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Permanent Court of International Justice

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THE PERMANENT COURT OF INTERNATIONAL JUSTICE

A LECTURE GIVEN AT THE ACADEMY OF INTERNATIONAL LAW OF THE HAGUE ON AUG. 1, 1923

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II.[4]

BUT as it exists and functions today, of what use is the Permanent Court, what are its attributes, what are, in fact, its jurisdiction and its competence?

The projects previously elaborated, the observations made since the Treaty of Versailles itself, the Court of Justice of Central America and the actual situation of the world from the point of view of international personality, make it possible to envisage the application of the powers and functions of the Court to ten distinct groups of cases classified according to the nature of the litigants.

The first group is composed of questions arising between individual or legal entities of diverse nationalities or of the same nationality over the subject of the external or internal applications of international rules; or,—to use an expression which the Second Peace Conference employed for the purpose of classifying the possible cases of obligatory arbitration—questions of private international law. Without denying that questions of interpretation and execution of treaties or agreements touching this domain of juridical life might be carried by the interested states to a permanent tribunal, it seems to us that the determination in law of the limits of the legislative power of states, when this power deals with disputes of a juridical nature which might be subject to different bodies of law, should be brought for private litigation before the tribunals of each country, and that this determination ought not to be and can not be taken out of the jurisdiction of the

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states. For this group of questions the competence of the Court is not provided and one may not deduce it from any of its guiding principles.

Then comes the second possible group, in which one may include complaints of a private character emanating from individuals or legal entities against their own nations, for the interpretation or application of international rules of a contractual, unilateral or customary nature. It was not a happy innovation to attribute this jurisdiction even in specified cases and in spite of its optional character, to the Court of Central America, since it was flagrantly opposed to national sovereignty in its essence and in its implications, as well as to the habitual conditions of the exercise of this sovereignty in the world.

Conformably to article 2 of the Treaty of Washington the Court of Justice of Central America took cognizance of complaints which the private citizens of one of the contracting states brought before it, against any of the other states for the violation of international treaties, and for all other cases of an international character—whether or not the government of the complainant backed the said claim—either after having exhausted the recourse provided against such violation by the respective laws of each state, or in case it was possible to allege a denial of justice. Neither can this third group be placed under the jurisdiction of the Permanent Court, but the respective governments may make their own and take under their protection claims emanating from individuals so that they may be initiated and treated as cases between states. Thus it is that in a recent advisory opinion, the question was one of the English or French nationality of persons residing in Morocco or Tunis; in the even more recent litigation concerning the S. S. "Wimbledon," six Powers discussed the question of damages accorded to a certain maritime shipping company.

The fourth of the groups which one may envisage also includes individuals, whether or not they have inside their own state an official representation, considered from the point of view of the penal responsibilities demandable between nations. The Peace Conference of Paris at the end of the War of 1914, took the first step in this direction in recording in Article 227 of the Treaty of Versailles that the Allied and Associated Powers accused the Emperor of Germany personally of a supreme offence against international ethics and the sacred authority of treaties, and in

establishing a special tribunal to try him, this tribunal being composed of five judges named by each one of the following Powers, viz.: the United States of America, Great Britain, France, Italy and Japan. This tribunal was to be governed by motives inspired by the highest principles of politics between nations, and to take care to insure respect for solemn obligations and international engagements as well as for international ethics; furthermore it was to determine the penalty which it should deem ought to be applied.

Another article of the same Treaty, article 228, recognized the liberty of the Allied and Associated Powers to try before their military tribunals persons accused of having committed acts contrary to the laws and customs of war, and article 229 stipulated that the authors of offences against the nationals of the several Allied and Associated Powers should be tried before military tribunals of those Powers. In this fashion a new international jurisdiction was created.

Two states, at least, a great Power and a small Power, opposed themselves by a written note to the Peace Conference to this doctrine, which implied misdemeanors defined after their commission and penalties unknown before the final judgment, a doctrine which, without mentioning other considerations which now are without importance, was not compatible with the fundamental principles forming the basis of the modern repressive law in force in the civilized world.

These dispositions were not put into practice; but they are like the germ of penal justice in matters of an international nature and they awakened in the Committee of Jurists of whom I have already spoken, the desire to take up and definitely to settle the problem. As a result of the acts of this committee, as well as of that which has been said concerning its labors notably during the course of the session of the Association of International Law, which was held at Buenos Aires, the following view was upheld: international misdemeanors may be classified in three categories of distinct cases, corresponding to periods of peace, to the declaration of an unjust war and to the military operations during the course of an armed conflict.

As to the first category, it was thought that they might be referred without danger to the various national jurisdictions, a doctrine which is open to criticism, not only if one takes account of the recent scientific movement, but if one recalls that military occu-

pation of a foreign territory and armed intervention under certain conditions are technically speaking pacific operations. In these two eventualities acts may be done which it may be preferable to submit to a jurisdiction more impartial and surer than that of the state whose nationals may be the object of penal actions. The second category appears quite acceptable in principle, but in practice it is completely subordinate to the vicissitudes of the conflict and a tribunal could not subsist, without difficulty, after having condemned an invincible conqueror. And in the third, also, although on a lesser scale the factor of success bears upon the accusation, and the execution of the sentences.

But these categories necessitate a clear and precise definition of international misdemeanors by treaties and conventions as well as preliminary fixation of penalties; they demand equally, international means which assure to the tribunal and to the whole world that its sentences will be executed; but certain of these conditions are still for the moment somewhat far from realization. The Committee of Jurists of The Hague, however, adopted a resolution thus worded:

Its President having submitted a proposal concerning the future establishment of a High Court of International Justice formulated in these terms:

Article 1. There is instituted a High Court of International Justice.

Article 2. This court is composed of one member for each State respectively, chosen by the group of delegates of each State at the Court of Arbitration.

Article 3. The High Court of International Justice will be competent to judge crimes against public international order and the universal law of nations which may be submitted to it by the plenary Assembly of the League of Nations or by the Council of said League.

Article 4. The Court shall have the power to characterize misdemeanors, fix punishments and determine the proper means for the execution of its sentences. It shall determine the procedure to be followed in such case by its own rules of procedure.

Recognizing the importance of this proposition, the committee recommends its examination to the Council and to the Assembly of the League of Nations.

