ordered by its judgment in a prior submission. It has indicated in the present case that the order entered for voluntary adjustment is to be deemed exceptional. It would seem necessary and proper, however, for the court to have such power as part of its function of determining disputes under voluntary submissions. Such power would not extend its jurisdiction. It would serve to develop its usefulness as a court of conciliation where the conciliatory process is needed to supplement the determination of justiciable issues.

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REVISING THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The committee of jurists which framed the Statute of the Permanent Court of International Justice in 1920 of necessity trod many new paths. The Permanent Court of Arbitration, the still-born Court of Arbitral Justice and the short-lived Central American Court of Justice afforded some precedents but failed to meet all the problems. The practical success of the plan evolved by the experts is a lasting testimonial to their wisdom and ingenuity. It would, however, be very surprising if years of operation did not reveal the possibility of improving some details. The realization of this seems to have animated the Assembly's resolution of September 20, 1928, which suggested to the Council the desirability of examining the Statute with a view to amending it in so far as experience demonstrated the desirability of amendments. The election of an entire new bench in September, 1930, indicated that the time was appropriate. There was no thought of radical change or of total revision. It might have been a wiser procedure to let the court itself take the initiative in this matter, but national precedents do not indicate that such privilege has commonly been accorded to the judiciary.

Pursuant to the Assembly's resolution, the Council appointed a committee of experts composed of MM. Scialoja (Chairman), van Eysinga, Fromageot, Gaus, Sir Cecil Hurst, Ito, Pilotti, Politis, Raestad, Elihu Root, Rundstein and Urrutia. The committee was assisted by M. Osusky, Chairman of the Supervisory Commission, and by Judges Anzilotti and Huber, President and Vice President of the court. The Registrar of the court, M. Hammarskjöld, was also present and rendered valuable assistance. The committee met in Geneva on March 11, 1929; its consideration of the problem of the accession of the United States has already been editorially considered in this JOURNAL.[1] The report of the committee was submitted to the Council and approved by it on June 12, 1929. It was discussed and slightly revised by a Conference of the Signatory States which met in Geneva in September. Finally, the report of the Signatory States was approved by

[32] See the writer's comment, this JOURNAL, Vol. 22, p. 383.

[1] January, 1930 (Vol. 24), p. 105. See also the recent Publication No. 44 of the Department of State, entitled "The United States and the Permanent Court of International Justice."

the Assembly and a protocol opened for signature on September 14. Up to March 14, 1930, fifty-two states had signed and seven had ratified this protocol accepting the revision. The signature of the United States was affixed on December 9, 1929.

The proposed changes may be placed in four groups: those designed to maintain the high character of the personnel of the court; those designed to improve the functioning of the court as a body; those dealing with advisory opinions; and sundry amendments.

As a first step in regard to the individual judges, new qualifications are suggested for candidates for election; they should have "practical experience in international law" and be "at least able to read both of the official languages of the court and to speak one of them." The Committee of Experts proposed that the Secretary-General should request the national groups to satisfy themselves that candidates have these qualifications, but the Conference and Assembly toned this down so that the Secretary-General is merely to draw their attention to the desirability of these attributes. The original proposal to modify Article 2 of the Statute thus failed of acceptance. Articles 16 and 17 of the original Statute limit slightly the outside activities of judges during their tenure of office, forbidding the holding of political office or acting as advocate in international cases. The revision would exclude "any other occupation of a professional nature." A judge on the court could therefore not continue private legal practice, serving as a professor, nor even as a director of a corporation. These requirements are necessary concomitants of the proposed revision of Article 23, which provides that the "Court shall remain permanently in session except during the judicial vacations" and that the judges shall be bound "to hold themselves permanently at the disposal of the Court." To assure judges from the Americas, Asia, and other distant places, an opportunity to visit their homes, they are to be granted an extra six months' leave every three years, which would amount to a year and a half out of the nine years' term, in addition to the regular annual vacations. This constant availability of the regular judges would make it unnecessary to have deputy judges, and this class of judges is to be eliminated. Hereafter, therefore, the court would consist only of fifteen regular judges.

