputy-judges, and its contribution to the expenses of the Court.

5. Likewise, the Committee recognised that the two points forming the subject of the fourth reservation should be accepted, namely, the right of the United States of America to withdraw its accession in the future and the necessity of its consent to any modification of the Statute, the Statute having been approved in 1920 by a unanimous agreement of the signatory States and being only susceptible of modification by another unanimous agreement. The right, however, to withdraw its accession is obviously in the nature of a guarantee which the United States of America desires to obtain in case the working of the Court with its participation should, in practice, prove to be not such as to satisfy the exigencies of the position of the United States of America. In the general discussion in plenary session of the Conference, it was suggested that it would be natural to give a similar right to the other signatory States. The Committee has endeavoured to express this idea in the first part of the reply which it recommends in regard to the fourth reservation. It has, however, been anxious to invest the exercise of such a right with the character of a collective decision taken by a sufficiently large majority to ensure that it is inspired exclusively by objective considerations arising from the discovery of some serious practical difficulty. The majority, in fact, proposed is two-thirds.

Further, the Committee has felt it right to express the hope that the right of denunciation will not be exercised, either by the United States or by the other signatory States, without an exchange of views first taking place with regard to such difficulties as may have arisen and, possibly, as to the means of overcoming them.

6. As regards the part of the fifth reservation which relates to publicity for the Court's decisions in the matter of advisory opinions, and the right of each adhering State to express its point of view before the Court takes its decision, the Committee has thought that full satisfaction is given to the demand of the United States of America by the provisions of Rules of Court relating to advisory procedure as recently amended. It nevertheless proposes that, if the United States of America considers it desirable, an agreement shall be concluded on this subject between the United States of America and the other signatory States.

7. The second part of the fifth reservation, owing to its great importance, formed the subject of long and careful examination by the Committee. In the general discussion at the Conference, several speakers had drawn the attention of their colleagues to the proceedings preparatory to the adoption by the Senate of the United States of America of the resolution by which conditional accession to the Court was agreed to. It was pointed out, on the one hand, that, in the discussions of the Senate, attention was directed to the view expressed by the Court in its advisory opinion No. 5 (Eastern Carelia), to the effect that an opinion dealing with the substance of a dispute between a State Member of the League of Nations and a Power not belonging of the League could not be given without the consent of the said Power. It was noted, on the other hand, that the main idea in these discussions appeared to be to ensure for the United States of America equality with any State Member of the League which has, in the capacity of a Member of the Council or of the Assembly, to pronounce upon a proposal made in the Council or the Assembly to submit a request to the Court for an advisory opinion. The Committee has taken these



observations into account and has drawn a distinction, in the reply which it proposes with regard to this part of the fifth reservation, between disputes to which the United States of America is a party and disputes to which it is not a party, together with questions other than disputes. It considers that, as regards the first case, the reply can be limited to a reference to the jurisprudence of the Court, as laid down in the opinion concerning Eastern Carelia.

As regards the second case, the reply can only consist in a declaration by the signatory States recognising the United States of America as enjoying equality with the States Members of the League represented in the Council or the Assembly. It follows from the principle of equality that opposition by the United States of America to the adoption by the Council or the Assembly of a request for an advisory opinion would have exactly the same effect as a negative vote by a State represented in the Council or Assembly. Its effect would only be that of an absolute veto if the request had to be approved by a unanimous vote. In the United States of America it seems to have been regarded as certain that a decision of the Council or Assembly asking the Court for an opinion requires to be unanimous; but the Committee does not consider that there is, in fact, certainty on this point, since no precedent exists in the matter.

8. The Committee has had to consider the practical question of the procedure which the United States of America would have to follow in order to express its view on the adoption of a request for an advisory opinion. There is an obvious difference between the position of a State which is not a Member of the League and that of a State Member which gives its vote in the Council or Assembly after considering all the circumstances and after realising the importance of finding a solution, for the sake of the application of the Covenant, and the consequences which might result if no solution could be found.

This is a question which must be dealt with in the reply to the fifth reservation. The Committee considers that it should be studied in order that a *modus operandi* satisfactory to both sides may be arrived at between the Government of the United States and the Council of the League of Nations, the nature of whose functions makes it particularly well qualified to watch over the proper working of the League.

9. The Committee considers that it would be advantageous to accompany the replies to the five reservations with the outline of a convention containing the special clauses required by the accession of the United States of America to the Protocol of December 16th, 1920. The Committee does not consider that this accession warrants any amendments or additions to the Statute of the Court. On the contrary, it seems more proper that a special agreement should be concluded between the States signatories of the Protocol of December 16th, 1920, on the one hand, and the United States of America on the other. Its provisions ought, of course, to have the same force and effect as those of the Statute.

With this object, the Committee has prepared a preliminary draft protocol of execution, to be submitted to the Government of the United States together with the replies. The draft deals with the participation of United States representatives in the proceedings of the Council and the Assembly in connection with the election of judges; the requirement of the consent of all the contracting States to any amendment of the Statute of the Court; the public rendering of advisory opinions; the understanding to be reached between the United States of America and the Council of the League as regards the procedure for giving the consent mentioned in the fifth reservation; the attribution to opposition by the United States of America to a request for an advisory opinion of the same force and effect as would attach to a negative vote given in the Council or Assembly; the conditions of the entry into force of the Protocol; and, lastly, the exercise of the right of denunciation by the United States of America or by the other signatory States.

10. Such is the result of the exhaustive investigations to which the Committee has proceeded. It may be summarised as meaning that, in principle at least, all the reservations should be accepted. In the Committee's name, I have the honour to express the hope that the Conference may accept our conclusions. I should like, further, to express the hope that the great American Republic may find in those conclusions a reflection of the spirit of good will and good faith which has animated us in our task of seeking equitable legal forms which could meet its proposal. In that case we shall have satisfied the ardent desire of all the States Members of the League of Nations, which, while respecting the motives which have led the United States of America to feel that it cannot join the League, are anxious to see it take part in the work, and still further enhance the high authority, of the Permanent Court, which has been established as a guarantee of peace through justice for the entire community of nations.

Continuing, M. Pilotti said he had asked the delegates to be good enough to send in to him any amendments they might have to make. He had received some amendments from M. Dinichert and also one proposed by Sir Francis Bell and another from M. Negulesco.

He suggested that the Conference should first discuss M. Dinichert's amendments, which were largely concerned with points of form.

(Agreed.)

M. DINICHERT (Switzerland) said that, in the text which he had sent to the Drafting Committee, he had raised some points regarding punctuation, on the assumption that the Drafting Committee would take note of the suggestions and accept them or not as it



thought fit, but that they would not be discussed by the Conference. In fact, he had not submitted them as amendments but merely as observations, for he had no desire to occupy the time of the Conference with questions of such a character.

On the proposal of the PRESIDENT, *it was agreed that M. Dinichert should submit his proposals regarding punctuation to the Bureau, which would decide on them.*

The PRESIDENT thought, nevertheless, that M. Dinichert would wish to have the opinion of the Conference on his final observation, which referred to the same question as that dealt with in Sir Francis Bell's amendment. As the latter amendment was furthest from the original text, the President said he would ask the delegate for New Zealand to speak first and state his views.

Sir Francis BELL (New Zealand) made the following suggestions :

1. To omit from the reply to the fourth reservation the second and third paragraphs as printed.

2. (To be proposed only in the event of amendment No. 1 being accepted.) To make the necessary consequent alterations in the Draft Protocol.

He added that, Western Samoa, of which New Zealand was the Mandatory, was separated by a narrow strait from Eastern Samoa, a territory of the United States. Consequent partly on that proximity, and partly on treaties made between Germany and the United States before the war, some international questions had already arisen, and it was probable that similar questions might arise in future, between the United States and New Zealand, some of which might be of interest to the League which had granted the mandate. New Zealand was therefore very directly concerned in the question with which this Conference was dealing, and, in his capacity as representative of the Dominion, he felt it a special duty to consider with care the proposals now before the Conference.

As a member of the Committee of the Conference, he had accepted the view of the majority as regards the general form adopted and as regards the answer to the fifth reservation, and he had abstained from even expressing the individual opinion which he still held on both these matters. As regards, however, the answer to the fourth reservation, he felt bound to move an amendment and to give direct expression to the contention he now offered on behalf of the Government of New Zealand.

This Conference of signatory States had not the powers of the Assembly nor of the Council of the League, nor could it speak with any authority for either of these bodies. Obviously, it had no power to direct the Permanent Court of International Justice, nor to require that Court to take or abstain from any course. The Conference had been convened because of the insistence by the United States on a unanimous assent by the signatory States to the reservations which the United States had defined. If such consent were given, the United States declared itself willing to come within the jurisdiction of the Permanent Court of International Justice. But, for reasons expressed in its first reservation, the United States abstained from seeking or requiring the assent of the Assembly or of the Council to the reservations.

The speaker ventured to remind the Conference that it was not the consent of the Conference that conferred any right on the United States. The United States had already the right to adhere to the Court and could exercise that right, which was conferred upon it by the Covenant (in the Annex to which that country was named). Before exercising that right, and as conditions precedent to the exercise of that right, the United States demanded certain admissions from the signatory Powers, but neither the giving nor the withholding of such admissions constituted, or in any manner affected, the right of the United States. They merely affected the decision of the United States upon the question whether it would or would not *exercise* that right.

It was not unreasonable, from the point of view of the United States, to insist that its decision to join the signatory States in this great experiment of the establishment of a tribunal to determine international disputes should not be irrevocable. It might be, from the Conference's point of view, undesirable that any Power once within the jurisdiction of the Court should be permitted to withdraw. If that was its conclusion, it should say so.

But if the Conference accepted the fourth reservation and conceded the right to withdraw, surely that should be an end of the matter. No valid reason could be suggested for such a conditional assent as the second and third paragraphs of the proposed reply defined.

The Conference should recognise that this reply to the fourth reservation was one which the United States could not accept and might perhaps resent. If it were merely a declaration of what would result after, and in consequence of, a withdrawal by the United States from the Court, it might be unobjectionable, though useless. But what was claimed by these paragraphs was a right of the signatory States to resile from every admission they had made and every assent they had given, whenever they chose hereafter, notwithstanding that the United States might then be within the jurisdiction, and might desire still to remain within the jurisdiction, of the Court. Though it was admitted to-day that adhesion by the United States to the Court did not involve any association of the United States with the League of Nations, the signatory States claimed the right to resile from

that admission at any time hereafter, and to assert, whenever they chose, that adhesion to the Court did involve that association, with all its consequences to, and obligations of, the United States. Further, the signatory States claimed the right to cancel, when they pleased, their admission that the United States should take part in the election of the judges of the Court. The effect of the assertion of such rights was not mitigated by any requirement that a certain majority must concur in a proposed exercise of those rights.

There was a second objection to the proposed conditional assent, namely, that any withdrawal by the signatory Powers of their present assent and admissions would have absolutely no effect. He would abstain from elaborating an argument upon this further objection because, in the discussions in the Committee of the Conference, it appeared that several eminent jurists had dissented from the opinion he had formed and still maintained. If the United States once exercised its undoubted right to adhere to, and come within the jurisdiction of, the Permanent Court, nothing but a statute passed by the Assembly of the League by unanimous vote could exclude the United States from that jurisdiction or from all the consequent rights, privileges and liabilities. It seemed clear that even the right, now to be admitted, of the United States itself to withdraw could only be made effective by an amendment of the Statute of the Court which was contemplated by all. With unfeigned deference to the opinions which had been expressed in the Committee to the contrary, he was still convinced that the signatory States, by a majority or by a unanimity vote, would have no power of any kind to affect or destroy the right of the United States, or the jurisdiction of the Court, when once the United States had adhered to and come within its jurisdiction. All that was now happening related only and was preliminary to a decision of the United States whether it would or would not exercise its undoubted right. When once that right was exercised and the United States was within the jurisdiction of the Court, nothing said, done or committed to writing by the Conference or by the signatory States could destroy, diminish or affect the position, status and full rights of the United States to remain within and to continue subject to that jurisdiction.

In conclusion, he did not want to raise a discussion on the second objection, though he felt bound to state it. The point to which he wished most seriously and solemnly to call the attention of every member of the Conference was that, if they agreed with him that the United States could not accept the right on their part to ignore and cancel at their will the admissions they made, then surely the Conference would not insert the paragraphs which in effect meant refusal. If they were going to refuse, let them say so.

M. FROMAGEOT (France), replying to Sir Francis Bell, said that no one would dispute the right of the United States, under the terms of the Covenant, to adhere to the Statute of the Court. This right was recognised by the reference to the United States at the beginning of the list of States in the Annex to the Covenant and by the reservation which had been formulated with special regard to its case in the Protocol of December 1920. There was no question, therefore, of disputing this right; but the United States desired to exercise it subject to certain conditions. These conditions were stated in the reservations which the Government of the United States required to have accepted before adhering to the Protocol. The point at issue was therefore whether the States signatories of the Protocol were prepared or not to accept the reservations which formed the conditions of the United States' adherence to that instrument.