The report of the Commission named by the first Assembly, and which was approved, disposed of this question in the following manner:

"The Commission has felt that it was useless to institute aside from the Court of International Justice, another Criminal Court

and that it would be preferable, as it is the custom in our international procedure, to entrust to the ordinary tribunals the prosecution of crimes. If crimes of this nature come one day under the application of an international penal law, there will be constituted a criminal Chamber within the Court of International Justice. In any case, this problem is very premature at the present hour."

Certain specialists in international law, in the first rank of whom the name of Professor Bellot takes its place, continue to make laudable efforts with a view to this reform. For ourselves, within the limits of this lecture, it will suffice to make mention of the fact that this repressive function is not within the jurisdiction of the Permanent Court of International Justice as it is actually organized and, on the other hand, to sum up briefly the four groups mentioned above, we see that the Court's jurisdiction does not extend to individuals or legal entities of a private or national character and that none of them may appear as parties before it.

The fifth group of possible litigants is composed of Unions or permanent international bodies, such as the League of Nations itself. The Court may be called upon to deal with problems which arise between them or which touch upon their relations or their attributes with reference to one or more states. In an advisory opinion which the Court rendered last year a question of jurisdiction was presented between the International Labor Organization and the International Agricultural Institute of Rome. One may equally well imagine that in the future certain difficulties may arise between the Assembly and the Council of the League, above whom juridically speaking there is no common superior.

The Treaty of Versailles attempted, without however having been able completely to succeed in accomplishing a certain unification of these organizations to the end, among others, of avoiding conflicts of jurisdiction or duplication of work. Conformably to Article 24 all the international bureaus actually established by collective treaties will, subject to the consent of the parties, be placed under the authority of the League. It will be the same later on for other organizations of a similar character and for commissions which may be created to regulate affairs of international concern.

This unification or centralization will make it possible that the problems of which I have just spoken may be carried to the Permanent Court in the form of a request for an advisory opin-

ion, not in the form of a contested suit; this has already occurred several times, and if it happened that some conflict arose between two bodies of the League of Nations, it is highly possible that in order to settle it, recourse would be had to this same advisory capacity. All litigation, properly speaking, concerning these questions, which tends to obtain a real sentence having the force of a judgment, runs up today against the following difficulty: the statute has limited the jurisdiction of the Court to states and to Members of the League of Nations. These terms are not synonymous. Article 14 of the Treaty of Versailles, which is broader in scope, provides that the Court shall take cognizance of all disputes of an international character which the parties submit to it.

Before coming to states themselves, it is proper to mention as the ninth group the Members of the League of Nations which are not states. These are new international legal entities, conceived during the world war and internationally born at the end of the war during the negotiations at Paris and which without enjoying full political independence and while constituting integral parts of another state, have obtained in spite of this, sovereign diplomatic representation in international relations. The Dominions and autonomous colonies of Great Britain which have taken part with direct representation in the negotiations of the Peace and which have maintained in the Assembly of the League their own personalities and delegations, find themselves in this situation which is new to contemporaneous public law. The Permanent Court is open to them conformably to article 34 of the Statute for all cases where its jurisdiction has been accepted by them as optional or obligatory; it is possible for them in the future to bring before it suits against other states or indeed against their own mother country. South Africa, Australia, Canada, India and New Zealand, which have a special diplomatic sovereignty, have signed and ratified as such the statute of the Court. From this fact the diplomatic sovereignty of these regions has obtained general recognition.

Another group—the most simple of all since it does not create the slightest difficulty—is that of the states who are or who will be later Members of the League of Nations and who have already accepted or will at some future time accept the Statute of the Court. They constitute the most legitimate nucleus of the jurisdiction of the Court which exists for them, and to a certain point, through them.

By article 35 the statute places on this same footing the states mentioned in the Annex to the Covenant. This Annex includes the independent states, who were then in good standing with all the contracting parties but who did not figure in the negotiations at Paris, because, neutral during the course of the almost world-wide war, they did not declare war upon the Central Powers nor break off diplomatic relations with them. The Treaty of Versailles invites them to accede to the Covenant and the authors of the Statute have identified them insofar as their position and rights before the tribunal are concerned, with full members of the League of Nations. This is logical and just.

Another section which, however, cannot really be called a group in a grammatical sense, is composed of any state which remains compulsorily subject to the International Court by reason of the Treaty of Versailles, and moreover has already appeared before it as a defendant, but which however does not figure among the members of the League of Nations nor among the states whom the Annex to the Covenant invites to accede thereto. The Statute does not mention this case perhaps because it is prior to and in a certain fashion superior to the organization itself of the League and of the Permanent Court, but it is proper, however, to refer to it in a complete and methodical exposition of the jurisdiction of the Court.

There remain finally states like, for example, the United States of America, signatories of the Treaty of Versailles and who through having refused their ratification are outside of the League of Nations as well as certain other states who, either having come into being subsequent to the Treaty (like the detached countries of Russia), or placed at the moment of the signature of the Treaty in a special political situation with reference to the contracting parties (like Russia in Europe and in the New World, Mexico, San Domingo and Costa Rica), are not mentioned in the Annex to the Covenant of the League. The conditions under which the Court is open to them subject to the dispositions of the treaties in force, are regulated by the Council conformably to article 35 of the Statute but with one sole limitation; no inequality shall result from these dispositions for the parties before the Court. These conditions fixed by the Council on May 17, 1922, are that the state in question must, first, deposit with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court conformably to the Covenant of the League of Nations, to

the terms of the Statute and to the rules of the Court, undertaking to carry out in good faith the sentences rendered and not to resort to war against any state which shall conform thereto. This declaration may have either a restricted character when the jurisdiction of the Court is accepted for one or several disputes already existing, or a general character when the jurisdiction is accepted for all differences existing or which may arise or for one or several categories of such disputes. In signing a declaration of a general character each state has the option of accepting as obligatory, de pleno jure and without a special convention, the jurisdiction of the Court conformably to article 36 of the Statute, and this acceptance, outside the case of a special convention, cannot be opposed either by the Members of the League of Nations, or by the states mentioned in the Annex to the Covenant of the League who have signed or who shall sign the additional protocol of December 16, 1920. This protocol we shall examine later. The Council of the League reserves the right to annul or amend this resolution by another one at any moment, and in this case the existing declarations cease to be in force except as to those cases which have already been brought before the Court.

