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Permanent Court of International Justice

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THE PERMANENT COURT OF INTERNATIONAL JUSTICE

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Summary

Historical and Scientific Antecedents.—The Peace Conferences of The Hague.—The Court of Justice of Central America.—Official labors upon the occasion of the Peace of 1919.—The Conference of Paris and the Treaty of Versailles.—The Advisory Committee of Jurists of The Hague and the decisions of the Council and Assembly of the League of Nations.—Organization of the Court.—Election of Judges; possible reforms.—The economic life of the Court and its consolidation.—Its competence; individuals; penal jurisdiction; international Unions and Bureaus; international juridical persons who are not States; States.—The Court and the recognition of States and Governments.—Nature of the disputes which may be submitted to the Court; resolution of the Institute of International Law.—Compulsory jurisdiction; provisions of the statute and other Treaties.—Optional jurisdiction.—Advisory opinions.—Procedure in contested matters; before the Court and before special bodies; summary procedure.—Rules of Law which the Court must apply.—Revision.—Sanction and execution of Judgments.—Labors of the Court to date.—New ideas in America.—The present and the future.

It is a dream become a reality. Greece had a glimpse of it and indeed almost applied it to her religious problems and certain political differences; Rome tried it as an instrument of power, at the beginning of her dominating expansion; the Christian religion made use of it in the Middle Ages, a sign and a consequence of its indisputable sovereignty; it is found again at the beginning of the modern age and after it had appeared in the conceptions of theologians, in the memoirs or books of jurisconsults, diplomats and

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philosophers: at the end of the seventeenth century it takes a definite form at the hands of William Penn; it arises from the half illusory, half practical phantasies of the Abbe de Saint Pierre and, in the closing years of the eighteenth century, the pen of Jeremy Bentham conferred upon it the double prestige of his coherent system in the order of scientific research and of his solid and useful work in the domain of the possible and of the positive.

It was by these stages, amusements of wise men full of illusions, or clever dreams of politicians, that the idea of international justice travelled across the world until the advent of the great nineteenth century, to which science owes so many successes and life so many victories, which, from a pure concept made of it a force and placing at its service the action of humanity made its triumph possible.

The economists, the authors of public law, and those who cultivate international law, Stuart Mill, Seely, Bluntschli, Hornsby, Sprague, Kamarowski and so many others that their names are legion; international or local associations from the Institute to the Bar Association of New York; institutions for pacifist propaganda which exist in almost every country and which are always surrounded by numerous and fervent disciples; the periodical press from the review to the political daily lending itself to the propaganda and diffusion of the ideals which it pursues by all means, sometimes praising and sometimes combatting, sometimes defending and sometimes attacking or indeed jeering; the national parliaments where the play of politics does not always permit one to measure the weight and the results of the debates and votes; all in short have given either to arbitration, obligatory or voluntarily consented to, or to occasional or permanent justice and to the tribunal which administers it, such a push of opinion and such a force as of a necessary thing that they have tended to transform into a law of the universe that well known line of the immortal author of the Divine Comedy: "Wherever a dispute is born there ought to be a judgment rendered."

This aspiration, the great international conferences have inscribed on their order of the day. And when at the initiative of the Emperor of Russia the Hague Conference came together in 1899, three projects served as the basis of the deliberations, one emanating from the nation which had issued the invitations, and the others from England and North America. But the participation of a

large number of nations—especially of those of the New World—was missing, and the assembled governments did not as yet have the national preparation necessary for the solution of the problem. There are things which are feared more than is reasonable: international justice was one of these.

At the time of the second Peace Conference in 1907, thought appeared more disposed and public opinion more determined to take this step in advance. Diplomacy however hesitated before the new international institution and desired to bring this new institution under its domination as well as to make it subject to its own exigencies. When the first commission voted obligatory arbitration, to be applied to eight different cases—and it is at this moment that justice, as a permanent recognized institution, appeared for the first time in international relations—the majority of the European World was, to tell the truth, unfavorable to it: because there were, out of twenty-one votes, eight against it and three not cast. On the contrary the whole of America—it is fitting to proclaim this to its honor—resolutely accepted the idea of obligatory arbitration; and it recalled that it had without doubt practiced arbitration more than any other part of the world during the course of the Nineteenth Century; it remembered also the affair of the Alabama, one of the most successful of arbitrations and which is so justly commemorated by a plaque of marble in the Municipal Palace at Geneva.