The second paragraph of the fourth reservation was only concerned with the giving or withdrawing of consent to the United States reservations and to the conditions governing its adherence at the present moment.

It was clear that the present Conference did not possess the rights of the Assembly nor of the Council, nor had it power to lay down certain regulations or to effect certain changes in the Statute. However, there seemed to be a misunderstanding between Sir Francis Bell and some of the members of the Conference. There seemed to be some confusion between the right of the United States to adhere to the Protocol and the conditions under which it was willing to adhere.

Without embarking on a discussion on the second paragraph of the reply to the fourth reservation, he ventured to point out that it would be very strange if this clause had really no signification. If the United States had the right to withdraw its adherence, including its reservations, the States signatories of the Protocol could not, for their part, deprive the United States of its right to adhere, since this was an accomplished fact, but could withhold their consent to the conditions under which its adherence was effected.

Supposing that such a case actually arose, what would happen? The States signatories of the Protocol having withdrawn their acceptance of the United States reservations, the United States would nevertheless continue, in the exercise of its right, to be subject to the jurisdiction of the Court. But it would no longer be able to avail itself of the reservations which it had made, or of the special conditions which had been conceded to it.

As regards the question whether it was advantageous or otherwise for the signatory Powers to claim this right of denunciation — which was the counterpart of the right of denunciation claimed by the United States — that was a different matter. It was a proposal which had been made by a member of that Conference; it had been examined with the greatest care, and the majority of the delegates had favoured the insertion of this clause in the text which was now under discussion.

He ventured, however, to urge that there was a great difference between deciding whether this clause was desirable, or otherwise, and declaring that it had no effect and was incompatible with the right of the United States to adhere to the Protocol.

M. FRANCO (Dominican Republic) thought that it was very desirable to accept Sir Francis Bell's amendment, for the two paragraphs in question were not of any essential value.

If it were shown that these two paragraphs were of real importance, they ought, of course, to be retained; but if, on the other hand, after careful examination, they were seen to be superfluous or of quite secondary value, there should be no hesitation in abandoning them. He thought that if the Conference accepted Sir Francis Bell's proposal, it would be taking a step forward and facilitating the adherence of the United States to the Statute of the Court.

The second paragraph, which enabled the signatory States to withdraw their consent acting together by a majority of two-thirds, appeared to him of rather theoretical value, and in consequence he desired to support Sir Francis Bell's amendment.

M. OSUSKY (Czechoslovakia) asked if it would not be possible to discuss M. Dinichert's amendment first. It was possible that this amendment might meet Sir Francis Bell's purpose.

The PRESIDENT said that the Conference must first decide on Sir Francis Bell's amendment. If it were accepted, there would be no need to discuss M. Dinichert's proposal. But if the Conference desired to maintain the two paragraphs in the reply to the fourth reservation, it would then have to discuss M. Dinichert's amendment.

M. ZUMETA (Venezuela) said that he desired to explain his vote. He did not see that any useful purpose could be served by the two paragraphs in question and he would therefore support the amendment of the delegate for New Zealand.

M. NEGULESCO (Roumania) said that he must first congratulate the Drafting Committee and its Rapporteur on the remarkable draft Final Act which they had just submitted.

He desired, however, to say something in regard to Article 7 of the preliminary draft Protocol. The right which it gave to the Powers to denounce their acceptance of the United States reservations was designed to ensure equality of treatment between all the Powers. It had been argued that, since the United States was able to denounce its adherence to the Protocol of the Statute of the Court, the other Powers could, for their part, denounce their acceptance of the United States reservations. He thought, however, that it was necessary to draw some distinctions in order to avoid certain mistakes. The United States, being mentioned in the Annex to the Covenant, was entitled to adhere by a unilateral declaration to the Protocol of Signature of the Statute of the Court. In that case, in the words of the Protocol, "they hereby declare that they accept the jurisdiction of the Court". It was therefore a question of judicial powers. The Protocol and the Statute of the Court did not mention advisory opinions. It was Article 14 of the Covenant which dealt with the advisory opinions given by the Court at the request of the Council or the Assembly. Several different acts were therefore involved: the adherence of the United States to the Protocol of Signature of the Statute of the Court; the acceptance by the Powers of certain reservations in connection with this adherence and relating solely to the judicial powers of the Court; and, lastly, the acceptance by the Powers of certain reservations relating to advisory opinions.

It seemed to M. Negulesco that the Powers could not denounce the adherence of the United States to the Protocol, because that was a unilateral act, which took effect independently of the wishes of the other Powers. The text of Article 7, which read: "On their part, each of the Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its consent to the *adherence of the United States to the Protocol of December 16th, 1920*", would have to be either omitted or amended.

If the United States could, in virtue of its adherence to the Protocol, enjoy the right of appearing before the Court, the other States could, nevertheless, reserve their right to denounce their acceptance of the conditions under which this right had to be exercised. In other words, the denunciation could only apply to the reservations which related to the Statute of the Court, and not to the exercise of the right which the United States possessed to appear before the Court independently of these reservations.

As regards advisory opinions, M. Negulesco thought that denunciation by the Powers could only relate to certain of the reservations which had been made. In the Committee's report a legal distinction had been drawn between advisory opinions in respect of which the United States would be in the position of a non-Member of the League, and those in respect of which the United States would be in the same position and could avail itself of the same rights as the States Members of the League of Nations. If that interpretation were accepted, it seemed to him difficult to believe that the denunciation could apply to the first category of opinions, in respect of which the United States would be on an equal footing with States non-Members of the League; the denunciation could only apply to the second category in respect of which the United States would be in the same position as States Members of the League.

In making the above observations, he had desired to show that it was necessary to amend Article 7 of the preliminary draft Protocol.

Sir George FOSTER (Canada) said that Sir Francis Bell had stated that he had no wish to provoke a discussion upon this question, but he felt that it was necessary for him to state his position. In stating his position, however, he had necessarily to make an argument in its favour.

The speaker did not propose to burn his fingers by engaging in an argument on the legal side of the question. But there was another argument which had been brought out very fully in the smaller Committee which for days had discussed this and other cognate questions. In the first place, it was not necessary but it was probably as well for him to affirm his desire — a desire equal to that of any other delegate — to see the United States, in so far as it could bring itself to do so, working for the objects and aims of the League. He thought it would be an immense gain if the United States were to give its adhesion to the Court and exercise its great influence — in some ways almost incalculable — in favour of the movement in which they were all so much interested. For years past the highest opinion of the public men of the United States had been in favour of a World Court, and it was the urgency of that opinion which had brought the United States to make its present proposal. The majority of the American people would be immensely gratified if the United States could co-operate in the work of the Court.

In connection with this matter there was an argument of reasonableness, and there was an argument in the fourth reservation which also bore on the question and which had not been touched upon by the Roumanian delegate. The argument of reasonableness was this: The United States had put toward a proposition in pursuance of its undoubted right to enter the Court, but it imposed certain conditions upon its entrance, and those conditions had been undergoing examination. In the fourth reservation there was not only the right of the United States to withdraw from the Court but there was the second right — that without its consent the Statute of the Court should not be amended. He thought that this portion of the fourth reservation must be taken into account in connection with the point under discussion. Was it reasonable, when one party to this provisional agreement asked for and obtained the right to withdraw, that the other party, which assented to that right — an agreement in virtue of which the United States entered the Court — should not have an equal right? In any transaction between nations or people it was unreasonable and unjust — when a conditional arrangement was made — for one party to demand and obtain the right to withdraw, unless the same right were given to the other party. Why was it that the League of Nations, represented in that Conference, asked for the right of withdrawal reciprocally with the right granted to the United States? It was because the force and the obligation of working out its views and aims were entirely thrown upon those who were Members of the League of Nations, and the United States, since it did not belong to the League, was under none of the obligations and was not required to put forward any of the effort necessary to carry out the aims of the League. Now, if, in carrying out this work, it became apparent to the Members of the League that the arrangement under which they were working was detrimental to their best efforts and to the best ultimate results which the League sought to obtain, was it not fair that, since the other side — that is, the United States — had the right to withdraw, the nations Members of the League should have an equal right to adjust matters by a reciprocal process of withdrawal? It seemed to him that this argument of reasonableness was a good one and one from which there could be no dissent.

As regards the latter part of the fourth reservation of the United States, to the effect that no amendment should be made to the Statute of the Court without the assent of the United States, he would like to draw the attention of the Conference to a case which, though perhaps not likely, might occur, and with reference to which some precautions ought to be taken. Let it be supposed that it became apparent to every Member of the League of Nations, in virtue of the experience gained in carrying out the work of the League, that it was necessary to amend the Statute of the Court, there would then be fifty or sixty nations of the world unanimously of the opinion that an amendment was necessary, while the other party to the agreement, by withholding its consent to any amendment, would be able to prevent those fifty or sixty States Members of the League from releasing themselves. A country outside the League could thereby hinder the work of the fifty or sixty nations in the League. This was an unfair position, nor would it be a position which the United States would wish to occupy. It was only fair that the States Members of the League should have the opportunity to release themselves if, on the other hand, the United States had the right to withdraw its adherence to the Protocol. The whole solution to the question was contained in the proposal which the Conference was considering. A spirit of reasonableness demanded that there should be a reciprocal arrangement for withdrawal, in order that the rights of both parties might be sustained.

M. SJÖBORG (Sweden) agreed with what had been said by Sir George Foster and M. Fromageot and declared his intention of voting in favour of the clause providing for withdrawal.

Sir Cecil HURST (British Empire) asked whether it would not be possible to render the machinery of withdrawal a little more simple, and therefore a little more real, by providing that the States which had already signed the Protocol and accepted the Statute of the Court should meet together in conference for the purpose of reaching an agreement, thus avoiding the cumbrous machinery of diplomatic correspondence. Anything which tended to simplify the machinery would be a great advantage. It would be an improvement, he thought, to introduce some verbal change so as to make it clear that, in this matter, the

States were not only acting together but had met in conference before expressing that opinion.

With regard to the point raised by Sir Francis Bell, he thought that the explanations and speeches already made would have removed his difficulty in some measure. Every word of Sir George Foster's speech was, in Sir Cecil Hurst's opinion, sound both from a juridical and a political point of view, and he felt that there was very little he could add to that wise and sagacious statement of the case.

It seemed difficult to conceive what justification there could be for Sir Francis Bell's suggestion that it was impossible for the United States to accept such a position. All that the States Members were asking was that there should be equality. Why was it impossible for the United States to accept this? He had always been under the impression that one of the principles most firmly held in the United States was the principle of the equality of States. What was there unreasonable, unfair, or in any way derogatory to either party in requiring that the States which had already accepted the jurisdiction of the Court should be put in a position of equality with the United States? If it were really the case that the United States declared that it must be in a position of superiority and not of equality, then the members of the Conference ought to consider whether the fourth reservation was one which, in fairness to their own peoples, they could accept. He proposed to vote against the acceptance of Sir Francis Bell's amendment.

The PRESIDENT asked Sir Cecil Hurst if he was definitely proposing to replace the formalities laid down in Article 7 by a different procedure such as would involve the convening of a Conference.

Sir Cecil HURST (British Empire) proposed that the Conference should merely accept the suggestion he had just made, and that it should leave to the President the drafting of the amendment, on the condition, however, that it should give satisfaction to the Vice-President who had suggested that slight modification.

M. ZUMETA (Venezuela) said that the Venezuelan delegation, like all the other delegations present, had only one wish, namely, to make clear to the United States that they all desired its adherence to the Court, on a footing of perfect equality. In order that this perfect equality might be attained, it was necessary to find some practical means of expressing their desire to have the same rights as the United States. He thought that the proposals of Sir Cecil Hurst and M. Fromageot fulfilled those conditions and he entirely agreed with them.

Mr. LATHAM (Australia) suggested that Sir Cecil Hurst should reconsider his proposal because it made the procedure more complicated than it otherwise would be. The effect of the amendment was to impose the additional condition of holding a Conference. As the report was drafted at present, there was nothing to prevent a Conference being held if the States thought that that was the easiest way to arrive at a conclusion. If, however, the amendment were accepted, there would have to be a Conference, and then the notifications. He had spoken upon this matter from a general point of view and also from the point of view of a State which was some 12,000 miles away from where the Conference would probably be held; to impose the additional condition of convening a Conference as a matter of necessity would not exactly result in making the procedure easier than it would be if the text were retained in its original form.

Mr. Latham added that he hoped that attention would be paid, at the appropriate time, to the words of Sir Francis Bell concerning the necessity of engaging, in this matter, the responsibility of the Assembly of the League. The draft Final Act and Annex as they stood did not appear to provide for any action by the Assembly, a point which should be taken into account. So far as the rest of the draft was concerned, it appeared to him to be as good as could be arranged under existing circumstances, and he supported it.