This raises the question of the recognition of new states which are born or which pretend to be born into constitutional life. The Permanent Court must in each case accept or reject the declaration and it is for it to decide at least provisionally the juridical position of such States. It seems that, confronted by this kind of a case, the Court ought to consider the surrounding circumstances, conforming itself to the reality of things according to its own view, and entirely eliminating from consideration as a ponderable factor, the conduct of the Power to which the newly constituted country belonged, or the conduct of the other Powers.

An identical difficulty may arise concerning de facto governments which are not generally recognized and which are at the head of nations, which at all times have been recognized and accepted as such. The Court cannot be, in an incidental or indirect fashion, a judge of the legitimacy of these governments; nor can it take a position as between the public power and a part of the nationals for the purpose of tipping the scales one way or the other. It must confine itself exclusively to the facts, and if there be someone who materially exercises the power in any nation, it must deal with him as the representative of the nation.

There cannot result from such conduct, which is based upon

material and ostensible facts and reserves expressly for an opportune and formal solution the difficulties of law, any inconvenience whatsoever with respect to other countries which constitute the international community. This admission before the Permanent Court of a state or a government which exists de facto although not de jure cannot in any case operate to authorize the citation of another state which has not recognized it or the intervention in litigation to which this other state may be a party. The Tribunal cannot be an indirect means of forcing recognition, because that is a political act which, as a general rule, is entirely free. And if, on the contrary, a state should cite another which has accepted the jurisdiction of the Court, and with which up to that time it had not entertained relations or the government of which did not exist for it, the result would be a tacit recognition, an eventuality which international law has recognized and sanctioned for a long time.

Therefore, states, only states, and only those states who fulfill the required conditions, are for the time being the possible litigants before the Permanent Court of International Justice. They can represent and defend the international interests of their subjects or citizens of their nationals, or of their legal entities, of a domestic or national character; but none of these can in any case appear directly as parties.

One sees immediately that between these international juridical persons to whom the jurisdiction of the Court is limited, difficulties of all sorts, some which are justiciable and some which are not, may arise just as they may between individuals in the social life of each country. And while Article 14 of the Treaty of Versailles speaks of any dispute of an international character which the parties may desire to submit to the Court, and while Article 36 of the Statute extends the jurisdiction of the Tribunal to all matters which the parties may desire to submit to it, without any qualification as to their nature, and to all cases specially envisaged in the treaties and conventions in force, this same Statute, when it refers to eventual obligatory jurisdiction limits it to all or to some of the categories of differences of a judicial nature having for their object (a) the interpretation of a treaty; (b) any point of international law; (c) the reality of any fact, which if it were established, would constitute the violation of an international agreement; (d) the nature or extent of the reparation due for such violation.

It is evident that the international activity of a state may fundamentally be divided into three classes, those of a political nature, those of a juridic nature, and those of an economic nature. But it is none the less true that it is in fact almost always impossible to delimit them, in spite of the radical difference between these classes when each remains in its sphere. One may say that they are as different as night and day, although it may be difficult to know, at the uncertain hour of twilight when one begins and the other ends. And the difficulty is even greater in the life of nations, because those problems which appear to be the most acute and apparently the least suited to a judicial settlement, are in most cases nothing more than points of law disguised and obscured by passion and by interest.

Accordingly one may not say, prima facie, that the jurisdiction of the Tribunal is limited to questions of a judicial nature if we give to that word a restrictive interpretation. Furthermore, between nations as between individuals the judicial power settles certain disputes in which no one raises a question as to the law which is accepted by all in the same way, but where the dispute is as to the facts which make the application of the law possible or necessary. One may conclude that reference was intended to be made to judicial or justiciable questions rather than to juridical problems.

All the nations prior to the second Hague conference were in the habit, with reference to the acceptance of arbitration, of excluding from the questions to be arbitrated all those which touched their vital interests, their honor, or their independence. This was, strictly speaking, to seize the excuse of necessity for avoiding the normal application of law; for, fundamentally, the excuse of necessity implies a simple juridical problem. Each state therefore undertook to decide unilaterally whether one of these elements entered into play, and therefore, to exclude from arbitration all problems with reference to which it feared justice. The doctrine which advised leaving to the Court itself the task of judging of these circumstances was a great step in advance, although sometimes it involves an affirmative solution declaring its own lack of jurisdiction.

It was logical and indeed necessary that the Institute of International Law should place this infinitely delicate and obscure question on the calendar of its sessions. It was debated at length following a detailed and conscientious report by Messrs. Marshall

Brown and Politis. The conclusions of this competent and prudent association which aspires to be consecrated as the interpreter of the juridical conscience of the civilized world are as follows:

"The Institute of International Law while expressing the wish that the Powers which up to the present, have not yet adhered to the special disposition set forth in Article Thirty-Six of the Statute of the Permanent Court of International Justice should adhere thereto, recommend to the States the adoption of the following resolutions.

Article 1st. All conflicts of whatever origin and character are, as a general rule and subject to the reservations indicated hereinafter susceptible to a judicial settlement or an arbitral solution.

Article 2nd. However, when, in the opinion of the State which has been summoned, the conflict is not susceptible of a judicial settlement, the preliminary question whether it is justiciable or not is submitted to the examination of the Permanent Court of International Justice which rules upon it according to its ordinary procedure.

If by a three-fourths majority, the Court declares this contention unfounded, it retains jurisdiction of the case in order to pass upon its merits.

In the contrary case, the matter is recommitted to the parties who remain free in default of friendly arrangements by diplomatic means, to carry it before the Court later, after having reached an understanding as to the powers to be given to the Court in order to permit it to render an effective judgment."