However the second Peace Conference was not able to arrive at an agreement with reference to the very grave problem of the organization of a permanent tribunal, in the absence of which international justice is indeed difficult. The great Powers sought to monopolize the tribunal, by the number of their judges and by giving to those whom they named a permanent position; it was against this pretension to an unjust justice that the illustrious Brazilian, recently deceased, pronounced these irrefutable words:

"This principle [apparently the principle of the equality at law of all states] is not observed by allowing each state to name a member of the Court, if he is to sit only for a certain period which is fixed differently as between the various states according to the degree of their importance, something which has nothing to do with this matter, and which, obviously partial to certain European countries, does not correspond to the evident reality of the facts.

"A right which is equal among those possessing it, is not suffered to be exercised on an equal footing when for some, it is restricted to more or less limited periods, while the privilege of exercising it continuously is reserved to others.

"The states which had been excluded from the First Peace Conference, were not invited to the Second Peace Conference for the purpose of having them solemnly sign an act diminishing their sovereignty by reducing them to a scale of classification, which the more powerful nations would well like to recognize.

"The interests of Peace are not promoted by the creation between states, by means of a contractual stipulation, of categories of sovereignty which humiliate some to the advantage of others, undermining the basis of the existence of all, and proclaiming, by a strange paradox, the predominance in law of might over right."

The power of truth is such that in the end it is almost always victorious. The members ended their deliberations without having been able to approach a discussion of the project of the tribunal in the form of a definitive proposition; the final Act merely contained the following voeu:

"The Conference recommends to the signatory Powers the adoption of the project annexed hereto of a Convention for the establishment of a Court of Arbitral Justice, and that it be put into operation when an agreement shall have been reached regarding the choice of judges and the constitution of the Court."

It should be observed how, always in the direction of progress and improvement, the international opinion of the world was evolving. From particular arbitrations in very limited cases, but nevertheless more and more frequent, one passed to the idea of general and obligatory arbitration; from a tribunal constituted in each kind of case, either freely, or by the use of lists prepared in advance, one arrives at the scheme of permanent arbitrators always ready to hear the parties and settle their disputes. If this last system did not go beyond the state of a plan—for it was not possible to find an ingenious and equitable means to effectuate nominations which would satisfy all aspirations without meanwhile injuring national independence—the second Peace Conference nevertheless formulated and proposed certain wise, useful and practical rules for obligatory arbitration which today—as we shall see presently—serve as rules for the new permanent Court.

The final act of the Conference, which we have just mentioned, was signed on October 18th, 1907, and although for the greater part of the contracting parties, this act was only a kind of ingenious solution, of which, the object having been attained, there was no more time to think, on the contrary five American republics, Costa Rica, Guatemala, Honduras, Nicaragua and Salvador inspired by the same idea and for the purpose of facing certain necessities which were their own, concluded on December 20th of the

same year, at Washington, an international convention establishing among themselves a Court of Justice of Central America. Transforming their plan into reality without delay, these republics, a few months later, on the 25th of May, 1908, installed that tribunal at Carthage. Thus it is that the first permanent Court of International Justice was a Latin-American institution.

This Court was composed of five judges and two substitutes for each judge, chosen by each one of the five contracting countries, from among those persons possessing the requisite qualifications for the exercise in their own respective countries of the highest judicial functions and enjoying the highest consideration by reason of their moral authority and their professional abilities.

The jurisdiction of this Court was, in the first place, obligatory for all disputes or all questions—whatever their origin and nature might be—arising between the states which founded the Court in case the chancelleries were unable to arrive at an accord; and in the second place,—and there it differs from what an institution of this sort should have been—for all claims brought against one of the contracting governments by a national of one of the other states of Central America, having for its origin the violation of a treaty or convention, or any other case of an international character, after the means provided by the legislation of the respective countries had been exhausted or when it was possible to allege a denial of justice; and this, whether the government of which the plaintiff was a national supported the claim or not.

Furthermore, the jurisdiction of this Court was optional or discretionary over certain matters submitted to it by common agreement by the contracting governments, and which might have arisen between several of them or between them and private individuals, and also for the international questions which might have been submitted to it by virtue of a special accord between one of the states of Central America and another state.