The PRESIDENT observed that the Conference had now to discuss an amendment to the amendment, with the object of meeting the views of those delegates who would prefer simply to omit the paragraphs 2 and 3 of the reply to the fourth reservation. Sir George Foster had just reminded the Conference that this question had been discussed at length in the Committee of Fourteen and in the Drafting Committee. The President had not wished to join in the present discussion, but he felt bound to say that he had hoped that the proposals of the Committee would be endorsed by the Conference; of course, the latter was perfectly free to do otherwise. Nevertheless, he thought that everyone would regard it as a misfortune if the Conference had to vote on one or other of the articles, which might thus be accepted by a majority against a minority. He was glad that the discussion had taken another direction and that new ideas had been contributed. For the moment, it was difficult to carry the discussion further till the Conference had before it the exact wording of Sir Cecil Hurst's proposal. In these circumstances, he suggested that the discussion on Sir Francis Bell's proposal and M. Dinichert's amendment should be adjourned till the next meeting and that, in the meanwhile, M. Negulesco's amendment should be discussed.

Sir Francis BELL (New Zealand) asked whether Sir Cecil Hurst and Sir George Foster would be content to confine the right of withdrawal to a right to withdraw assent to the fourth reservation. If so, he would agree with the proposal. What he meant to suggest was that, instead of having the right to withdraw acceptance of the first or second reservation, this power should be confined to the right to withdraw assent to the fourth reservation.

The PRESIDENT said that it was difficult to decide offhand on such a proposal. Denunciation had only been contemplated as a step applicable to all the reservations and Sir Francis Bell's proposal was new. The Committee of Fourteen might discuss it that afternoon and refer it to the Conference at a meeting to be held later in the day.

M. NEGULESCO (Roumania) wished to make an observation in regard to the reply to the fifth reservation, paragraph B. In the second paragraph there was a reference to disputes to which the United States would be a party and the following paragraph dealt with disputes to which the United States would not be a party but in which it would claim an interest, and also with questions other than disputes in which the United States would claim an interest. Moreover, the succeeding paragraph opened with the words:

"Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give on the request of the Council or Assembly and which are provided for in the Covenant."

The fact that it is only in this paragraph that reference is made to advisory opinions rendered by the Court "on the request of the Council or the Assembly" might convey the impression that the two preceding paragraphs were only concerned with advisory opinions rendered by the Court at the request of the parties. That would be contrary to Article 14 of the Covenant.

To avoid any confusion it would be necessary to amend the first words of the fifth paragraph to read:

"As regards the advisory opinions referred to in the two preceding paragraphs, it should be noted that great importance attaches to such opinions in so far as the Members of the League of Nations are concerned."

If the passage were worded thus, the connection between this paragraph and the two preceding paragraphs would be perfectly clear.

M. PILOTTI (Italy), Rapporteur, thought that in substance there was no great difference between the former text and the words proposed by M. Negulesco.

It appeared, however, that the wording proposed by M. Negulesco would remove any impression that there were certain advisory opinions which were not covered by the preceding paragraphs, and he therefore accepted the proposal.

However, to avoid repetition, he thought it would be better not to begin this paragraph with the words "as regards", as the two preceding paragraphs began with those words.

The Rapporteur therefore proposed the following wording:

"Great importance is attached by the Members of the League of Nations to the value of the advisory opinions . . ."

M. NEGULESCO (Roumania) said that he accepted that wording.

M. FROMAGEOT (France) said that he thought this wording rather incomplete and proposed that it should read as follows:

"Great importance is attached by the Members of the League of Nations to the value of the advisory opinions *which the Court may give as provided for in the Covenant.*"

M. NEGULESCO (Roumania) assented.

*This text was adopted.*

The PRESIDENT observed that M. Erich, delegate for Finland, had said that he wished to make a statement. He asked if he would be content if his statement were simply inserted in the Minutes.

M. ERICH (Finland) said that he would be quite satisfied if his observations were inserted in the Minutes.

Mr. LATHAM (Australia) suggested that the Committee should take into consideration the point mentioned by Sir Francis Bell concerning the action of the Assembly, and that, in considering Article 5 of the preliminary draft Protocol, the Committee should take into account the desirability of inserting the words "when adopted by the League of Nations", so that Article 5 would then read:

"Subject to the provisions of Article 7 below, the provisions of the present Protocol shall, when adopted by the League of Nations, have the same force and effect as the provisions of the Statute annexed to the Protocol of December 16th, 1920."

The Conference was unable to amend the Statute, and could not by its agreement impose upon the Court any kind of obligation; and, although this did not impose an obligation, it looked like an attempt by a body other than the League of Nations to give its decision the same force and effect as a decision of the Assembly. Any document which was to have the same force as the Statute of the Court ought to have the same origin as that Statute.



M. PILOTTI (Italy), Rapporteur, pointed out that the Protocol concluded with the words:

“ A certified copy shall be sent to each of the States signatories of the Protocol of December 16th, 1920, as well as to the Council of the League of Nations, which convoked the Conference. ”

It would have been better to say that these copies would be communicated to the Council of the League, not merely because the Council had convened the Conference but also to give it an opportunity of expressing its opinion on the results of the work of the Conference and, if it thought fit, of submitting those results to the Assembly.

The delegations should note that the Statute of the Court did not derive its authority from the Assembly of the League of Nations. The Assembly had, it was true, approved the Statute by a unanimous vote, but the Statute had been put in force in virtue of the Protocol which was signed by the States on December 16th, 1920. It was this Protocol which gave the Statute the force of an international Convention. He could not therefore entirely agree with the view that the provisions of the present Protocol would not have full force till they had been approved by the Assembly. In any case, the Council would be able to take note of the result of the Conference's work and would be free to submit it to the Assembly.

M. ROLIN (Belgium) thought that the Conference could do something more than merely communicate the result to the Council. M. Pilotti had observed that the Statute had been adopted in the form of a Convention, but it was mentioned in the first part of the Protocol that the Assembly had given its approval. It appeared, therefore, that both conditions were necessary. However, vis-à-vis the United States, no action by the Assembly would be either natural or necessary. He therefore thought it better that the intention of submitting the question to the Assembly should be indicated not in the draft Protocol which was going to be communicated to the United States but in the Final Act.

The PRESIDENT thought that this question might be examined in the Committee of Fourteen. For the rest, the Council would do what it judged best. But as this Conference was not an organ of the League, it was best not to insert anything in the Final Act which was not absolutely necessary. The President considered, moreover, that they could safely trust the wisdom of the Council. The States belonging to the Council would be able to make proposals to it.

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## EIGHTH MEETING

*Held at Geneva on Thursday, September 23rd, 1926, at 4 p.m.*

President: M. VAN EYSINGA.

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### 20. Consideration of the Draft Final Act of the Conference (*conclusion of the discussion*).

The PRESIDENT announced that the Committee of Fourteen had met and, after a thorough discussion, had come to an agreement regarding the amendments to be made in the conclusions of the Conference concerning the fourth reservation and in Article 7 of the preliminary draft Protocol. Sir Francis Bell had accepted these amendments, which met his objections.

The President observed that Sir Francis Bell had said that he would accept the right of denunciation by the States signatories of the Protocol other than the United States, provided that this right only applied to the second part of the fourth reservation (*i.e.*, to paragraph B, which related to possible amendments in the Statute of the Court) and to the fifth reservation. In practice, therefore, the States other than the United States would have the right to denounce the second part of the fourth reservation and the fifth reservation. If they availed themselves of this right, the United States would still be a Member of the Court, as it would be a signatory, subject to the conditions of the first, second and third reservations and the first part of the fourth reservation. The following changes in the text were proposed to give effect to this idea:

In the second paragraph of the conclusions on the fourth reservation, the following passage would be inserted after the word " Protocol " : " In the second part of the fourth reservation and in the fifth reservation " .

In the third paragraph of Article 7 of the preliminary draft Protocol, the words " consent . . . " , would be replaced by : " acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920, in the second part of its fourth reservation and in its fifth reservation " .

In the last line of Article 7, the words " the consent . . . " would be replaced by " the above-mentioned acceptance " .

As no delegate wished to speak, *the text proposed by the Committee was adopted.*

Count ROSTWOROWSKI (Poland) observed that, at the morning meeting, Sir Cecil Hurst had proposed to simplify the procedure laid down in Article 7 of the preliminary draft Protocol and, with this object in view, had suggested a Conference in which any difficulties

which might have arisen in the working of the present system would be discussed. This was a very practical suggestion, but means must be found to give effect to it. Accordingly, he proposed to substitute the following passage for paragraphs 2 and 3 :

“ It nevertheless seems natural to provide that the signatory States should be entitled, if the present arrangement should not in the future be found to work satisfactorily, to review its terms at a Conference of States signatories of the Protocol of 1920, including the United States, and to endeavour, by means of a decision adopted by a two-thirds majority, to remedy the objections which had come to light. ”

This proposal would be in harmony with a view which had been put forward more than once in the Commission, namely, that what was required was a collective step, and that this step could best be taken by the decision of a Conference. The United States would be a member of that Conference, and the concessions which had been accorded to it could be reviewed with its help. If it were found that the results were not satisfactory a remedy could be sought by common agreement. No doubt, if, when it came to voting, the United States were in the minority, the question would arise whether the United States was willing or not to continue its adherence, but the responsibility for such a decision would rest with the United States. In this way, the rights of the signatory States would be completely safeguarded and the possibility of having to adopt a course which might appear discourteous to the United States would be avoided.

M. ROLIN (Belgium) said that, in the Commission, he had supported Count Rostworowski's proposal, but he thought that the Conference by adopting it now would be attaching a fresh condition to the exercise by the United States of the right of denunciation — a condition which would perhaps not be easily accepted. He thought, therefore, that the Conference would be wise to adhere to the text proposed by the Commission.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) agreed with the remarks of the Belgian delegate. As the point raised was the purely suppositional case referred to in paragraphs 2 and 3 of the fourth reservation, it was superfluous, at this stage, to lay down the precise form of the steps to be taken in such a contingency.

If the Polish delegate would agree not to press his proposal, it would be sufficient, he thought, if the statements just made by the Polish delegate were inserted in the Minutes of the meeting, where they would be available to those who would have to consider the question if the contingency actually arose.

Sir Cecil HURST (British Empire) asked what had become of the suggestion he had made at the morning meeting that provision should be made for a Conference for the purpose of arriving at the necessary measures of agreement in respect of the exercise of the power of denunciation. Count Rostworowski's proposal with regard to a Conference went further than his own, because the Polish delegate's idea was that the Conference would include representatives of the United States, whereas his own idea was a Conference in which the United States would not participate, but which would be solely a Conference between the other Powers who were signatories to the Protocol. If the Conference desired to give satisfaction to his suggestion, he would propose the insertion of the following words in the French text, after the words “ agissant d'accord ” in the second paragraph of the answer to the fourth reservation :

“ Cet accord sera formé par la réunion d'une conférence, s'il y a lieu, et exigerait l'acceptation de deux tiers au moins des Etats signataires. ”

The PRESIDENT reminded the Conference that Count Rostworowski had made a proposal to the effect that a Conference of all the signatory States, including the United States, should be convened, whenever the right of denunciation was exercised.

On the other hand, Sir Cecil Hurst had just made a proposal to provide, if necessary, for the convening of a Conference between the signatory States other than the United States.

He asked whether Sir Cecil Hurst would be content to have his proposal inserted in the Final Act, or did he think it essential that it should also appear in Article 7 of the preliminary draft Protocol.

Sir Cecil HURST (British Empire) said that his suggestion had not been made in order to get over the difficulty raised by Sir Francis Bell, but in order to get over a difficulty indicated to him by M. Zumeta in a conversation ; it had nothing to do with Sir Francis Bell's proposal at all. Personally, he did not think it necessary to make any addition to Article 7 of the draft Protocol ; he wished only to make an addition on page 6 of the Final Act. All he wanted to do was to indicate in that paragraph the possibility of arriving at an agreement by means of a Conference.

M. PILOTTI (Italy), Rapporteur, said that, if Sir Cecil Hurst did not press for his amendment to be inserted in Article 7, he thought that agreement could easily be reached by wording the second paragraph of the conclusions on the fourth reservation as follows :

“ In order to assure equality of treatment, it seems natural that the signatory States acting together, if necessary by means of a Conference convened for that purpose and by not less than a majority of two-thirds . . . ”



M. ROLIN (Belgium) drew the attention of his colleagues to a serious difficulty.

The idea of the members of the Conference and the intention of Count Rostworowski's proposal had been that, before the right of denunciation was exercised, there should be an exchange of views between the signatory States, and that this exchange of views would take the form of a Conference in which the United States would take part. Did it not then appear that a reference, in so many words, in the second paragraph of the conclusions on the fourth reservation to a Conference which would only include the signatory States, and not the United States, was inconsistent with the aim which the Conference had in view?