The thesis of the Institute with reference to obligatory jurisdiction coincides with the part of article 36 of the Statute of the Court which treats of optional jurisdiction; the Court must take cognizance of all matters which the parties submit to it and of those cases specially envisaged in the treaties and conventions in force. Furthermore, conformably to article 37, when one of these treaties or conventions contemplates a reference to a jurisdiction to be established by the League of Nations, the Permanent Court shall constitute such jurisdiction. And since in case of a question whether the Court is competent it is to the Court itself that the duty of decision is left, conformably to the last paragraph of article 36, the analogy is still more complete. It is only to obligatory justice resulting from the Statute and the additional protocol that the words "differences of a juridical nature," which apply to certain particular cases enumerated in the same article, relate. However, it should be remembered, that in the majority of cases and with an elasticity as prudent as it is adroit, the obligatory jurisdiction of the Court finds its origin in treaties and conventions,

ever more numerous, which imperceptibly and even for the Powers which are most opposed to it, are conditionally extending and affirming it. It is a case of social and juridical penetration where the invincible law of human progress triumphs anew.

Consequently the Court actually has two missions of equal development but of different origin. On the one hand the Court is at the disposition of states who agree to submit a difference to it; on the other hand it is the judicial power of states which have agreed to accept it as such, either temporarily, or in a permanent fashion, with or without reciprocity, for all categories of questions or for certain ones only, and who are thereby, entirely or partly submitted to its compulsory or obligatory jurisdiction.

Who are these nations and what are their respective situations with regard to the obligatory jurisdiction of the Court? Starting from the Statute itself and continuing with the other treaties and conventions, one may affirm that today the competence of the Tribunal is obligatory:

I. For states which have accepted the additional protocol, with respect to differences of a juridical nature which have for their object the interpretation of a treaty, any point of international law, the reality of any fact which, were it established, would constitute the violation of an international engagement, and the nature and extent of the reparation due for the breach of the engagement:

(a) Esthonia and Haiti have accepted it in a permanent fashion and without the condition of reciprocity.

(b) Bulgaria, Costa Rica, Liberia, Panama, Portugal, Salvador and Uruguay have accepted it in a permanent manner, but on condition of reciprocity; four of them have not yet ratified it.

(c) Austria, China, Denmark, Finland, Holland, Lithuania, Luxemburg, Norway, Sweden, and Switzerland have accepted it for five years, on condition of reciprocity. One of these countries has not yet ratified it.

(d) Brazil has accepted it for five years, on condition of reciprocity, and with a reservation of the acceptance of obligatory jurisdiction by at least two of the Powers represented in a permanent manner on the Council of the League of Nations.

In a word, and aside from this last country, the additional protocol has obtained the assent of nineteen states.

II. For the states which have signed and ratified the Treaty of Versailles of June 28, 1919, in which 28 Powers took part:

(a) If they are riparian states of the international portions of the Elbe, Oder, Niemen and Danube or if they are represented on the international commissions of these rivers, as well as if they are riparian states of the navigable Rhine-Danube waterway: Articles 336, 337 and 353.

(b) If they are interested, and if it involves a difference relating to the interpretation and application of the dispositions of that part of the Treaty of Versailles entitled: "Ports, Waterways and Railways": Article 376.

(c) For anything which deals with the Kiel Canal: Article 386.

(d) For all questions relative to the regime of labor elaborated in Part XIII of the Treaty of Versailles and to the conventions later concluded under said Part: Article 423.

III. For the States which have signed and ratified the Treaty of St. Germain-en-Laye of September 10, 1919, in which eighteen Powers took part:

(a) Between Austria and the states represented on the Executive Council of the League of Nations in regard to the dispositions concerning the protection of minorities of race, religion or language: Article 69.

(b) If they are riparian states of the international part of the Elbe, Oder, Niemen and Danube, or if they are represented on the international Commissions of these rivers, as well as if they are riparian States of the navigable Rhine-Danube waterway: Articles 297, 298, 308. This is the application to Austria of a stipulation identical with that of the Treaty of Versailles.

(c) As to the right of railroad transportation, stipulated for Czecho-Slovakia across Austrian territory, and between these two powers only: Article 324.

(d) For questions relating to the use of telegraphic and telephonic lines between the two States mentioned in the preceding paragraph: Article 327.

(e) If they are interested and if it concerns a violation of the dispositions of that part of the Treaty of St. Germain entitled "Ports, Waterways, Railways" or a disagreement over the interpretation of one of its articles: Article 328.

IV. For the states which have signed and ratified the Treaty of Neuilly-sur-Seine of November 27, 1919, in which sixteen Powers took part:

(a) Between Bulgaria and the States represented on the

Executive Council of the League of Nations with reference to the dispositions concerning the protection of the minorities of race, religion or language: Article 57.

(b) With reference to the subject of international river Commissions, in cases identical with those cited apropos of the Treaties of Versailles and St. Germain: Articles 225 and 226.

(c) On the subject of stipulations concerning ports, waterways and railways: Article 245.

(d) On the subject of the labor regime: Article 285.

V. For the States who have signed and ratified the Treaty of Peace of Trianon with Hungary of June 4, 1920, in which eighteen Powers took part:

(a) On the subject of minorities: Article 60.

(b) On the subject of International waterways: Article 224.

(c) On the subject of the right of passage over railways: Article 307.

(d) On the subject of ports, waterways, railways: Article 311.

(e) On the subject of labor: Article 451.

VI. For Great Britain, France, Italy, Japan and Poland who have signed and ratified the special Treaty of Versailles of June 28, 1919:

(a) Regarding the stipulations which concern minorities of race, language or religion: Article 12.

(b) On the subject of the regime of the River Vistula (including the Bug and the Narew): Article 18.

VII. For the four great Powers mentioned above and the Serb-Croat-Slovene Kingdom by virtue of the special treaty signed at St. Germain, September 10, 1919:

(a) On the subject of the stipulations concerning minorities of race, religion or language: Article 11.

VIII. For the same Powers and Czecho-Slovakia by virtue of the special treaty signed on the same day and at the same place:

(a) On the subject of the protection of minorities: Article 14.

IX. For the four Powers named above and Roumania, under the Treaty of Paris of December 9, 1919:

(a) On the subject of the minorities already several times previously mentioned: Article 12.

(b) On the subject of the system of the River Pruth: Article 16.

X. Between the same Powers and Greece by virtue of the treaty signed at Sevres on August 10, 1920:

(a) On the subject of the protection of minorities: Article 16.

XI. Between the same Powers and Armenia by virtue of a treaty signed at the same place and on the same day:

(a) On the subject of the same question: Article 8.