Article 21 of the treaty stipulated that the Court should adjudicate contested points of fact, according to its own free judgment, and points of law in conformity to the principles of international law; article 22 gave it the capacity to determine its own competence.

The interested parties declared themselves ready to submit to the judgments of the Court and all the contracting states bound themselves to give it the moral support necessary for their execution and thus according to the text itself, there was a real and positive guarantee of respect for the convention and for the tribunal.

The capital error of this treaty, memorable for so many reasons, was that its duration was limited to ten years, without automatic extension; at the end of this too short period, and in view of the judgments rendered, victor and vanquished, the satisfied and the dissatisfied, the one and the other were not of the same sentiments as regards its re-enactment or the introduction of modification. Furthermore, the war of 1914 supervened, European at the outset, but soon world wide, and this, in 1917, did not surround the different states of the world with an atmosphere favorable to propositions relative to justice and to institutions of law. Add to that, certain local difficulties from which Central America was not able to extricate itself, and you will not be astonished that the Court disappeared with the binding force of the treaty which created it, in spite of the efforts made by intelligent and foresighted people to defend it, and of which one may cite as an important example, the resolution passed by the American Institute of International Law at its meeting which took place at Havana.

But when the World War approached its end and the future victors came to examine its results and to prepare for its immediate consequences, public opinion realized that the victory could not be simply a work of force, as brilliant as it would be sterile. In this twentieth century, humanity could not confine itself to the writing of a new chapter of history over the battle fields; on the contrary it was necessary to utilize the enthusiasm provoked by victory for the establishment of new bases of life, which would permit, as far as possible, the avoidance of such disasters. Almost simultaneously without previous agreement between them, but all responding to an irrepressible impulsion, official proposals were made for the organization and functioning of International Justice. On June 8, 1918, the French Ministerial Commission for the League of Nations, in a project which was printed in the annex to the proces-verbal of the first meeting of the commission named for the same purpose by the Peace Conference, adopted, among others, the two following articles which bear the number 4 and 5:

Article 4. The League of Nations shall be represented by an international body which shall be composed of the responsible head of the Governments or of their delegate. This international body shall have the following powers: 1, it shall organize an international Court, . . . 3, in cases where a peaceful settlement is found impossible, the question shall be submitted to the international Court if it is susceptible of a judicial settlement. 4, it shall enforce the execution of its decisions and of those of the international

Court. At its demand, each nation shall be obliged, in agreement with the other nations, to use its economic, naval and military power against any recalcitrant States.

Article 5. The international Court shall decide all the questions which shall be submitted to it either by the international body, or by any State having a dispute with another State. It shall decide and solve the questions of law which arise between the States, basing its decisions on custom or on international conventions as well as on doctrine and jurisprudence. In case of violation of law, it shall prescribe reparations and the necessary sanctions.

Shortly afterward on the Fourth of July of the same year 1918, President Wilson delivered his famous speech at Mt. Vernon where he declared that the fourth of the points indispensable for peace was the establishment of an organization which should guarantee that the combined power of free nations would oppose all attacks upon law, and which would assure peace and justice by virtue of the constitution of a tribunal of opinion to which all must submit, and entrusted with the settlement of any international question upon which the states directly interested have not been able to agree in a friendly manner.

Twelve days later Col. House submitted to President Wilson a draft of a constitution for a League of Nations. This draft contained an Article X by virtue of which an international tribunal of not to exceed fifteen members was to be constituted, with jurisdiction to pass upon all differences between nations relating to the existence, interpretation or execution of a treaty, which had proved to be incapable of settlement by diplomacy, arbitration or other means, or which was submitted to it by mutual consent, or finally, which dealt with commercial questions, including in this last class the validity or the effect in international law of a law or a custom.

Article XIV of this draft is worthy of special mention, when we remember that there is quite a problem to be solved with regard to sanctions, because it was expressly stipulated therein that any state which the delegates should decide had not submitted to the International Court, a dispute over which that Court had jurisdiction, or had not executed the sentence of the Court, lost ipso facto the right to carry on commerce or entertain relations with the contracting parties.