If difficulties should arise, an attempt would first be made to come to an agreement with the United States, and for this purpose a Conference would be convened in which the United States would take part. If that Conference failed, and if the States Members of the League of Nations were still convinced that the existing arrangement was unworkable, they would then discuss the desirability of making use of the right which they had reserved to themselves. It appeared, therefore, not only indiscreet but hardly consistent with the facts to speak of a Conference to which the signatory States, but not the United States, would be invited.

He thought, therefore, that it would be wiser merely to refer in the Minutes to this idea of an agreement, which indicated what was essential, and to this suggestion of an exchange of views which indicated what was desirable.

M. ZUMETA (Venezuela), Vice-President, observed that he had always done all that he could to help and never to hamper the work of the Conference and of its Committees. He was therefore prepared to accept M. Rolin's view.

Count ROSTWOROWSKI (Poland) said that he was ready, with a view to reaching an agreement, to withdraw his proposal, provided that it was mentioned in the Minutes.

The PRESIDENT thought that, in these circumstances, the discussion was finished, and that the Conference now had a text which was unanimously accepted.

The minor alterations proposed by M. Dinichert would be made in the final texts, in so far as they had been accepted by the Conference. It now only remained for the members of the Conference to sign the Final Act. That formality could be carried out in Mr. McKinnon Wood's office, where the instrument would be placed.

Prince ARFA (Persia) desired to make the following declaration :

" My Government trusts that all difficulties may be removed and that the United States may be able to adhere to the Protocol "

M. DENDRAMIS (Greece) made the following declaration :

" I think it is my duty to explain to the Conference the special situation of Greece in regard to the United States reservations.

" The Greek Government, which had only been informed of the suggestions of the Council of the League of Nations for the convening of the Conference by the Secretary-General's letter of March 29th, had already on March 12th last instructed its Minister at Washington to inform the United States Government that it had no objection of principle to make to the conditions, reservations and stipulations of the United States Senate.

" As, however, the United States Government had made its adherence to the Protocol of Signature of the Statute of the Court dependent upon the acceptance of these conditions and reservations by all the States signatories of the Protocol, the Greek Government had subsequently informed the United States Government that it would take part in the Conference.

" After carefully reading the Final Act and after hearing the clear statement of the Rapporteur and the debates which have taken place in the Conference, I am glad to find that the conclusions reached by the Conference amount to an acceptance in principle of the United States reservations, subject to certain details of procedure. The President stated this morning that the Governments were in no way committed. In these circumstances, I am prepared to sign the Final Act "

The PRESIDENT said he took note of the Greek delegate's declaration, which would be inserted in the Minutes.

## 21. Close of the Session.

M. MARKOVITCH (Kingdom of the Serbs, Croats and Slovenes) desired to thank the President on behalf of the members for the manner in which he had conducted the work of the Conference.

Sir George FOSTER (Canada) desired to associate himself with this expression of thanks. He deeply appreciated the work done by and the courtesy of the President.

Sir Cecil HURST (British Empire) said that he wished not only to support a vote of thanks to the President but to propose a vote of thanks also to the Rapporteur, M. Pilotti, to whom all the members of the Conference were so greatly indebted.

*The Conference associated itself by acclamation with these expressions of thanks.*

The PRESIDENT thanked the delegates who had just spoken for their cordial references to himself and then made the following closing address.

The present Conference, he said, had presented a number of more or less striking characteristics. He only wished to lay stress on one of them. The task of the Conference had not been

to draw up a convention or to draft a resolution or recommendation, but to compose a reply to the United States, a reply which was not very easy to frame. The United States, when expressing its desire to adhere to the Statute of the Permanent Court of International Justice, had made its adherence dependent upon a stipulation which might very appreciably affect the efficient working of the League of Nations, to which they all belonged and whose interest they ought all to have at heart. Sir George Foster, who was, so to speak, the personification of the truth that the best lawyers were found sometimes among those who were not lawyers by profession, in one of his invariably sagacious speeches, had said that the case was that of a legislative act by a foreign State concerning a question which was outside its competence. It had also been difficult to draw up the reply because the Conference had not been able to discuss the matter with representatives of the United States; international matters required to be dealt with internationally. This was true also of any act which was so eminently international as an adhesion *with reservations* to a convention. The point to which he had just referred furnished ample evidence that it would have been very easy to reply in the negative to the United States reservations; and indeed the possible rejections and exceptions, the minor legal difficulties which, if they had been pursued to the utmost, might have become insurmountable obstacles, had been very numerous in connection with the thorny problem which the Conference had been examining. The Conference, however, had refused to be deterred by these difficulties. It had regarded them as having arisen only to be overcome; the delegates had not for one moment forgotten that they had been summoned to Geneva for a great purpose: to endeavour to give satisfaction to the United States, and in so doing to make it possible for that country to share in the work of the Court of Justice and make it easier for that country to resume its noble mission — the course of which had been somewhat interrupted — in the pacific settlement of international disputes. The Conference had refused to admit that all these possible exceptions and difficulties could deter it for one moment from the attainment of this most worthy purpose. In a word, it had taken an exalted standpoint — a standpoint where the mere jurist had given place as far as possible to the man of action who desired to carry out a good work. That, he believed was the great merit of the work done by the Conference.

What, he asked, would be the fate of the Final Act? He could form no idea, and he had not the least desire to endeavour to be a prophet. He thought, however, that the Conference could be sure of one thing, that the spirit and the manner in which its work had been carried out had given abundant proof of its earnest desire to succeed.

Another point brought out by the debates had been that the constitutional difficulties which had been encountered had been far more serious than was perhaps suspected in the United States when the reservations were drawn up. The Conference had, however, endeavoured to reduce these difficulties to a minimum, and to span what was left of them by a bridge which the United States had only to pass over to meet them. He hoped that the United States would take the course which had been indicated. It would then be able to resume the place which belonged to it by right in the pacific settlement of international conflicts. But, in order to reach this goal, it was essential that their Governments should forward to the Washington Government, as early as possible, the letter of which the Conference had directed him to transmit a model. He would endeavour to do so promptly. He ventured to express a most earnest hope that all the delegates would endeavour, as soon as they reached their own countries, to ensure that this letter would be despatched as soon as possible.

He desired to add some words of thanks, first to the heads of the great Labour Organisation which had so generously given the Conference hospitality in its magnificent building, and, secondly, to all those present for the lofty plane on which they had maintained the discussions ever since the opening of the Conference. More than one of those present had had to sacrifice ideas by which he set great store; he was extremely grateful to his colleagues for the self-denial they had shown.

He thanked the Committee, which had twice subjected the work of the plenary Conference to a careful scrutiny, and the small Drafting Committee, which had been so efficiently served by M. Zumeta and M. Rolin and Sir Cecil Hurst.

He also expressed his most cordial thanks to the Secretary of the Conference, Mr. McKinnon Wood, and his colleagues. He would not mention them all, but he would allow himself to cite at any rate the name of Professor M. O. Hudson, of Harvard University.

He also expressed his thanks to the interpreters and to all the officials of the Secretariat and the International Labour Office.

Finally, on behalf of all the members of the Conference, he wished to express their very special gratitude to their able Rapporteur, who had given them an example of those qualities of suppleness of mind and acumen which were so characteristic of the nation which had bequeathed the Roman Law to the world. How they had marvelled at his skill in evolving formulæ to reduce to their smallest proportions the problems and difficulties which had confronted the Conference! Nor could they sufficiently admire his patience, which he himself, a member of a Northern race, had often regarded with envy. It might be truly said that, if the Conference had achieved the utmost that was possible, it was due above all to the ability of its Rapporteur.

M. PILOTTI (Italy) desired to express his thanks to the President and to all the members of the Conference.

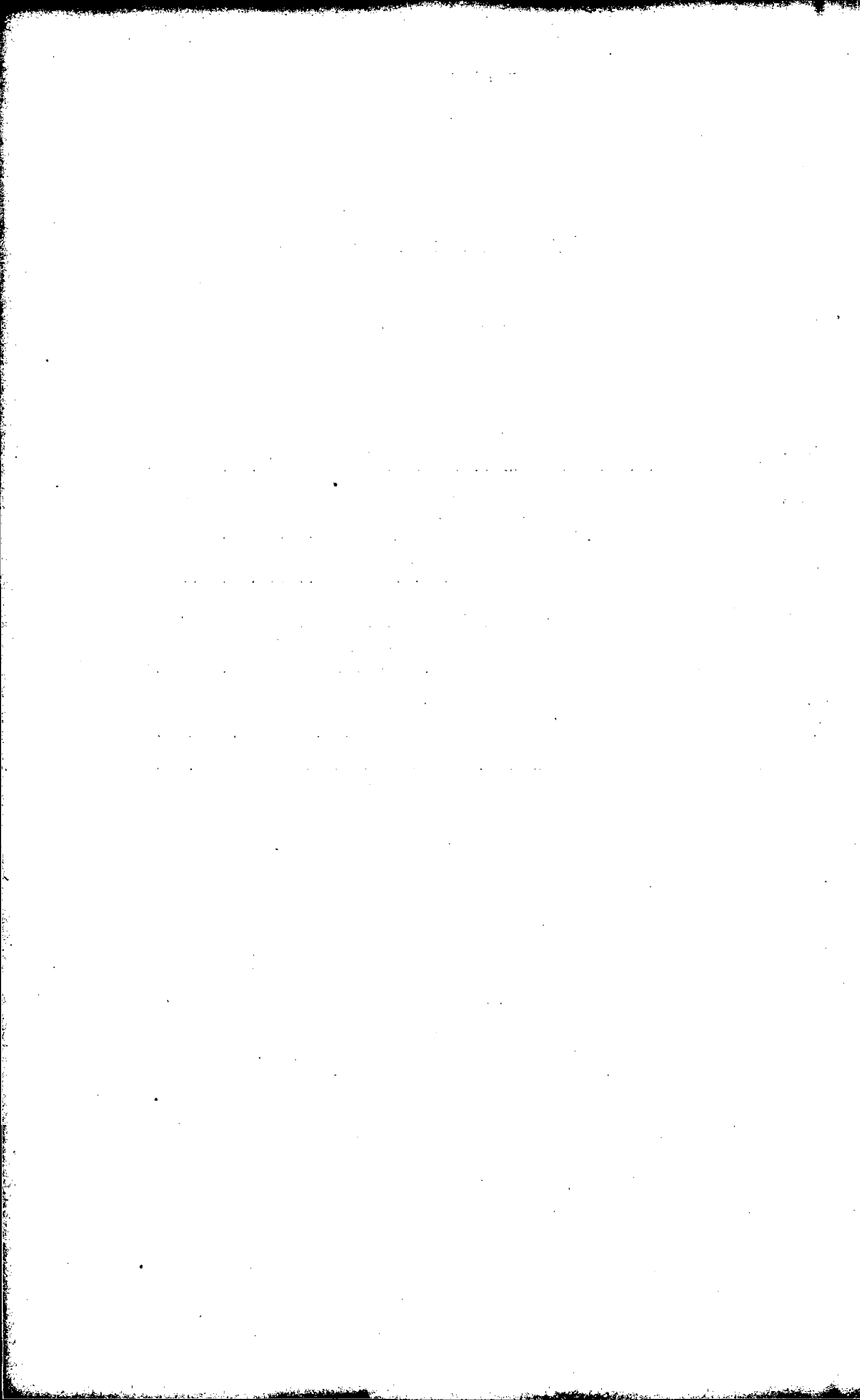
The PRESIDENT pronounced the Conference closed.

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**Annex 1.**

**LETTER OF THANKS FROM THE PRESIDENT OF THE CONFERENCE  
TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE.**

Geneva, September 1st, 1926.

[*Translation.*]

This morning the Conference which has met to examine the question of the adhesion of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice began its work.

I cannot refrain, on this occasion, from telling you how greatly the Conference appreciates your kindness in placing at its disposal the magnificent room in which it is to hold its meetings and in providing it with such excellent facilities for its work.

I beg to thank you, both personally and on behalf of the other delegates, whose feelings I am confident I am voicing.

(Signed) VAN EYSINGA,  
*President of the Conference.*

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**Annex 1a.**

**REPLY FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE  
TO THE PRESIDENT OF THE CONFERENCE.**

Geneva, September 3rd, 1926.

[*Translation.*]

I very much appreciate the thanks which you have been good enough to send me both in your own name and on behalf of the delegates to the Conference of States signatories to the Statute of the Permanent Court of International Justice. We were very happy to offer you the hospitality of our Office and sincerely hope that your work will be crowned with success. It is a pleasure to us at any time to give proof of the cordial spirit of co-operation which exists between the International Institutions belonging to the League of Nations.

(Signed) Albert THOMAS.