XII. For Albania and any member of the Council of the League of Nations, according to the declaration signed at Geneva on October 2, 1921:

(a) On the same conditions as previously: Article 7.

XIII. For Lithuania and the Members of the Council, according to the Declaration of Geneva of May 12, 1922:

(a) As above: Article 9.

XIV. For the British Empire and any one of the Members of the League of Nations, according to the mandate for Nauru, of December 17, 1920:

(a) Concerning all differences relating to the interpretation or the application of the provisions of the mandate which would not be susceptible to settlement by negotiation: Article 7.

XV. For the same Powers by virtue of the mandate for German Samoa of December 17, 1920, which must be exercised by the Dominion of New Zealand:

(a) As above: Article 7.

XVI. For the same Powers by virtue of the mandate for the former German possessions in the Pacific Ocean situated south of the Equator, signed on the same day, and which will be exercised by the Government of the Commonwealth of Australia:

(a) As previously: Article 7.

XVII. For the same Powers according to the mandate for German Southwest Africa, signed on the same day, which will be exercised by the South African Union:

(a) As the three preceding treaties: Article 7.

XVIII. For the same powers according to the mandate for Cameroon of July 20, 1922:

(a) As in the four preceding sections: Article 12.

XIX. For the same Powers by virtue of the mandate for Togoland, signed on the same day:

(a) As in the five last preceding sections: Article 12.

XX. For the same Powers according to the mandate for Palestine of July 24, 1922:

(a) As in the six treaties already mentioned: Article 26.

XXI. For the same Powers by virtue of the mandate for East Africa dated July 20, 1922:

(a) As in the seven treaties already mentioned: Article 13.

(b) The Member States of the League may also submit to the judgment of the Court, in the name of their nationals, any complaint emanating from the latter and calling attention to any violations of their rights as defined by the present mandate: Article 13.

XXII. For Japan and any one of the Members of the League of Nations according to the mandate of December 17, 1920, for the former German Colonies situated in the Pacific Ocean north of the equator:

(a) Concerning any difference relating to the interpretation of the application of the dispositions of the mandate and which would not be susceptible of settlement by negotiation: Article 7.

XXIII. For Belgium and any one of the Members of the League of Nations, under the mandate for East Africa, signed on the same date as the preceding one:

(a) As above: Article 17.

XXIV. For France and the same Powers by virtue of the mandate signed on the same date relative to the Cameroon:

(a) As the last two: Article 12.

XXV. For the same, according to the mandate of the same date for Togoland:

(a) As the three previous: Article 12.

XXVI. For the same, by virtue of the mandate for Syria and Lebanon of July 24, 1922:

(a) As the four preceding treaties: Article 20.

XXVII. For the states which have signed and ratified the Convention of Paris of October 13, 1919, regulating aerial navigation, in which twenty-seven Powers have taken part:

(a) In case of disagreement between them, relative to the interpretation of the Convention or the technical rules annexed thereto: Article 37.

XXVIII. For the states who have signed and ratified the Convention and Statute dealing with freedom of transportation, concluded at Barcelona April 20, 1921, in which forty Powers have taken part:

(a) For differences arising over the interpretation and application of the Statute: Article 13.

XXIX. For the states which have signed and ratified the Convention and Statute of Barcelona of the same day concerning the status of navigable ways of international interest in which likewise forty powers have taken part:

(a) The same as for the preceding treaty: Article 22.

XXX. For the states, numbering twelve, which signed at Paris on July 23, 1921, and which have ratified the definitive Statute of the Danube:

(a) Against the decision of the International Commission with reasons based on lack of jurisdiction or on the violation of the Convention: Article 38.

(b) In the case where a State refuses to conform to a decision made by the International Commission by virtue of its powers: Article 38.

XXXI. For the states, numbering ten, who signed at Portorose on November 23, 1921, and who have ratified, the Convention concerning regulation of international railway traffic:

(a) In the case of differences relative to its interpretation or application: Article 13.

XXXII. For Denmark and Norway by virtue of the Convention concerning aerial navigation signed at Copenhagen on July 27, 1921:

(a) As the preceding: Article 40.

XXXIII. For Germany and Poland by virtue of the accord signed at Geneva on May 15, 1922, relative to Upper Silesia:

(a) In the case of differences arising from the interpretation and the application of Articles 6 to 22: Article 23.

(b) In the case of differences on questions of law or fact concerning the minorities of race, religion or language, between the German Government and the Polish Government and any one of the Allied or Associated Powers: Article 72.

XXXIV. For the British Empire and Mesopotamia according to the Treaty signed at Bagdad on October 10, 1922:

(a) In the case of differences which may arise between the

High Contracting Parties relative to the dispositions of the treaty: Article 17.

XXXV. For Switzerland and Poland by reason of the final protocol of the Convention of Commerce signed at Warsaw on June 26, 1922:

(a) On the subject of litigation relative to the interpretation and the execution of the Convention: Paragraph 2 of the final protocol.

XXXVI. For Poland and the Free State of Danzig by virtue of the Convention signed at Paris on November 9, 1920:

(a) On the subject of questions relative to the protection of minorities of race, religion or language: Article 33.

It is truly surprising that, less than two years after the organization and the inauguration of the Permanent Court, there may be noted—disregarding the Treaty of Sevres with Turkey which was not ratified, and two or three others of doubtful interpretation—thirty-six treaties and international acts, ranging from those which were born of the Treaty of Versailles to simple accords, which accept as obligatory the jurisdiction of the Court for various matters. And admiration increases before the following list of forty-seven nations, great and small, from all parts of the world, which are bound by one or several of these conventions and which, without reserve and without misgiving, have agreed in advance, for one or for several categories of questions, to the new organization as a judicial power.

They are the following Powers: Albania, Germany, Armenia, Austria, Belgium, Bolivia, Brazil, British Empire, Bulgaria, China, Costa Rica, Cuba, Danzig, Denmark, Equador, Esthonia, Finland, France, Greece, Guatemala, Haiti, Hedjaz, Honduras, Hungary, Italy, Japan, Lettonia, Liberia, Lithuania, Luxemburg, Mesopotamia, Nicaragua, Norway, The Netherlands, Panama, Paraguay, Peru, Poland, Portugal, Rumania, Serbia, Sweden, Switzerland, Czecho Slovakia, Uruguay, and Venezuela.