On the 29th of November of the same year, 1918, immediately after the Armistice, the Ambassador of France, M. Jusserand, transmitted to Mr. Lansing, Secretary of State of the United States, a draft of a plan for the Peace Conference which included

as part of the organization of the League of Nations the Permanent Court of Arbitration of the Hague. And on the other hand, while the propositions of General Smuts, which appeared in the famous draft of December 16, 1918, treated—with a certain juridical impropriety—more of arbitration than of justice properly speaking, the plan of the Covenant of the League of Nations approved in general terms by the English Cabinet and transmitted to President Wilson by a confidential letter of Lord Robert Cecil dated January 20, 1919, envisaged the creation of a permanent court of international justice and stipulated that the states should not resort to war without having solicited and obtained the sentence of the Court.

With all these preliminary projects, President Wilson elaborated his three plans for the Covenant of the League, without mentioning therein in any express and definite way a permanent tribunal; however, attention should be called to a phrase which was found in the first plan—a plan which was never given out to the Commission and which was superseded by the printed proposition dated January 10, 1919. This phrase, contained in Article IX and which pre-supposes the existence of a Court, is thus worded:

"In the event of a dispute arising between one of the contracting parties and another Power, the interested contracting parties bind themselves to obtain the submission of this dispute to a *judicial* or arbitral decision."

The Commission of the Conference, more for gaining time than for any other reason, took as the basis of its deliberations not the plan of President Wilson, but the English project of February 3, 1919, entitled after the name of its authors, the "Hurst-Miller Project." This plan, in which the judicial power and the arbitral function were once more confused, set forth its doctrine in the following rules:

"Article X. The contracting parties undertake, in cases where there shall arise between them any question which cannot be settled by the ordinary means of diplomacy, not to resort to arms in any case without having previously submitted this question and the problems which it involves, either to arbitration or to the examination of the Executive Council and then not until after a delay of three months after the sentence of the arbitrators or the recommendation of the Council; they undertake not to resort to arms in any case against a Member of the League which shall carry out the sentence or recommendation."

"Article XI. The high contracting parties agree, if there shall arise between them a conflict or a difficulty which they think can

be submitted to arbitration and cannot be settled in satisfactory fashion by diplomatic means, to submit the entire matter to arbitration and to carry out with entire good faith the sentence or the decision given, whatever it may be."

"Article XII. The Executive Council will prepare a plan for the creation of a Permanent Court of International Justice and this tribunal will be competent to take cognizance of and to settle all affairs that the parties recognize as susceptible to be submitted to arbitration conformably to the preceding Article."

Therefore, when the deliberations of the Commission of the Peace Conference entrusted with the preparation of the Covenant of the League of Nations, commenced, the question presented itself as follows: voluntary arbitration and an optional court constituted in advance. It is not yet possible, without rivalling the famous indiscretions of history, to refer to the debates of this commission, but there is nothing improper in summing up here the results as they publicly appeared in the plenary sessions of the Conference.

On February 14, 1919, Article XII of the Project which had become Article XIV was presented in the following form which had been provisionally adopted:

"Article XIV. The Executive Council will decide upon the plan creating a permanent court of international jurisdiction to entertain and render judgments upon all questions which the parties agree to consider as susceptible to be arbitrated by it according to the terms of the preceding Article."

Fortunately this improper word, arbitration, disappeared in the final draft which figures in the final text and which constitutes Article 14 of the Treaty of Versailles of June 28, 1919; and at the same time—and this time less happily—the functions of the Court were enlarged. Here are the terms of Article XIV:

"The Council is charged with the preparation of a project of a Permanent Court of International Justice and with its submission to the members of the League. This Court will take cognizance of all disputes of an international character which the parties shall submit to it. It will also give advisory opinions on all disputes or any questions which the Council or the Assembly shall submit to it."

A tentative proposal was made to give it another duty which would have bound it in a direct and immediate fashion to the League of Nations, the special duty of interpreting the Covenant of the League, but an amendment presented by M. Larnaude in the name of the French Government was defeated, Lord Robert Cecil and M. Orlando having made the observation that it would be pre-

ferable to leave to the Council which was to enforce the Covenant, the mission of settling the difficulties raised by its interpretation.

It therefore devolved upon the Council to create for the world a Permanent Court of International Justice entrusted with a double mission, a judicial mission, consisting of the settlement of differences between States and an advisory mission, consisting of instructing the Council and the Assembly upon all questions or points which these organizations should submit to it.