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**Annex 2.**

**RESOLUTION ADOPTED BY THE UNITED STATES SENATE  
ON JANUARY 27TH, 1926.**

**LETTER FROM THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA  
TO THE SECRETARY-GENERAL OF THE LEAGUE.**

Washington, March 2nd, 1926.

I have the honour to refer to the communication of this Department, dated August 15th, 1921, acknowledging the receipt of a certified copy of the Protocol of Signature relating to the Statute of the Permanent Court of International Justice, and take pleasure in informing you that the Senate of the United States of America, on January 27th, 1926, gave its advice and consent to the adherence on the part of the United States to the Protocol of Signature of the Statute for the Permanent Court of International Justice, dated December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice, without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in the said Statute, on the condition of the acceptance by the Powers signatory to the Protocol of the conditions, reservations and understandings contained in the Senate resolution which reads as follows :

“Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923, asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in

the said message of the President (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

“ Therefore be it

“ Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely :

“ 1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

“ 2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies.

“ 3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

“ 4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

“ 5. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

“ The signature of the United States to the said Protocol shall not be affixed until the Powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

“ Resolved further, As a part of this act of ratification, that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute ; and

“ Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States 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 adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

“ Agreed to, January 16th (Calendar day, January 27th), 1926. ”

I have the honour, therefore, to inform you that the signature of the United States will not be affixed to the said Protocol until the Governments of the Powers signatory thereto shall have signified in writing to the Government of the United States their acceptance of the foregoing conditions, reservations and understandings as a part and a condition to the adherence of the United States to the said Protocol and Statute.

I have addressed a communication to the representative of each of the Governments of the Powers signatories of the Protocol asking these several Governments to be good enough to ascertain and to inform me in writing whether they will accept the conditions, reservations and understandings contained in the resolution as a part and condition of the adherence of the United States to the said Protocol and Statute.

(Signed) Frank B. KELLOGG.

Annex 3.

EXTRACT FROM THE MINUTES OF THE SEVENTH MEETING OF THE  
THIRTY-NINTH SESSION OF THE COUNCIL OF THE LEAGUE  
OF NATIONS HELD AT GENEVA ON MARCH 18TH, 1926.

ADHESION OF THE UNITED STATES TO THE PROTOCOL OF THE PERMANENT COURT  
OF INTERNATIONAL JUSTICE.

Sir Austen Chamberlain reminded the Council of the letter received by the Secretary-General from the Secretary of State in Washington communicating the terms on which the United States of America, with the consent of the Senate, were prepared to adhere to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

He then read the following statement :

" The Senate resolution of January 27th, 1926, stipulates that the signature of the United States to the Protocol of December 16th, 1920, shall not be affixed until the Powers signatory to that Protocol shall have indicated by an exchange of notes their acceptance of the first five paragraphs of that resolution. The Protocol of 1920 is a multilateral instrument to which all the signatories are parties, and the special conditions on which the United States desire to accede to it should also be embodied in a multilateral instrument. They cannot appropriately be embodied in a series of separate exchanges of notes.

" The terms of some of the first five paragraphs of the Senate resolution affect in certain respects the rights of the States which have ratified the Protocol of December 16th, 1920, and it is not usual that rights established by an instrument which has been ratified should be varied by a mere exchange of notes.

" The terms of the fifth paragraph of the Senate resolution necessitate further examination before they could safely be accepted by the States which are parties to the Protocol of 1920. This paragraph is capable of bearing an interpretation which would hamper the work of the Council and prejudice the rights of Members of the League, but it is not clear that it was intended to bear any such meaning. The correct interpretation of this paragraph of the resolution should be the subject of discussion and agreement with the United States Government.

" It should not be difficult to frame a new agreement giving satisfaction to the wishes of the United States Government if an opportunity could be obtained for discussing with a representative of that Government the various questions raised by the terms of the Senate resolution. To any such new agreement the States which have signed the Protocol of December 16th, 1920, and the United States Government would be parties.

" I suggest that the most convenient course would be to propose to all the Governments which have received from the United States Government a copy of the Senate resolution that a reply should be made indicating the difficulty of proceeding by way of a mere exchange of notes and the need of a general agreement. An invitation might also be addressed by the Council to all these Governments and to the Government of the United States to appoint a delegation to participate in the discussions as proposed above and in the framing of a new agreement at a meeting to be held here on September 1st of the current year. "

*The Council adopted the proposals of the British representative.*

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Annex 4.

INVITATION ADDRESSED TO THE STATES SIGNATORIES OF THE PROTOCOL  
BY THE SECRETARY-GENERAL OF THE LEAGUE.

Geneva, March 29th, 1926.

I have the honour to inform you that, at the meeting of the Council of the League of Nations held on March 18th, 1926, the representative of the British Empire brought to the attention of the Council the Note of March 2nd, 1926, addressed to me, as Secretary-General of the League of Nations, by the Secretary of State of the United States of America and informing me of the conditions, reservations and understandings subject to which the United States Senate has given its advice and consent to the accession of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice and of the despatch to the representatives of the Powers signatories of this Protocol of a communication enquiring whether they will accept such conditions, reservations and understandings.

Copies of this Note have been communicated to the Members of the League in the document C.192.M.60.1926V, dated March 17th, 1926.

The British representative submitted to the Council a statement and proposals for action by the Council, which were adopted by the Council, and the text of which will be found in the enclosed extract (see Annex 3) from the Minutes of the Council.

The Council has decided, in the first place, to propose to all the Governments which have received from the United States a copy of the Senate's resolution, among which the Government of . . . . ., being a State signatory of the Protocol in question, is no doubt included, "that a reply should be made indicating the difficulty of proceeding by way of a mere exchange of notes and the need of a general agreement".

The Council, in the second place, decided to invite all the Governments signatories of the Protocol and the Government of the United States of America to appoint delegations to participate in the discussion contemplated by the above-mentioned recommendation and in the framing of a new agreement at a meeting to be held in Geneva on September 1st of the current year.

I am communicating to the Government of the United States of America the text of the Council's decision and the Council's invitation to participate in the meeting convened by the Council.

I have now the honour to request your Government to be so good as to inform me as soon as possible whether it is prepared to accept the invitation by the Council and to name a delegation to take part in the meeting of September next.

A copy of my communication to the Government of the United States is enclosed herewith for your information (see Annex 5).

(Signed) ERIC DRUMMOND,  
Secretary-General.

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Annex 5.

INVITATION ADDRESSED TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA BY THE SECRETARY-GENERAL OF THE LEAGUE.

Geneva, March 29th, 1926.

I have the honour to refer to your letter of March 2nd, 1926, communicating to me, as Secretary-General of the League of Nations, the terms of the resolution adopted by the Senate of the United States of America on January 27th, 1926, with regard to the eventual adhesion of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and informing me that you had addressed a communication to the representatives of the Governments of the States signatories of that Protocol enquiring whether they would accept the conditions, reservations and understandings required by the Senate's resolution. As I informed you in my letter of acknowledgment dated March 18th, 1926, I communicated copies of your letter to the Governments of the Members of the League.

I now take pleasure in informing you that, at a meeting of the Council of the League of Nations held on March 18th, 1926, the British representative put before the Council, in regard to the subject dealt with in your letter, a statement and proposals which were adopted by the Council.

I have the honour to enclose an extract from the Council's Minutes containing the statement and proposals to which I refer.

You will observe from this extract that the Council, desirous of facilitating common action by the signatories of the Protocol in question with regard to the adhesion of the United States to that instrument, and after consideration of the technical aspects of the subject, has taken a decision that invitations shall be issued to the Governments of the States actually signatories of the Protocol and to the Government of the United States to appoint delegations to meet in Geneva on September 1st of the current year for the purpose of discussing any questions which it may be proper for them to discuss in this connection, and for the purpose of framing any new agreement which may be found necessary to give effect to the special conditions on which the United States are prepared to adhere to the Protocol.

Under the terms of the Council's decision, the invitation to the meeting is addressed to the signatory States in their capacity as such signatories and to the United States of America. I have conveyed the invitation to the Governments of the former States.

I have now the honour to convey to you the above invitation of the Council for consideration by your Government, and to request that you will be so good as to inform me whether your Government will find it possible to be represented at the meeting in question.

(Signed) ERIC DRUMMOND,  
Secretary-General.



**Annex 6.**

**REPLY FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
TO THE INVITATION TO THE CONFERENCE.**

I have the honour to acknowledge your communication of March 29th, 1926, in which you enclose an extract from the Minutes of the meeting of the Council of the League proposing that invitations be issued to the Governments of the States actually signatories of the Permanent Court of International Justice and to the Government of the United States to appoint delegates to meet in Geneva on September 1st of the current year for the purpose of discussing any questions which it may be proper for them to discuss in this connection and for the purpose of framing any new agreement which may be found necessary to give effect to the special conditions on which the United States is prepared to adhere to the Protocol. I further note your statement that invitations have been issued to the various States signatory to the Protocol and you now extend an invitation to the United States for such purpose. I am also advised that, in the invitation sent to the States other than the United States, the League has asked them to indicate to the United States Government the difficulty of treating the American reservations to adhesion to the Protocol of the Permanent Court by direct exchange of notes and to point out the need for a general agreement.

While acknowledging the courtesy of the invitation of the League of Nations to attend such a meeting, I do not feel that any useful purpose could be served by the designation of a delegate by my Government to attend a conference for this purpose. The Senate gave its consent to the adherence of the United States to the Statute of the Permanent Court with certain specific conditions and reservations set forth in the resolution which I forwarded to you as the depository of the Protocol. These reservations are plain and unequivocal and according to their terms they must be accepted by an exchange of notes between the United States and each one of the forty-eight States signatory to the Statute of the Permanent Court before the United States can become a party and sign the Protocol. The resolution specifically provided this mode of procedure.

I have no authority to vary this mode of procedure or to modify the conditions and reservations or to interpret them, and I see no difficulty in the way of securing the assent of each signatory by direct exchange of notes, as provided for by the Senate. It would seem to me to be a matter of regret if the Council of the League should do anything to create the impression that there are substantial difficulties in the way of such direct communication. This Government does not consider that any new agreement is necessary to give effect to the conditions and reservations on which the United States is prepared to adhere to the Permanent Court. The acceptance of the reservations by all the nations signatory to the Statute of the Permanent Court constitutes such an agreement. If any machinery is necessary to give the United States an opportunity to participate through representatives for the election of judges, this should naturally be considered after the reservations have been adopted and the United States has become a party to the Statute of the Permanent Court of International Justice. If the States signatory to the Statute of the Permanent Court desire to confer among themselves, the United States would have no objection whatever to such a procedure, but, under the circumstances, it does not seem appropriate that the United States should send a delegate to such a conference.

*(Signed)* Frank B. KELLOGG.

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**Annex 7.**

**STATEMENT BY M. ERICH, DELEGATE OF FINLANDE**

*Submitted to the Conference on September 23rd, 1926.*

In response to the Chairman's invitation to the delegates to the Conference of the States signatory to the Protocol of Signature of the Statute for the Permanent Court of International Justice to submit their remarks on the draft Final Act laid before the Conference by the Committee appointed on September 3rd, 1926, before the meeting on Thursday, September 23rd, 1926, at 10 o'clock, the undersigned has the honour to state his opinion on the following points:

Whilst admitting that the United States of America, after having adhered to the Statute, should have the right to participate, through representatives appointed for that purpose and

on equal terms with the Members of the League of Nations, in all discussions for the election of judges, etc., one must not lose sight of the fact that such a modification presupposes an amendment to the Covenant. In point of fact, the Covenant only recognises one case where a State not a Member of the League may be invited for a special and strictly limited purpose to accept the obligations of membership of the League. This exceptional situation is provided for in Article 17, which, nevertheless, only refers to the settlement of a dispute. The Convention of October 20th, 1921, relating to the non-fortification and neutralisation of the Aaland Islands did doubtless invite Germany, which at that time was not yet a Member of the League, to sit on the Council with the other States signatory. In this connection, however, it was explained that the organ entrusted with the execution of the Convention was not the League Council in its regular form and in the discharge of its regular duties, but an organ constituted *ad hoc*, if in great part identical with the Council (*cf.* Memorandum by M. Anzilotti and M. Kaekenbeek in the Act of the Conference relating to the non-fortification and neutralisation of the Aaland Islands, pages 52 and 53).

In the case to which the draft Final Act refers, on the contrary, a Power not a Member of the League would be invited to sit on the Council, acting as a regular organ of the League of Nations.

There is another important difference. According to Article 17, a State not a Member of the League which accedes to the invitation to accept the obligations of membership will always occupy the same position as a Member which is not represented on the Council but which, as provided in Article 4, paragraph 5, of the Covenant, is invited to send a representative to the Council. If the United States of America were to sit on the Council, they would, for the purposes of a special emergency, find themselves in the same situation as a Member with a permanent seat. In strict justice and at bottom, this arrangement would not be any the less incompatible with the provisions of the Covenant — that is to say, it would require an amendment to the Covenant —.