In two particular cases the contracting parties have reserved to themselves the right to submit their differences either to the Permanent Court, or to arbitration. I refer to the Treaty of Prague, signed December 16, 1921, between Czecho-Slovakia and Austria, and the Treaty of Warsaw of March 17, 1922, between Poland and the Baltic States. This form is somewhat vague; it will be difficult of application when a dispute arises and it marks

a step backward in the course followed. It cannot be recommended.

In addition to this function, properly judicial, the Permanent Court has a task which as we have said is entrusted to it by article 14 of the Treaty of Versailles. It consists of giving to the Council or to the Assembly advisory opinions concerning all disputes or points which these bodies may bring before it. The Statute is silent regarding this part of the functions of the Court, giving doubtful character to the range of the powers of the League, and of the duties of the Court. May the Court be consulted as to points of fact or only as to points of law? Is it obliged to answer or has it the power to declare itself incompetent? May its advice be asked concerning contentious questions which may return to it later in the form of disputes between the several states?[5] Here are a few questions—there are certainly others—which we are not able to answer within the limits of time which one lecture sets for us.

It is indispensable to say something about the rules of procedure which the Court has adopted and which the Statute has charged it to elaborate. The preliminary session was devoted to this task and there resulted the rules of March 24, 1922, which we will now consider briefly. These rules are neither as precise nor as forward-looking as our laws of Latin procedure, heirs of the juridical genius of Rome and fortified by the experience of centuries. But their lack of precision and of determination are perhaps, appropriate to a new institution, until the acquired practice makes it possible to leave less elasticity in the written rules and less of the arbitrary element in the powers of the Court and of its president.

The Statute had laid down several general rules. According to these rules, suits are commenced by a notification to the Court either of some agreement between the litigant States or of a complaint presented by one state against the other. In the second case the complaint is communicated to all the Members of the League of Nations. If a state deems that, in a proceeding already instituted a question of a juridical nature involving its interests is at issue, it may address an application to the Court to the end that it may be allowed to intervene; the Court decides. But if the proceeding involves the interpretation of a convention in which it has partici-

[5]This question was discussed by the Court in the Eastern Carelia Case, decided in 1923.

pated, this state may intervene as a matter of right and the interpretation contained in the judgment is as binding upon it as upon the original parties. In another series of provisions which it is not necessary to elaborate, the Statute stipulates that the procedure shall consist of two parts: a written part and an oral part; that the Court may ask questions of the parties; that the parties have the right to be assisted by agents, counsellors and attorneys; that the decisions are taken by a majority vote, the president having the deciding vote in case of equal division; that the judges who have a dissenting opinion have the right to register it and to give their reasons therefor.

It is upon these principles that the procedural dispositions are based by the rules. They leave to the interested parties, if they agree, the right of proposing other rules to the tribunal; and in case the parties should not avail themselves of this right, they provide for an ordinary and developed procedure and for another one which is of a restricted and summary nature. The former is applied by the full Court, the Labor Chamber, and the Transit and Communications Chamber; the latter is used by the Special Chamber already mentioned. The ordinary procedure is divided into a written part and an oral part. For the former part, the litigants elaborate and submit a memorandum, a counter-memorandum, an answer and a replication and also all such other documents and procedural papers as they deem fitting. The second part is devoted to the testimony and oral arguments, in public audience, of the representatives of the parties. Before closing the argument, each party has the right to submit a bill of its costs. After each matter has been heard, the Tribunal deliberates and reaches its decision in Chambers.

What rules should the Court apply? The answer to this question which is theoretically very controversial, is found in article 38 of the Statute. The Court applies (a) the international conventions, either general or special, establishing the rules expressly recognized by the litigating states; (b) international custom, as proof of a general practice, accepted as being the law; (c) the general principles of law recognized by the civilized nations; (d) as qualified by the dispositions of article 59, the judicial decisions and the doctrines of the best qualified publicists, as an auxiliary means of determining rules of law. In other words, and in the same order, the court applies written law, custom law, rules of general law, jurisprudence and opinions of publicists as justificating means of the rules of law.

The reference to article 59 is understood when it is remembered that the text expressly stipulates that the decisions of the Permanent Court are obligatory only for the litigating parties, and in the particular case in which they are rendered. During the conference of Buenos Aires of 1922, which I have already mentioned several times, a very learned English professor interpreted this provision in the following way: The decisions of the Tribunal cannot be invoked as a precedent. This professor literally called this provision a first class error. But in our opinion, the reference contained in article 38 should be understood in the following way: in matters of civil municipal law, each decision has three different results: the adjudicated matter, which settles forever the controverted question—but only the controverted point—between the litigating parties, but only between the litigating parties; the executory force which is in a way the dynamic of the judgment and which authorizes its obligatory execution by all legal means; and finally the juridical doctrine which flows from the Court's opinion and from the rules of law which are therein accepted and recited, and which has the full force of a precedent. The first and second results only affect the interested parties: that is declared, following a very ancient rule, in article 59. The third represents the social and international usefulness of the judgment and carries the same weight for always and everyone, being the expression of rules of law, according to the very terms of article 38. The Permanent Court of International Justice is and must be, according to the Statute, a source of legal rules, because its judgments must form a jurisprudence, as in the case of all the highest courts of almost every nation. There is only one case in which the Court assumes an arbitral character and makes a complete abstraction of the rules of law: It can, if the parties so agree, render a decision ex aequo et bono.

The judgment is final. There is no recourse. In case of doubt as to its meaning or its effect it behooves the Court itself to interpret it, at the request of any party. A revision may be requested, however, when a fact has been discovered which is of such a nature as to have a decisive influence and which before judgment was rendered, was unknown to the Court and to the party asking for the revision, provided ignorance thereof cannot be imputed to any fault on its part. The request for revision must be made at the latest within six months following the discovery of the new fact, and before the expiration of ten years from the date of the judgment.

How and through what means are the judgments of this high jurisdiction to be executed? The famous French statesman, M. Bourgeois, in a speech delivered in the name of the League of Nations, at the opening of the sessions of the Committee of Jurists, raised the question of the efficacy and reality of a judicial decision, if it did not find in a powerful organization of international institutions, the sanctions necessary to the execution of these decisions. He answered it by saying that the Covenant provides for several varieties of sanctions: juridical, diplomatic, economic, and lastly in very specially determined cases, military sanctions.