On the 10th of January, 1920, the ratifications of fourteen States which had signed the Treaty of Versailles were officially deposited at Paris—among them, those of six American Republics—and the Council of the League commenced immediately its task with an activity worthy of the highest praise. At London a month later on the third of February, it decided to name a committee of jurists whose duty should be the preparation of a draft of the Statute for the Permanent Court of International Justice.

On this committee the five Powers called the "Great Powers" and which had retained this character in international relations since the end of the war and five other Powers which did not have such pretensions were represented. The latter were Belgium, Brazil, Spain, Norway and the Netherlands. The committee met as soon as possible at the Hague and in little more than a month between the 16th of June and the 24th of July of the same year, 1920, it prepared a plan which is practically the Statute in its actual form.

It is not possible to speak of this committee without offering the tribute of our admiration. Very well documented on almost all of the previous projects and basing itself particularly upon the work of the second Hague Conference, it studied thoroughly and settled successfully the greater part of the problems which presented themselves and had the courage to decide in favor of compulsory jurisdiction for the Court, which, in this manner it immediately and clearly made the judicial power of the world.

The Council of the League of Nations which studied this plan during its session of September 16 at Paris, and which approved it definitively at Brussels at the end of October with the reservation of certain slight modifications of minor importance, refused to accept as an absolute rule the compulsory jurisdiction of the court; in the following December the Assembly at Geneva seeking a compromise satisfactory to the opposing opinions and interests, left the exercise of the compulsory judicial functions to an additional

protocol which was purely optional and which might be accepted permanently or temporarily and with or without reciprocity.

When the Assembly met again the following year, more than half of the signatory Powers had ratified the Statute and it was possible to proceed on the 14th and 15th of September, 1921, to the election of judges. From that time the Court was constituted and it met in the Peace Palace at the Hague, on January 30, 1922. Some days later on the 15th of February the official inauguration was solemnly held. For the first time the world possessed a permanent and definitive institution administering justice between the nations. The attention of all was directed to it, full of faith and hope:

Let us now examine the rules applicable to the constitution of this new and extraordinary body with which humanity honors itself, the election of its members, its economic life, its jurisdiction, its procedure and finally the execution of its decisions.

The Court sits in a permanent manner at the Hague; it is always ready to exercise its functions. It meets every year on the fifteenth of June and continues its sessions until all pending matters are settled. The rest of the time it may be convoked by the president in extraordinary session; it was in fact thus convoked during the first year of its existence for the purpose of giving an advisory opinion to the Council of the League of Nations, a matter which at first blush does not seem to be of transcendant importance. During each annual session the Court names a chamber of three members plus two alternate members, to hear summary proceedings with reference to all questions which may be submitted to it for that purpose.

The presiding judge as well as the registrar must have his permanent residence at the Hague so that he may be able to promulgate before the oral proceedings commence, the procedural papers as well as the complaints presented, to the end that the Court may be ready to hold public audiences and render its decisions after the fifteenth of June.

The Court is composed of fifteen members, of whom eleven are titular judges and four are alternate judges. Eleven members may sit at a time and but nine members constitute a quorum. The Assembly acting upon the proposal of the Council of the League of Nations may increase the number of judges to twenty-one so that the titular judges may number fifteen and the alternate judges six. Up to the present time, the quantity of litigation has neither

required nor justified this increase which would necessitate a division of the Court into chambers. A Court ought not to have so many members that it looks like an assembly and that the discussions blunt and delay its opinions. Even now, the actual number of judges would be somewhat too large if it were not necessary to face the following consideration. The principal juridical systems of the world as well as the greatest possible number of national systems of legislation must be represented on the Court.

The Statute has prescribed—probably in response to one of these considerations—that, for matters concerning labor, as well as for those which concern transportation and communications, which are, respectively, the subject of Parts XIII and XII of the Treaty of Versailles, special chambers of five judges and two substitutes are constituted. These Chambers may sit elsewhere than at the Hague and may take cognizance of matters at the request of the parties.

What are the conditions of eligibility and the qualities of a personal nature which the judges should possess? Article 2 of the Statute says expressly that the Court is a body of independent magistrates, elected without regard to their nationality from among those persons enjoying the highest moral consideration and who combine the qualities requisite for the exercise, in their respective countries, of the highest judicial functions, or who are jurists possessing a recognized competence in matters of international law. This is all that is required by the Statute, which has not indicated minimum or maximum limits of age; however, one may deduce, from the fact that the official languages of the Court are fixed by the Statute, that the judges are required to have knowledge, sufficient for the purpose of understanding and writing French or English. When one recalls on the one hand that the Court may at the request of the parties authorize the use of other languages and on the other hand that of the forty-six nations which have signed the protocol of the Statute at Geneva, eleven speak Spanish, it seems that in the long run, knowledge of this language may become equally indispensable for the members of the Court.