If the Covenant provides only, as a quite exceptional measure, for the possibility of a non-Member sitting on the Council, an event of this nature is entirely excluded as regards the Assembly. It must be pointed out that the possibility of referring to the Assembly a dispute which has already been submitted to the Council (Article 15, paragraph 9, of the Covenant) is *strictly limited to disputes between two or more Members of the League*. To admit a Power which is not a Member of the League as a Member *ad hoc* of the Assembly would mean even more a change in the Covenant, a change for which, juridically, an amendment is essential.

The Advisory Opinion of the Court, No. 5 (Eastern Carelia), can scarcely be cited as indicating an attitude definitely adopted by the Court as regards disputes between a Member and a non-Member, for the following reasons :

The negative reply of the Court in the question of Eastern Carelia was only the opinion of a very small majority; a considerable minority of four ordinary Judges expressed a divergent opinion; the League Council itself did not, in 1923, share the opinion of the Court on the possibility or impossibility of delivering an opinion in a case similar to that of Eastern Carelia. Furthermore, in the opinion given by the Court on Article 3, paragraph 2, of the Treaty of Lausanne, the Court did not apply strictly the principles which it had declared decisive relative to a State not a Member of the League which disputed the competence of the Court and refused to participate in the procedure.

By Article 4 of the Preliminary Draft, the conditions under which the consent provided for in the second part of the fifth reservation of the United States of America will be given are to form the subject of an agreement to be concluded between the Government of the United States and the Council of the League. Obviously, this agreement must be based either on direct co-operation between the United States of America and the Council, or the Assembly, in the event of a request for an advisory opinion, or else on an independent declaration by the United States intimating the consent or refusal of that Power. The first case would mean a very large extension of the participation of the United States in the activity of the League, which naturally would not be limited to a special function, but would come into play whenever the question of an application for an advisory opinion arose. If, on the other hand, the form in which the United States give their consent consisted in a special independent declaration, it would appear even clearer that, in opposition to the terms of the Covenant, a further condition, *i.e.*, the consent of the United States, would have been added to the conditions required under Article 14.

When it is stated in Article 14 of the Covenant that the Court " may also give an advisory opinion . . . referred to it by the Council or the Assembly ", this means that the Council or the Assembly has not merely the right to *ask an opinion* but also the right to *obtain* the opinion asked for unless the Court considers itself unable to accede to the application. By the fifth reservation, however, an element which does not form part of the League would have the right to prevent the Court from complying with the request. To hand over to the Court the duty of appraising the value and the effects of the opposition of the United States, *i.e.*, the task of determining whether a valid decision of the Council or of the Assembly has or has not been taken, would certainly not be a happy expedient. This would frequently necessitate a preliminary examination of the question at issue by the Court, a step which might lead to grave inconveniences.

In drafting paragraph 3 of Article 4, a very important point seems to have been omitted.

The words "relating to a dispute to which the United States of America are not a party" convey the impression *ex contrario* that if, in a given case, the United States were actually party to a dispute, they should have *unlimited power* to oppose an application for an opinion. What, then, would be the conclusion in regard to a case similar to that of the Turkish-Iraq frontier? How would it be possible to oust the jurisdiction of the Court in regard to a State not a Member of the League (the United States of America), while admitting this jurisdiction in regard to another non-Member State (a State in the same position as Turkey)? If complete equality is to be observed as between the Members of the League and the United States of America, it would be necessary to go even further and make the admissibility of a request for an advisory opinion on a dispute which has already occurred depend upon the consent of all the parties.

In these few observations, the undersigned has, in the first place, desired to call attention to the relationship between the American reservations and the Covenant. There is no need to say that all the signatory States regard the adhesion of the United States of America as highly desirable. But it is the duty of every Member of the League to insist on the strict observance of the Covenant and the necessity of beginning by removing any obstacles which may exist in the juridical structure of the League before undertaking a reform, no matter how desirable it may be.

The undersigned is not in a position to announce the definitive attitude of his Government, whose desire to go to the extreme limits of what is possible and justifiable he has already expressed. He thought it his duty, as representing a Member of the League of Nations and a State signatory of the Statute, to accept the invitation given to delegates by the Chairman of the Conference. The Finnish Government, therefore, retains full and entire freedom as to the attitude it may finally take up and is in no sense bound by the foregoing considerations.

Geneva, September 22nd, 1926.

(Signed) R. ERICH.

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Annexe 7.

CONFÉRENCE DES ÉTATS SIGNATAIRES DU PROTOCOLE DE SIGNATURE DU STATUT DE LA  
COUR PERMANENTE DE JUSTICE INTERNATIONALE

ACTE FINAL

1. La Conférence d'Etats signataires du Protocole de signature du Statut de la Cour permanente de Justice internationale (Protocole du 16 décembre 1920) s'est réunie le 1<sup>er</sup> septembre 1926, à Genève, au Bureau international du Travail.

2. La réunion de cette Conférence a eu pour origine la lettre du 2 mars 1926, par laquelle le Secrétaire d'Etat des Etats-Unis d'Amérique avait porté à la connaissance du Secrétaire général de la Société des Nations que les Etats-Unis étaient disposés à adhérer au Protocole de signature du 16 décembre 1920, moyennant cependant l'acceptation préalable, par chacun des Etats signataires dudit Protocole, de cinq réserves et conditions ainsi formulées :

« I. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

« II. That the United States shall be permitted to participate, through representatives designated for the purpose and upon an equality with the other States Members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

« III. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

« IV. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

« V. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest. »

La dite lettre a ensuite donné lieu à une résolution du Conseil de la Société des Nations en date du 18 mars 1926, tendant à la convocation d'une Conférence de délégués des Etats signataires, devant se réunir à Genève et à laquelle le Gouvernement des Etats-Unis serait invité à se faire représenter. La Conférence fut chargée de la mission de rechercher la voie par laquelle les gouvernements signataires du Protocole susmentionné pourraient donner satisfaction aux cinq réserves et conditions posées par le Gouvernement des Etats-Unis d'Amérique.

3. Le Gouvernement des Etats-Unis, pour les motifs exposés dans une lettre adressée, le 17 avril 1926, par le Secrétaire d'Etat au Secrétaire général de la Société des Nations, déclina l'invitation de prendre part à la Conférence. Les Etats signataires dont l'énumération suit ont désigné pour leurs délégués :

[Suit la liste des délégués.]

Le 1<sup>er</sup> septembre 1926, au cours de sa première séance, la Conférence a élu, pour président, le Jonkheer W. J. M. VAN EYSINGA, délégué des Pays-Bas et, pour vice-présidents, Son Excellence M. César ZUMETA, délégué du Venezuela, et le très honorable Sir Francis Henry Dillon BELL, délégué de la Nouvelle-Zélande.

4. Dans une série de réunions, tenues du 1<sup>er</sup> au 23 septembre 1926, les délégués précités, tout en regrettant de n'avoir pu profiter de l'assistance d'un représentant des Etats-Unis, ont étudié les réserves et conditions des Etats-Unis, constamment inspirés du ferme désir de donner satisfaction, dans la plus large mesure possible, aux réserves des Etats-Unis. La Conférence a été unanime à rendre un cordial hommage à l'intention des Etats-Unis de collaborer au maintien

**Annex 7.**

CONFERENCE OF STATES SIGNATORIES OF THE PROTOCOL OF SIGNATURE OF THE STATUTE  
OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

FINAL ACT

1. The Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice (Protocol of December 16th, 1920) met at the International Labour Office in Geneva on September 1st, 1926.

2. The occasion of this Conference was the letter of March 2nd, 1926, by which the Secretary of State of the United States of America informed the Secretary-General of the League of Nations that the United States was disposed to adhere to the Protocol of Signature of December 16th, 1920, on condition that each of the States signatories of the said Protocol should previously accept five reservations and conditions as follows:

" I. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

" II. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

" III. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

" IV. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

" V. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State, concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

This letter gave rise to the resolution of the Council of the League of Nations of March 18th, 1926, suggesting that a Conference of the delegates of the States signatories of the Protocol should be convened at Geneva, in which the Government of the United States was also invited to participate. The Conference was charged with the task of studying the way in which the Governments of the signatories of the Protocol above mentioned might satisfy the five reservations and conditions proposed by the Government of the United States of America.

3. The Government of the United States, for the reasons set forth in a letter of April 17th, 1926, addressed by the Secretary of State of the United States to the Secretary-General of the League of Nations, declined the invitation to take part in the Conference. The signatory States enumerated below designated as their delegates to the Conference:

*[Here follows the list of Delegates.]*

In the course of its first meeting on September 1st, 1926, the Conference elected as President, Jonkheer W. J. M. VAN EYSINGA, delegate of the Netherlands, and as Vice-Presidents, His Excellency M. César ZUMETA, delegate of Venezuela, and the Right Honourable Sir Francis Henry Dillon BELL, delegate of New Zealand.

4. In the course of its sessions, continued from September 1st, 1926, to September 23rd, 1926, the delegates named above, while regretting that they have not had the assistance of a representative of the Government of the United States, have studied the reservations and conditions of the United States with a strong desire to satisfy them in the largest possible measure. The Conference has unanimously welcomed the proposal of the United States to

de la Cour permanente de Justice internationale, collaboration qui était attendue avec confiance par les Etats adhérents au Statut de la Cour. Elle s'est pleinement rendu compte de l'effet moral que la participation des Etats-Unis à cette institution de paix et de justice aurait sur le développement du droit international et sur l'organisation progressive de la société mondiale sur les bases du respect du droit et de la solidarité des nations; elle s'est souvenue des précieuses contributions américaines aux progrès de la justice internationale au cours des XIX<sup>e</sup> et XX<sup>e</sup> siècles, notamment, par l'intervention féconde des délégués des Etats-Unis aux deux Conférences de la Paix de La Haye et, plus récemment, par la part considérable prise par un éminent juriste américain à la préparation du Statut de la Cour.

5. La Conférence a reconnu que l'adhésion des Etats-Unis au Protocole de signature du 16 décembre 1920, dans des conditions spéciales, nécessite une entente entre les Etats-Unis et les signataires du Protocole.

6. La Conférence a formulé les conclusions ci-après, destinées à servir de base aux réponses à adresser à la lettre envoyée par le Secrétaire d'Etat des Etats-Unis à chacun des gouvernements signataires du Protocole du 16 décembre 1920, réponses dans lesquelles les Etats signataires s'exprimeraient sur l'acceptation des réserves et conditions des Etats-Unis:

#### *Réserve I.*

Il y a lieu d'accepter que l'adhésion des Etats-Unis au Protocole du 16 décembre 1920 et au Statut y annexé de la Cour permanente de Justice internationale ne soit pas considérée comme impliquant pour les Etats-Unis une relation juridique quelconque avec la Société des Nations ou l'acceptation de leur part d'aucune obligation découlant du Traité de paix de Versailles du 28 juin 1919.

#### *Réserve II.*

Il y a lieu d'accepter que les Etats-Unis puissent participer par l'intermédiaire de représentants désignés à cet effet et sur un pied d'égalité avec les autres Etats, Membres de la Société des Nations, représentés, soit au Conseil, soit à l'Assemblée, à toutes délibérations du Conseil ou de l'Assemblée, pour élire des juges ou des juges suppléants de la Cour permanente de Justice internationale ainsi que pour pourvoir à des vacances.

#### *Réserve III.*

Il y a lieu d'accepter que les Etats-Unis contribuent aux dépenses de la Cour pour une part équitable que le Congrès des Etats-Unis déterminera et inscrira au budget.

#### *Réserve IV.*

A. Il y a lieu d'accepter que les Etats-Unis puissent en tout temps retirer leur adhésion audit Protocole du 16 décembre 1920.

En vue d'assurer l'égalité de traitement, il paraît naturel de prévoir pour les Etats signataires, agissant d'accord et, au moins, à la majorité des deux tiers, le droit de retirer de même leur acceptation des conditions spéciales mises par les Etats-Unis à leur adhésion au dit Protocole dans la seconde partie de la quatrième réserve et dans la cinquième réserve. Le *statu quo ante* pourra ainsi être rétabli, si l'on constate que l'arrangement intervenu ne donne pas de résultats satisfaisants<sup>1</sup>.

On peut espérer, néanmoins, qu'il ne sera pas procédé à une dénonciation sans que, préalablement, il ait été tenté de résoudre, par un échange de vues, les difficultés qui se seraient élevées.

B. Il y a lieu d'accepter que le Statut de la Cour permanente de Justice internationale joint au Protocole du 16 décembre 1920 ne soit pas modifié sans le consentement des Etats-Unis.