Notwithstanding the great personal authority carried by these statements, the last paragraph of Article 13 of the Treaty of Versailles should be considered; it reads:

"The Members of the League undertake to carry out in good faith the judgments rendered, and not to resort to war against any Member of the League which complies therewith. In the event of any failure to carry out such a judgment, the Council will propose measures to assure its enforcement."

In connection therewith it should be considered whether this paragraph really refers to arbitral decisions or to the judgments rendered by the Permanent Court of International Justice. It is conceivable that there may be doubt, but with the new draft proposed by the Assembly of the League of Nations, for this article as well as for other articles of the Covenant, this doubt will disappear and the sanction will be much clearer.

It should, however, be remembered that according to the resolutions of the Council, dated May 17, 1922, when states that are not Members of the League of Nations and which are not mentioned in the Annex to the Covenant, accept the Court's jurisdiction, they must expressly accept an obligation drawn in the very terms employed in Article 13 of the Covenant. It would both be illogical, and contrary to the principle of equality, that this Article should only govern the present or future Members of the League and should lead to juridical results which would not be the same for them and for the other countries.

Let us hasten to say that in our opinion, this problem does not have the importance given to it by many. Business practice shows that the execution of judgments of a municipal nature depends mostly upon the status of the litigating parties. And the nations are litigants of the first class, upon which the stern eye of public opinion and of history is focussed now and forever.

A list of unexecuted arbitral decisions would be neither long nor important. Both the great and the small nations have nearly always bowed before the decisions of voluntary justice, even when they did not recognize them as being in conformity with the law. Why should it not be likewise for a permanent tribunal surrounded from its origin and throughout all its activity, by guaranties and prestige? Whatever may be the weight of interest and partiality, the sense of duty and the conscience of international responsibility always prevail in the end.

The Permanent Court has not been very active since the beginning of its official life. Nor could it have been otherwise. Its first duties were to render advisory opinions to the Council of the League of Nations upon difficult or controverted problems. To this end, and in accordance with its rules, the Court heard, or requested to hear in each case the interested governments and the international bodies liable to furnish information, making use for this purpose, of the same methods as in a litigation, that is to say written procedure and public sessions.

At the time of the first request for an opinion, which was presented in response to a unanimous resolution of the third International Labor Conference, the British and Dutch governments, the director of the International Labor Bureau, the International Syndical Federation, the International Confederation of Christian Syndicates and the General Dutch Professional Federation were heard. Upon submission of all the necessary documents, and after a careful study of the controverted problems, the Court was of the opinion that the Dutch workmen's delegate to the third International Labor Conference had been appointed in conformity with the dispositions of section 3 of article 389 of the Treaty of Versailles.

The second request for an opinion, which was of a more general character, gave rise to oral information furnished by the French, British, Portuguese and Hungarian governments, as well as by the International Commission of Agriculture, the International Labor Bureau and the International Federation of Syndicates. The Swedish and Italian Governments, the International Agricultural Institute of Rome, the International Federation of Workers of the Soil, the Central Agricultural Syndicate of France, the International Federation of the Christian Syndicates of the Workers of the Soil, and the International Confederation of Agricultural Syndicates submitted written observations. The Court

rendered its opinion—not unanimously as in the preceding case, but by nine votes to two—that the competency of the Labor Organization extends to the international regulation of the work of persons employed in agriculture.

The third question is closely bound up with the last one. In regard to it the French Government and the International Labor Bureau were heard at a public session. The Governments of Haiti, Esthonia and Sweden, the International Institute of Agriculture, and the International Confederation of the Agricultural Syndicates submitted written observations. By the same vote as in the first case, that is unanimously, it was decided that the International Labor Organization was not competent to examine proposals tending to organize and develop means of agricultural production.

The fourth advisory opinion, which was made the object of an extraordinary session, dealt with problems of an entirely different bearing. The Executive Council of the League of Nations had asked the Court whether a disagreement between France and Great Britain, with regard to the decrees relating to nationality promulgated in Tunis and Morocco (French zone) on November 8th, 1921, and with regard to their application to British nationals, was not of an entirely domestic nature.

The two governments were heard at length, and the Court unanimously resolved that the question was of an international character. When the opinion was read at the public audience, on February 7th, 1923, the French representative had it officially noted, in the name of his government, which had not been satisfied by the opinion on the question, that he requested the British Government to submit the whole matter to the Permanent Court of International Justice, and the British representative, having no instructions enabling him to make an immediate answer, declared that his government would examine this proposal with the greatest care. These two states reached through diplomatic negotiations, at least as far as Tunis is concerned, a satisfactory solution and brought it to the Court's knowledge, thereby accepting in an explicit and practical manner the opinion which had been solicited.

Three requests for opinions, and one litigated action have been brought before the Court for the ordinary session of the current year. One of these opinions, similar in form to that rendered with reference to the Franco-British problem, deals with

the question whether articles 10 and 11 of the Treaty of Peace between Finland and Russia, signed at Dorpat on October 14th, 1920, and the annexed declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character, which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein.

The other request for an opinion arises from the fact that the Council of the League of Nations was called upon to deal with certain questions relating to the following points:

(a) A number of colonists who were formerly German nationals, and who are now domiciled in Polish territory previously belonging to Germany, have acquired Polish nationality, particularly by virtue of Article 91 of the Treaty of Versailles. They are occupying their holdings under contracts (Rentengutsvertrage) which although concluded with the German Colonization Commission prior to the Armistice of November 11th, 1918, did not receive an "Auflassung" before that date. The Polish Government regards itself as the legitimate owner of these holdings under Article 256 of the Treaty of Versailles, and considers itself entitled to cancel the above contracts. In consequence, the Polish authorities have taken certain measures in regard to these colonists by which the latter will be expelled from the holdings which they occupy:

(b) The Polish authorities will not recognize leases granted before November 11th, 1918, by the German Government to German nationals who have now become Polish subjects. These are leases over German State properties which have subsequently been transferred to the Polish State by virtue of the Treaty of Versailles, in particular of Article 256.