The Statute stipulates for the use of the electors certain guiding principles which one should take into account in order to understand the organization of the Court. The electors must bear in mind that the persons elected should insure in the aggregate the representation of the great forms of civilization and the prin-

cipal juridical systems of the world. Furthermore it is expressly provided that they must elect not more than one candidate from any one nation. If more than one candidate from any given country is elected on any ballot the senior in point of years will be considered as elected. It is not without value to indicate in passing the result of the application of the first of these principles at the only election which has taken place up to the present time. Out of eleven titular judges six are Europeans, one is from North America, two from Latin America and one from Asia. Of the substitutes three are Europeans, the fourth is Asiatic and there is none from America. Thus, given the very special political conditions which prevail in Europe the principal juridical systems of the World and the great forms of civilization are almost completely represented.

The judges are named for nine years but they continue to exercise their functions until their successors replace them and they are eligible for re-election. The Statute foresaw for them certain incompatibilities of function. They may not exercise—the substitutes excepted—any political or administrative functions. They cannot be agents, counsel or advocates in any international proceeding. Before taking their seats they pronounce in a public hearing the solemn engagement to exercise the powers appertaining to their offices with complete impartiality and according to the dictates of conscience. It is to be regretted that one does not find the prohibition of the acceptance by the judges, while they form part of the Court, of official honors or decorations.

What is the procedure of election? This was very difficult to establish because it was important not to infringe upon the equality, the sovereignty or the susceptibilities of the various nations. All the earlier official attempts and all the scientific systems had failed. It was the delegation from the United States of North America composed of two eminent men, the great statesman Mr. Root and the celebrated international jurist, Mr. James Brown Scott, who found the happy formula.

The electoral procedure consists of two parts: the presentation of candidates and the election itself, each one of these parts being given respectively to that which one may call the social factor and the governmental factor. For the first part, the presentation of candidates, each state leaves the initiative to the four members which it has named, conformably to the Hague Covention of 1907, to the Permanent Court of Arbitration. They have been desig-

nated in advance and there was nothing to make them believe that they might one day have this duty. In order to enable them to obtain in a large measure, indications of candidates worthy of the position it is recommended that they consult in their respective countries the highest court of justice and the schools of law, the national juridical academies and the national sections of the international academies devoted to the study of law. It is after this preliminary sounding out of the official and private organizations, whose competence in such a matter is recognized, that each national group is to propose at the maximum four members of whom two at the outside—note well the importance of this detail—can be of its own nationality. In this manner the candidates proposed by each state reflect not only the reputation of each one in his own country, but also the international reputation of the foreign candidates proposed. Since there are some states which are not represented in the Permanent Court of Arbitration or who may not be represented in the future, it is stipulated that the government of each one of these states will constitute a national group of persons combining the conditions set forth in Article 44 of the 1907 Convention for the Peaceful Settlement of International Disputes.

Upon submission of these proposals, the secretary general of the League of Nations compiles the general list of candidates. It is from this list, save in an exceptional case to which we will advert later, that those elected are chosen. Then two bodies of the League of Nations, the Council and Assembly, whose composition it is important to indicate here briefly, enter upon their functions as an electoral college. In the first body there figured, at the time of the election of the judges, the representatives of the four Powers which with the United States bear, since the Treaty of Versailles, the title of Great Powers, and which by virtue of this same treaty are there represented in a permanent manner, as well as the representatives of four other nations designated for this purpose since the treaty: Belgium, Brazil, China and Spain. Today the Powers which constitute this second category and which are periodically designated by the Assembly are six in number instead of four: Greece and Uruguay have been added to those we have just mentioned. In the Assembly on the other hand, all the Members of the League are represented with one vote for each.