#### *Réserve V.*

A. En matière d'avis consultatifs et, tout d'abord, en ce qui concerne la première partie de la cinquième réserve, le Gouvernement des Etats-Unis aura sans doute pris connaissance, depuis l'envoi de ses lettres aux divers Gouvernements, des articles 73 et 74 du Règlement de la Cour, tels qu'ils ont été amendés, le 31 juillet 1926, par la Cour elle-même (Annexe A). Ces dispositions semblent de nature à donner satisfaction aux Etats-Unis, la Cour ayant statué à ce sujet dans l'exercice des pouvoirs que l'article 30 du Statut lui confère. Au surplus, les Etats signataires pourraient étudier avec les Etats-Unis l'opportunité d'incorporer à ce sujet certaines stipulations de principe dans un protocole d'exécution dont un avant-projet est ci-joint (Annexe B), notamment en ce qui concerne la publicité du prononcé des avis consultatifs.

<sup>1</sup> Le texte original de cet alinéa dans le projet présenté à la Conférence par la Commission était le suivant:

« En vue d'assurer l'égalité de traitement, il paraît nécessaire de prévoir pour les Etats signataires, agissant d'accord et, au moins, à la majorité des deux tiers, le droit de retirer de même leur acceptation des conditions spéciales mises par les Etats-Unis à leur adhésion audit Protocole. Le *statu quo ante* pourra ainsi être rétabli, ...etc. »

collaborate in the maintenance of the Permanent Court of International Justice; such collaboration has been awaited with confidence by the States which have accepted the Statute of the Court. The Conference has taken full account of the great moral effect which the participation of the United States in the maintenance of this institution of peace and justice would have on the development of international law and on the progressive organisation of world society on the basis of a respect for law and the solidarity of nations. No has it been unmindful of the valuable American contributions to the progress of international justice in the course of the 19th and 20th centuries, notably in the fruitful participation of the delegates of the United States in the two Hague Peace Conferences and more recently in the large part taken by an eminent American jurist in the preparation of the Statute of the Court.

5. The Conference has recognised that adherence to the Protocol of Signature of December 16th, 1920, by the United States under special conditions necessitates an agreement between the United States and the signatories of the Protocol.

6. The Conference has formulated the following conclusions as the basis of the replies to the letter addressed by the Secretary of State of the United States to each of the States signatories of the Protocol of December 16th, 1920, by which the signatory States would declare their views as to the acceptance of the reservations and conditions proposed by the United States:

#### *Reservation I.*

It may be agreed that the adherence of the United States to the Protocol of December 16th, 1920, and the Statute of the Permanent Court of International Justice annexed thereto shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Peace of Versailles of June 28th, 1919.

#### *Reservation II.*

It may be agreed that the United States may participate, through representatives designated for the purpose and upon an equality with the other States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, or for the filling of vacancies.

#### *Reservation III.*

It may be agreed that the United States pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

#### *Reservation IV.*

A. It may be agreed that the United States may at any time withdraw its adherence to the Protocol of December 16th, 1920.

In order to assure equality of treatment, it seems natural that the signatory States, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol in the second part of the fourth reservation and in the fifth reservation. In this way the *status quo ante* could be re-established if it were found that the arrangement agreed upon was not yielding satisfactory results.<sup>1</sup>

It is to be hoped, nevertheless, that no such withdrawal will be made without an attempt by a previous exchange of views to solve any difficulties which may arise.

B. It may be agreed that the Statute of the Permanent Court of International Justice annexed to the Protocol of December 16th, 1920, shall not be amended without the consent of the United States.

#### *Reservation V.*

A. In the matter of advisory opinions, and in the first place as regards the first part of the fifth reservation, the Government of the United States will, no doubt, have become aware, since the despatch of its letters to the various Governments, of the provisions of Articles 73 and 74 of the Rules of Court as amended by the Court on July 31st, 1926 (Annex A). It is believed that these provisions are such as to give satisfaction to the United States, having been made by the Court in exercise of its powers under Article 30 of its Statute. Moreover, the signatory States might study with the United States the possible incorporation of certain stipulations of principle on this subject in a protocol of execution such as is set forth hereafter (Annex B), notably as regards the rendering of advisory opinions in public.

<sup>1</sup> The original text of this paragraph in the draft submitted to the Conference by the Committee was as follows:

"In order to assure equality of treatment, it seems necessary that the signatory States, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol. In this way the *status quo ante* could be re-established . . ."

B. La seconde partie de la cinquième réserve conduit à distinguer, d'une part, les avis consultatifs demandés à l'occasion d'un différend dans lequel les Etats-Unis seraient partie, et, d'autre part, ceux demandés à l'occasion d'un différend où les Etats-Unis ne seraient pas partie, mais dans lequel ils déclareraient être intéressés, de même que d'une question, autre qu'un différend, dans laquelle les Etats-Unis déclareraient être intéressés.

En ce qui concerne les différends dans lesquels les Etats-Unis seraient partie, il suffit, semble-t-il, de se référer à la jurisprudence de la Cour, qui a déjà eu l'occasion de se prononcer dans la matière de différends entre un Membre de la Société des Nations et un non Membre. Cette jurisprudence, telle qu'elle est formulée dans l'avis consultatif n° 5 (Carélie orientale), le 23 juillet 1923, paraît de nature à donner satisfaction au désir des Etats-Unis.

En ce qui concerne les différends où les Etats-Unis ne seraient pas partie, mais où ils déclareraient être intéressés, de même qu'en ce qui concerne les questions autres que des différends et où les Etats-Unis déclareraient être intéressés, la Conférence a cru comprendre que le but poursuivi par les Etats-Unis a été celui de s'assurer l'égalité avec les Etats représentés, soit au Conseil, soit à l'Assemblée de la Société des Nations. Ce principe devrait être accepté. La cinquième réserve paraît, il est vrai, basée sur la présomption que l'adoption par le Conseil ou l'Assemblée d'une requête d'avis consultatif nécessite un vote unanime. Or, cette présomption n'a pas été confirmée jusqu'ici; on ne peut dire avec certitude si, dans quelques cas ou peut-être dans tous une décision de majorité n'est pas suffisante. Quoiqu'il en soit, il y a lieu de garantir aux Etats-Unis une situation d'égalité à cet égard; ainsi, dans tous les cas où un Etat représenté au Conseil ou à l'Assemblée aurait le droit, par son opposition au sein de ces organes, d'empêcher l'adoption d'une proposition tendant à provoquer l'avis consultatif de la Cour, les Etats-Unis jouiraient d'un droit équivalent.

Une grande importance s'attache, pour les Membres de la Société des Nations, aux avis consultatifs donnés par la Cour en vertu du Pacte<sup>1</sup>. La Conférence est persuadée que le Gouvernement des Etats-Unis n'entend pas restreindre la valeur de ces avis, par rapport au fonctionnement de la Société des Nations. Les termes employés dans la cinquième réserve pourraient, cependant, recevoir une interprétation conduisant à une telle restriction. Les Membres de la Société des Nations exerceraient leurs droits, au Conseil et à l'Assemblée, en pleine connaissance des détails de la situation qui a pu provoquer une requête tendant à obtenir un avis consultatif, ainsi qu'en pleine connaissance des responsabilités qui, en vertu du Pacte de la Société des Nations, leur incomberaient, dans le cas où l'on n'aboutirait pas à une solution. Un Etat exempt des obligations et des responsabilités découlant du Pacte se trouverait dans une situation différente. C'est pour cette raison que la procédure à suivre par un Etat non membre de la Société, au point de vue des requêtes tendant à obtenir un avis consultatif, constitue une question importante; en conséquence, il est désirable que les modalités dans lesquelles le consentement prévu à la seconde partie de la cinquième réserve sera donné fassent l'objet d'un accord supplémentaire qui garantirait que le règlement pacifique des futurs différends entre les Membres de la Société des Nations n'en serait pas rendu plus difficile.

La Conférence aime à croire que les considérations qui précèdent rencontreront l'agrément des Etats-Unis. Elle constate que l'application de certaines des réserves des Etats-Unis requiert des stipulations appropriées, à intervenir entre les Etats-Unis et les autres Etats signataires du Protocole du 16 décembre 1920, stipulations qui ont été également prévues dans la réponse du Secrétaire d'Etat des Etats-Unis au Secrétaire général de la Société des Nations, en date du 17 avril 1926. Dans cet ordre d'idées, il est souhaitable que les Etats signataires du Protocole du 16 décembre 1920 concluent avec les Etats-Unis un protocole d'exécution, qui, sous réserve de tous échanges de vues ultérieurs que le Gouvernement des Etats-Unis jugerait utiles, pourrait être conçu dans les termes présentés ci-après (annexe B).

#### Annexe A.

EXTRAIT DU RÈGLEMENT REVISÉ DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE.

(Les articles 71, 73 et 74, tels qu'ils figurent ci-après, ont été amendés le 31 juillet 1926.)

##### Article 71.

Les avis consultatifs sont émis après délibération par la Cour en séance plénière. Ils mentionnent le nombre des juges ayant constitué la majorité.

Les juges dissidents peuvent, s'ils le désirent, joindre à l'avis de la Cour soit l'exposé de leur opinion individuelle, soit la constatation de leur dissentiment.

<sup>1</sup> Le texte original de cette phrase dans le projet présenté à la Conférence par la Commission était le suivant:

« Une grande importance s'attache, pour les Membres de la Société des Nations, aux avis consultatifs que la Cour peut formuler à la requête du Conseil ou de l'Assemblée, et qui sont prévus dans le Pacte. »



B. The second part of the fifth reservation makes it convenient to distinguish between advisory opinions asked for in the case of a dispute to which the United States is a party and that of advisory opinions asked for in the case of a dispute to which the United States is not a party but in which it claims an interest, or in the case of a question, other than a dispute, in which the United States claims an interest.

As regards disputes to which the United States is a party, it seems sufficient to refer to the jurisprudence of the Court, which has already had occasion to pronounce upon the matter of disputes between a Member of the League of Nations and State a not belonging to the League. This jurisprudence, as formulated in Advisory Opinion No. 5 (Eastern Carelia), given on July 23rd, 1923, seems to meet the desire of the United States.

As regards disputes to which the United States is not a party but in which it claims an interest, and as regards questions, other than disputes, in which the United States claims an interest, the Conference understands the object of the United States to be to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to. But the fifth reservation appears to rest upon the presumption that the adoption of a request for an advisory opinion by the Council or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient. In any event the United States should be guaranteed a position of equality in this respect; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right.

Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give as provided for in the Covenant.<sup>1</sup> The Conference is confident that the Government of the United States entertains no desire to diminish the value of such opinions in connection with the functioning of the League of Nations. Yet the terms employed in the fifth reservation are of such a nature as to lend themselves to a possible interpretation which might have that effect. The Members of the League of Nations would exercise their rights in the Council and in the Assembly with full knowledge of the details of the situation which has necessitated a request for an advisory opinion, as well as with full appreciation of the responsibilities which a failure to reach a solution would involve for them under the Covenant of the League of Nations. A State which is exempt from the obligations and responsibilities of the Covenant would occupy a different position. It is for this reason that the procedure to be followed by a non-member State in connection with requests for advisory opinions is a matter of importance and in consequence it is desirable that the manner in which the consent provided for in the second part of the fifth reservation will be given should form the object of a supplementary agreement which would ensure that the peaceful settlement of future differences between Members of the League of Nations would not be made more difficult.

The Conference ventures to anticipate that the above conclusions will meet with acceptance by the United States. It observes that the application of some of the reservations of the United States would involve the conclusion of an appropriate agreement between the United States and the other States signatories of the Protocol of December 16th, 1920, as was indeed envisaged by the Secretary of State of the United States in his reply to the Secretary-General of the League of Nations dated April 17th, 1926. To this end, it is desirable that the States signatories of the Protocol of December 16th, 1920, should conclude with the United States a protocol of execution which, subject to such further exchange of views as the Government of the United States may think useful, might be in the form set out below (Annex B).

#### Annex A.

##### EXTRACT FROM THE REVISED RULES OF COURT OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

*(Articles 71, 73 and 74, as printed herewith, were amended on July 31st, 1926.)*

##### Article 71.

Advisory opinions shall be given after deliberation by the full Court. They shall mention the number of the judges constituting the majority.

Dissenting judges may, if they so desire, attach to the opinion of the Court either an exposition of their individual opinion or the statement of their dissent.

<sup>1</sup> The original text of this sentence in the draft submitted to the Conference by the Committee was as follows:

“Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give on the request of the Council or Assembly, and which are provided for in the Covenant.”

*Article 72.*

Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par le Président de l'Assemblée ou par le Président du Conseil de la Société des Nations, soit par le Secrétaire général de la Société agissant en vertu d'instructions de l'Assemblée ou du Conseil.

La requête formulée, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

*Article 73.*

1. Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux Membres de la Société des Nations par l'entremise du Secrétaire général de la Société, ainsi qu'aux Etats admis à ester en justice devant la Cour.