By reason of these circumstances the Permanent Court of International Justice is requested to give its advisory opinion on the following questions:

(1) Do the points referred to in (a) and (b) above involve international obligations of the kind contemplated by the Treaty between the United States of America, the British Empire, France, Italy, Japan and Poland, signed at Versailles on June 28th, 1919, and do these points come within the competence of the League of Nations as defined in that Treaty?

(2) Should the first question be answered in the affirmative, the Council requests the Court to give an advisory opinion on the question whether the position adopted by the Polish Government, and referred to in (a) and (b) above, is in conformity with its international obligations.

The third request for an opinion arises from the fact that

the Polish Government decided to treat certain persons formerly German nationals, as not having acquired Polish nationality, which exposes them in Poland to the application with respect to them of the rulings governing foreigners and especially Germans. In opposition thereto, and upon the basis that these persons were born on the territory which is now actually a part of Poland, their parents having been domiciled there at the time of their birth, it was argued that by virtue of Article 4, paragraph 1, of the Treaty of June 28th, 1919, between the principal Allied and Associated Powers and Poland, they possess Polish nationality as a matter of right and in consequence enjoy all the rights and guarantees which the stipulations of the above-mentioned treaty have recognized to Polish nationals, belonging to minorities of race, religion or language. But the Polish Government believes that it is justified in not extending to these persons the recognition of their Polish nationality nor the rights flowing therefrom, if their parents were not domiciled within the above mentioned territory as well at the time of the birth of the individual, as at the date of the taking effect of the above cited treaty, that is to say, the 10th of January, 1920.

In this connection the Court is requested to give its advisory opinion on the following points:

(a) Is the question concerning the status of the above mentioned persons, insofar as they belong to minorities of race, religion or language, resulting from the application by Poland of Article 4 of the Treaty of June 28, 1919, within the competence of the League of Nations according to the terms of said treaty? and

(b) If so, does article 4 of the above mentioned treaty relate exclusively to the domicile of the parents at the time of the birth of the individual, or does it require also the domicile of the parents at the moment when the treaty took effect?

The contested action to which we have recently referred, and which is the first to be carried before the Permanent Court, was introduced by an application dated January 16, 1923, presented by the governments of the British Empire, France, Italy and Japan; this application is based upon article 380 of the Treaty of Versailles by virtue of which the Kiel Canal and its approaches are to be maintained always free and open, upon terms of entire equality, to the vessels of war and commerce of all nations at peace with Germany. On March 21st, 1921, the German authorities refused passage through the Canal to the English steamship

"Wimbledon," chartered by a French company, and which was transporting four thousand tons of munitions from Salonika to Danzig. The refusal of passage was based upon the fact that Poland and Russia were at war and that the German regulations concerning neutrality prohibited the transportation through German territory, of war materials consigned to any one of the belligerents. The complaint prays that the Court may decide that the authorities have wrongfully refused free access through the Kiel Canal to the steamship "Wimbledon" and that the German Government is bound to make reparation for damages appraised in the sum of 174,082.86 francs with interest at six per cent per annum from March 20, 1921. The request having been communicated to Germany, the German Government duly appeared to oppose these contentions. At the end of the written pleadings, Poland intervened and was accepted as a party to the action by reason of the fact that it had participated in the Treaty of Versailles, the interpretation of which was the subject in dispute.

These are along very general lines, the only ones which the limited time of one lecture permits me to trace, the history, the organization, the functions and the activities of the Permanent Court of International Justice.

One proof of its success and of that which one might call its budding popularity—the most evident of proofs, perhaps, outside of the weight and number of the matters which have been submitted to it—is the fact that the Convention of Washington of February 7, 1923, by which the five republics of Central America sought to create a more or less permanent tribunal, being more similar to a court of justice than to a court of arbitration, and having obligatory jurisdiction over all the contracting parties for all questions which do not concern the sovereignty and independent existence of any one of the signatory republics, and optional jurisdiction with regard to the other governments, the proof of success, I say, is that this Convention in an express manner reserved for matters within the sphere of compulsory jurisdiction, the possibility of an agreement of the parties to submit their differences to another tribunal. The allusion could not be more transparent.

And what was said and written during the last Pan-American Conference of Santiago, Chile, on the subject of a new court of justice for America—a question which will be studied anew dur-

ing the next conference at Havana—is another demonstration of the fact that the world realizes that we are facing a reality bound to take root and to grow and which already takes its place among the surest and greatest conquests of contemporary civilization. The political contest which took place in the United States over this institution whose advantages to the entire nation have been indicated by an unceasing campaign of education as well as on the other hand the notes exchanged between the United States and France on July 20th, on the subject of the extension, for five more years, of the Treaty of Arbitration between these two nations, and which contemplate the substitution of the eventual jurisdiction of the Permanent Court for the arbitrators, if the Senate of the United States accepts it, all this is a new and evident proof of the fact that international justice has passed out from the theoretical phase and from the period of experiment in order to enter, with the indisputable support of public opinion, into the domain of the real and positive.

But to this end, the collaboration of America is necessary. Not only should the American States adhere to the Statute, as a great number of them have already done, but they should also submit to the Court the disputes which arise in order that they may be decided according to law. When a fair number of American questions shall be before the Court, it can during each year hold two ordinary sessions, one at The Hague for European matters, the other in some city of America for the problems of the New World with the understanding that it will deal in one or the other of these sessions with matters which are common to the two continents and those which concern the rest of the planet. It is fitting now not to multiply international jurisdictions, but rather to fortify and confirm the only one which does exist.

It is a great good fortune for our generation to have seen international justice come to life and commence to function. Hugo Grotius who was a founder and prophet of international law, did not even conceive of it. In the last century no one would have dared seriously to affirm the imminent victory. Perhaps without the World War and without the important movement of public opinion against might which it stirred up in a large number of countries, the governments would not have decided to put it into practice.

Man is thus constituted. Science and logic are his masters, indeed, but disaster and sorrow are, likewise. Always noble and

always going forward, from success as from misfortune, he emerges stronger, greater and juster. Let us bear in mind above all things this lesson which history has repeated more than once and render thanks that at last, between States, as hitherto between men, one may speak of law and of justice, under the aegis of a tribunal, on the same terms for the strong as for the weak.