The need for permanent functioning of the court is indicated by the fact that in the period covered by its first seven ordinary sessions, it held nine extraordinary sessions. Such a volume of business had not been anticipated when the Statute was framed in 1920. Although it cannot be denied that the new scheme would work some hardship to non-European judges, the new significance thus attributed to the title "Permanent Court" is pregnant with great advantages to the cause of international justice. For men of outstanding ability, private activities are always more remunerative than public service, but a slight increase in salaries is designed to make more possible the personal sacrifice involved.

To prevent the court from becoming cumbersome with its new bench of fifteen judges, a scheme of rotation is provided. It was elaborated by Mr. Root on the basis of the experience of the courts of New York State, but only trial can establish whether this scheme will operate successfully in an international court wherein the respective nationalities of judges and of parties litigant are not inconsequential factors.

The Statute now contains no reference to the advisory functions of the court, which are provided for in Article 14 of the Covenant. The court has cared for the deficiency in its rules of procedure, but it seemed proper to put the essential elements of these rules into statutory form. The incidental advantage of such a step with regard to the accession of the United States was also in mind. It is proposed to add to the Statute a new chapter of four articles on advisory opinions. These articles reproduce substantially Articles 72, 73 and 74 of the rules as revised in 1926, and are numbered 65, 66 and 67 of the Statute. The fourth article—Number 68—as originally drafted by the Committee of Experts reads:

> In the exercise of its advisory functions the Court shall apply Arts. 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognizes them to be applicable.

As amended by the Conference of Signatory States and approved by the Assembly, this article reads:

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

In some quarters, considerable importance has been attached to this redrafting. It is said that the intent was to make paragraph one of Article 36 applicable to advisory opinions. This paragraph of Article 36 states: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters provided for in treaties and conventions in force." In the so-called Eastern Carelia case, the court gave its opinion that even with respect to requests for advisory opinions, relating to existing disputes, the consent of the disputant states was necessary. The court indicated that members of the League of Nations had yielded that consent in advance by accepting the Covenant, but non-member states would need to yield an *ad hoc* consent. It is now argued that the new Article 68 would give statutory force to this jurisprudence, assuring the court's jurisdiction to render an advisory opinion in a contentious case, only if the parties to the dispute "refer" it to the court, that is, if they consent. This is a sound interpretation of the new Article 68. The new drafting may make the interpretation clearer, but the original text would certainly have led to the same conclusion since "the preceding chapters of the statute" refer only to "contentious cases." That the new text merely clarified but did not alter the original text, was made clear

by Sir Cecil Hurst, who said in the conference that he proposed the amendment to allay the anxieties reported to him by an "enthusiastic gentleman from across the Atlantic."

Other suggested amendments include provisions for the resignation of a judge and the filling of occasional vacancies; improvement of the procedure in the special chambers of the court; regulation of the contribution of states in special circumstances; and several changes in drafting.

The procedure suggested for bringing into effect the proposed amendments presents unusual and interesting features. As already stated, a protocol, embodying in an annex the amendments, was opened for signature. Usually this protocol would have to be ratified by all parties to the original protocol of December 16, 1920. The new protocol does indeed provide for ratification, but it is further provided that it shall come into force on September 1, 1930, "provided that the Council of the League of Nations has satisfied itself that those members of the League of Nations and states mentioned in the Annex to the Covenant which have ratified the Protocol of December 16, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol." For this purpose, the United States "shall be in the same position as a state which has ratified the Protocol of December 16, 1920." This provision seems to contemplate the possibility of a tacit acceptance. Clearly the protocol of December 16, 1920 can be modified only by the unanimous agreement of the parties thereto. Suppose the Foreign Offices of States X and Y assure the Council of the League before next September 1, that they favor the adoption of the amendments but that their Parliaments have not yet acted on the matter, and assume that all other parties ratify before that date. But assume further that the Constitutions of States X and Y require parliamentary approval of all treaties. If those Parliaments subsequently refuse consent to the ratification of the new protocol, it can not be said that States X and Y are bound and, therefore, the new protocol will not be in effect.

Though the proposed amendments seem highly desirable, it unfortunately seems doubtful whether all the states involved will take action to ratify through their proper constitutional channels before September 1 of this year. Their failure to do so would probably postpone this desirable revision for nine years, since the new requirements placed on the judges could not prop erly be imposed in the midst of their terms. Nevertheless, the amendments dealing with advisory opinions could be adopted at any time, and if the entire project fails of adoption, a new protocol should be drawn up adopting this and some of the other proposed amendments which would not be subject to the objection just noted.

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