En outre, à tout Membre de la Société, à tout Etat admis à ester devant la Cour, et à toute organisation internationale jugée, par la Cour ou par le Président si elle ne siège pas, susceptible de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

Si un des Etats ou des Membres de la Société mentionnés au premier alinéa du présent paragraphe, n'ayant pas été l'objet de la communication spéciale ci-dessus visée, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

2. Les Etats, Membres ou organisations qui ont présenté des exposés écrits ou oraux, sont admis à discuter les exposés faits par d'autres Etats, Membres et organisations, dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Etats, Membres ou organisations qui en ont eux-mêmes présenté.

*Article 74.*

L'avis consultatif est lu en audience publique, le Secrétaire général de la Société des Nations et les représentants des Etats, des Membres de la Société et des organisations internationales directement intéressés étant prévenus. Le Greffier prend les mesures nécessaires pour s'assurer que le texte de l'avis consultatif se trouve au siège de la Société entre les mains du Secrétaire général, aux date et heure fixées pour l'audience à laquelle il en sera donné lecture.

L'avis consultatif est fait en deux exemplaires signés et scellés qui sont déposés dans les archives de la Cour et dans celles du Secrétariat de la Société. Des copies certifiées conformes en sont transmises par le Greffier aux Etats, Membres de la Société ou organisations internationales directement intéressés.

Tout avis consultatif qui serait donné par la Cour, ainsi que la requête à laquelle il répond, sont imprimés dans un recueil spécial publié sous la responsabilité du Greffier.

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**Annexe B.**

**AVANT-PROJET DE PROTOCOLE.**

Les Etats signataires du Protocole de signature du Statut de la Cour permanente de Justice internationale du 16 décembre 1920, et les Etats-Unis d'Amérique, représentés par les soussignés dûment autorisés, sont convenus des dispositions suivantes relativement à l'adhésion des Etats-Unis d'Amérique audit Protocole sous condition des cinq réserves formulées par les Etats-Unis.

*Article premier.*

Les Etats-Unis sont admis à participer, par le moyen de délégués qu'ils désigneront à cet effet et sur un pied d'égalité avec les Etats signataires, Membres de la Société des Nations, représentés, soit au Conseil, soit à l'Assemblée, à toutes élections de juges ou de juges suppléants de la Cour permanente de Justice internationale visées au Statut de la Cour. Leur voix sera comptée dans le calcul de la majorité absolue requise dans le Statut.

*Article 2.*

Aucune modification du Statut joint au Protocole du 16 décembre 1920 ne pourra avoir lieu sans l'acceptation de tous les Etats contractants.

*Article 72.*

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

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

*Article 73.*

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

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

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

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

*Article 74.*

Advisory opinions shall be read in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States, of Members of the League and of international organisations immediately concerned. The Registrar shall take the necessary steps in order to ensure that the text of the advisory opinion is in the hands of the Secretary-General at the seat of the League at the date and hour fixed for the meeting held for the reading of the opinion.

Signed and sealed original copies of advisory opinions shall be placed in the archives of the Court and of the Secretariat of the League. Certified copies thereof shall be transmitted by the Registrar to States, to Members of the League, and to international organisations immediately concerned.

Any advisory opinion which may be given by the Court, and the request in response to which it is given, shall be printed and published in a special collection for which the Registrar shall be responsible.

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**Annex B.**

**PRELIMINARY DRAFT OF A PROTOCOL.**

The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States.

*Article 1.*

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

*Article 2.*

No amendment of the Statute annexed to the Protocol of December 16th, 1920, may be made without the consent of all the Contracting States.

*Article 3.*

La Cour prononcera ses avis consultatifs en séance publique.

*Article 4.*

Les modalités selon lesquelles le consentement prévu à la seconde partie de la cinquième réserve sera donné, formeront l'objet d'un accord à conclure par le Gouvernement des Etats-Unis avec le Conseil de la Société des Nations.

Les Etats signataires du Protocole du 16 décembre 1920 seront informés dès que l'accord prévu à l'alinéa précédent sera intervenu.

Dans le cas où les Etats-Unis s'opposeraient à ce qu'un avis consultatif soit, à la demande du Conseil ou de l'Assemblée, donné par la Cour, relativement à un différend dans lequel les Etats-Unis ne seraient pas partie ou relativement à une question autre qu'un différend entre Etats, la Cour attachera à cette opposition la même valeur que celle qui doit être attachée à un vote émis par un Etat Membre de la Société des Nations, au sein de l'Assemblée ou au Conseil, pour s'opposer à la requête.

*Article 5.*

Sous réserve de ce qui sera dit à l'article 7 ci-après, les dispositions du présent Protocole auront la même force et valeur que les dispositions du Statut joint au Protocole du 16 décembre 1920.

*Article 6.*

Le présent Protocole sera ratifié. Chaque Etat adressera l'instrument de sa ratification au Secrétaire général de la Société des Nations, par les soins duquel il en sera donné avis à tous les autres Etats signataires. Les instruments de ratification seront déposés dans les archives du Secrétariat de la Société des Nations.

Le présent Protocole entrera en vigueur dès que tous les Etats ayant ratifié le Protocole du 16 décembre 1920, y compris les Etats-Unis, auront déposé leur ratification.

*Article 7.*

Les Etats-Unis pourront, en tout temps, notifier au Secrétaire général de la Société des Nations qu'ils retirent leur adhésion au Protocole du 16 décembre 1920. Le Secrétaire général donnera immédiatement communication de cette notification à tous les autres Etats signataires du Protocole.

En pareil cas, le présent Protocole sera considéré comme ayant cessé d'être en vigueur dès réception par le Secrétaire général de la notification des Etats-Unis.

De leur côté, chacun des autres Etats contractants pourra en tout temps notifier au Secrétaire général de la Société des Nations qu'il désire retirer son acceptation des conditions spéciales mises par les Etats-Unis à leur adhésion au Protocole du 16 décembre 1920, dans la seconde partie de la quatrième réserve et dans la cinquième réserve<sup>1</sup>. Le Secrétaire général donnera immédiatement communication de cette notification à tous les Etats signataires du présent Protocole. Le présent Protocole sera considéré comme ayant cessé d'être en vigueur dès que, dans un espace de temps ne dépassant pas une année à compter de la réception de la notification susdite, au moins deux tiers des Etats contractants, autres que les Etats-Unis, auront notifié au Secrétaire général de la Société des Nations qu'ils désirent retirer l'acceptation sus-visée<sup>2</sup>.

*Article 8.*

Le présent Protocole restera ouvert à la signature des Etats qui signeront ultérieurement le Protocole de signature du 16 décembre 1920.

FAIT à ....., le ..... 19..., en un seul exemplaire, dont les textes français et anglais feront également foi.

7. La Conférence recommande à tous les Etats signataires du Protocole du 16 décembre 1920 d'adopter les conclusions ci-dessus énoncées et d'envoyer leur réponse dans un délai aussi rapproché que possible. Elle charge son président de transmettre aux Gouvernements des dits Etats un modèle de lettre de réponse au Secrétaire d'Etat des Etats-Unis.

<sup>1</sup> Le texte original de cette phrase dans le projet présenté à la Conférence par la Commission était le suivant:

« De leur côté, chacun des autres Etats contractants pourra en tout temps notifier au Secrétaire général de la Société des Nations qu'il désire retirer son consentement à l'adhésion des Etats-Unis au Protocole du 16 décembre 1920. »

<sup>2</sup> Le texte original de cette phrase dans le projet présenté à la Conférence par la Commission était le suivant:

« Le présent Protocole sera considéré comme ayant cessé d'être en vigueur dès que, dans un espace de temps ne dépassant pas une année à compter de la réception de la notification susdite, au moins deux tiers des Etats contractants autres que les Etats-Unis, auront notifié au Secrétaire général de la Société des Nations qu'ils désirent retirer le consentement donné à l'adhésion des Etats-Unis. »

*Article 3.*

The Court shall render advisory opinions in public session.

*Article 4.*

The manner in which the consent provided for in the second part of the fifth reservation is to be given, will be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

The States signatories of the Protocol of December 16th, 1920, will be informed as soon as the understanding contemplated by the preceding paragraph has been reached.

Should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council.

*Article 5.*

Subject to the provisions of Article 7 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute annexed to the Protocol of December 16th, 1920.

*Article 6.*

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all the States which have ratified the Protocol of December 16th, 1920, including the United States, have deposited their ratifications.

*Article 7.*

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920, in the second part of its fourth reservation and in its fifth reservation.<sup>1</sup> The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.<sup>2</sup>

*Article 8.*

The present Protocol shall remain open for signature by any State which may in the future sign the Protocol of Signature of December 16th, 1920.

Done at ....., the ..... day of ....., 19..., in a single copy, of which the French and English texts shall both be authoritative.

7. The Conference recommends to all the States signatories of the Protocol of December 16th, 1920, that they should adopt the above conclusions and despatch their replies as soon as possible. It directs its President to transmit to the Governments of the said States a draft letter of reply to the Secretary of State of the United States.

<sup>1</sup> The original text of this sentence in the draft submitted to the Conference by the Committee was as follows:

" On their part, each of the Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its consent to the adherence of the United States to the Protocol of December 16th, 1920. "

<sup>2</sup> The original text of this sentence in the draft submitted to the Conference by the Committee was as follows:

" The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw their consent to the adherence of the United States. "

En foi de quoi, les délégués ont signé le présent Acte.

FAIT à Genève, le vingt-trois septembre mil neuf cent vingt-six, en un seul exemplaire, dont les textes français et anglais feront également foi et qui sera déposé dans les archives de la Société des Nations. Des copies, certifiées conformes, en seront délivrées à tous les Etats signataires du Protocole du 16 décembre 1920, ainsi qu'au Conseil de la Société des Nations, qui a convoqué la Conférence.

In faith of which the Delegates have signed the present Act.

DONE at Geneva, the twenty third day of September nineteen hundred and twenty-six, in a single copy, of which the French and English texts shall both be authoritative, and which shall remain deposited in the archives of the League of Nations. A certified copy shall be sent to each of the States signatories of the Protocol of December 16th, 1920, as well as to the Council of the League of Nations, which convoked the Conference.

UNION SUD-AFRICAINE

UNION OF SOUTH AFRICA

ALBANIE

ALBANIA

D. DINO

AUSTRALIE

AUSTRALIA

J. G. LATHAM

AUTRICHE

AUSTRIA

D<sup>r</sup> M. LEITMAIER

BELGIQUE

BELGIUM

Henri ROLIN

EMPIRE BRITANNIQUE

BRITISH EMPIRE

Cecil J. B. HURST

BULGARIE

BULGARIA

WI. MOLLOFF

CANADA

CANADA

George Eulas FOSTER

CHINE

CHINA

DANEMARK

DENMARK

A. OLDENBURG.

RÉPUBLIQUE DOMINICAINE

DOMINICAN REPUBLIC

Il est entendu que mon gouvernement se réserve le droit d'accepter, purement et simplement, les réserves des Etats-Unis d'Amérique, si bon lui semble.

D<sup>r</sup> FRANCO

ESPAGNE

SPAIN

Juan de ARENZANA

ESTHONIE

ESTHONIA

A. SCHMIDT.

FINLANDE

FINLAND

Rafael ERICH.

FRANCE

FRANCE

Henri FROMAGEOT

GRÈCE

GREECE

Vassili DENDRAMIS

HONGRIE

HUNGARY

Paul de HEVESY

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LIBÉRIA

LIBERIA

LITHUANIE

LITHUANIA

Venceslas SIDZIKAUSKAS

LUXEMBOURG

LUXEMBURG

Ch. G. VERMAIRE

NORVÈGE

NORWAY

Frede CASTBERG.

NOUVELLE-ZÉLANDE

NEW ZEALAND

F. H. D. BELL

C. J. PARR



PANAMA

PANAMA

Eusebio A. MORALES

PAYS-BAS

NETHERLANDS

v. EYSINGA.

PERSE

PERSIA

P<sup>ce</sup> ARFA

POLOGNE

POLAND

Michel ROSTWOROWSKI  
Leon BABINSKI.

PORTUGAL

PORTUGAL

Augusto de VASCONCELLOS

ROUMANIE

ROUMANIA

Demetre NEGULESCO

ROYAUME DES SERBES, CROATES  
ET SLOVÈNES

KINGDOM OF THE SERBS, CROATS  
AND SLOVENES

D<sup>r</sup> Lazare MARCOVITCH

SIAM

SIAM

CHAROON

SUÈDE

SWEDEN

Erik SJÖBORG

SUISSE

SWITZERLAND

Paul DINICHERT

TCHÉCOSLOVAQUIE

CZECHOSLOVAKIA

Stefan OSUSKY

URUGUAY

URUGUAY

VENEZUELA

VENEZUELA

C. ZUMETA  
Diógenes ESCALANTE.  
C. PARRA-PÉREZ

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