These two bodies proceed independently of each other, using the list of candidates as a basis, to the election, first, of the titular judges and thereafter, of the substitute judges. If one first bal-

lot does not give an absolute majority to all the necessary candidates, two ballots are taken and those are proclaimed elected who have received an absolute majority in the double vote of the Assembly and Council. If after a third ballot there still remain certain seats to fill, a mixed commission of mediation is designated, composed of three persons for each of the electoral colleges, with the object of choosing a candidate to present for the separate adoption of the Council and Assembly; this candidate may be chosen with entire freedom from among all persons satisfying the requisite conditions whether or not his name appears on the list of candidates.

If, however, it is impossible to settle the election in this manner, the electoral body is changed: the League of Nations delegates this function to the Permanent Court itself. The Court exercises it, however, with a curious restriction. Whereas the Mixed Commission, as we have indicated, may choose its candidates from outside the list of eligibles, the Court must designate them not even from the full list of candidates, but exclusively from among those persons who have received votes either in the Assembly or in the Council.

No provision is made to fill definitive vacancies by means of the substitute judges. A new election is held, following the method previously explained, but the newly elected judge merely completes the term of office of his predecessor.

There is a special case in which the number of judges is augmented otherwise than by election. Conformably to Article 31 of the Statute, judges of the nationality of the parties have the right to sit in the matter which is before the Court and if one of the parties does not have on the bench a judge of its nationality, whereas the other has such a judge, the former may designate to sit on the bench the substitute judge which is of its nationality, or if such substitute judge does not exist it may choose a judge. All parties have this right if there is not a judge of their nationality. This system invites criticism because it does not square with the idea of the international independence of the judges and because it runs counter to the doctrine which the famous publicist, Sir R. Seely, formulated in these terms on February 28, 1871:

"There ought to be no representation of interest on a judicial bench; a good court is not one where both parties are represented on the bench, but where neither is."

This defect is inherited from the arbitrations, which never-

theless in other cases have done much good both to the international idea and to the possibility of a permanent tribunal.

However that may be, in view of a work realized by unanimous consent, whereas everyone believed it almost impossible of realization, one is compelled to applaud rather than to censure, and to give free course to praise rather than to criticism. A method has been found to which no one has objected for electing an international tribunal; this election has been carried out without protests or difficulties. What more could one desire?

It is easy, however, to note certain anomalies for which time will bring forth a remedy. For example not all the nations which form the League have accepted and ratified the Statute; but yet all through the Council and the Assembly elect the judges, a faculty which is expressly conferred on them by this same statute.

And on the other hand the Court does not exist only for the Members of the League of Nations. By virtue of the Treaty of Versailles which has given it life, by virtue of conventions the number of which increases continuously, by virtue of the Statute itself, by virtue of the resolutions of the Council of December 13, 1920, and May 17, 1922, the Court is open to the States mentioned in the Annex to the Covenant of the League and to all the other States who desire to utilize it, either in a compulsory or optional manner. And the states of this last group who submit to the jurisdiction of the Court and who eventually contribute to its expenses do not take part in the election of the judges because they are not represented in the Council and in the Assembly. In this way, there is with respect to such states a slight inequality, which to a certain degree binds the Court to the League, but which will tend to disappear if the vigorous efforts of President Harding are successful in the United States.

The solution is very simple. It would be sufficient to modify the Statute, in such a manner that the states who are Members of the League of Nations, and who have not ratified the Statute, shall not form part of the Assembly and Council when they meet as electoral colleges for the nomination of judges; in exchange, at the meeting of the Assembly, and perhaps for certain Powers, at the meeting of the Council, the representation of all the states which have accepted in a satisfactory and legal manner the jurisdiction of the Court would be provided for. There would be only one other difficulty to resolve, and this we shall examine later when we consider anew the resolution of the Council dated May

17, 1922, cited above, and the provision of the Statute by virtue of which it was passed.

The procedure which I have indicated and according to which the Court henceforth will complete itself when vacancies occur does not appear acceptable at first sight. As a matter of fact and in spite of the maintenance of the ingenious and very useful system of the list of candidates this procedure will have a result contrary to those democratic principles which are bound to obtain between states as between individuals. A power will in this case, perpetuate itself by the sole fact of its own will, substituted for that of the world. And furthermore some people fear that, thus, the Court will be transformed into super-state more dangerous according to them than the League. Others fear lest it weaken itself lacking the warmth and vital force which will give it the support of the world. And finally it is of the utmost importance not to forget that the Court must represent the great forms of civilization and the principal juridical systems of the world.

When the chancelleries, although not yet accustomed to the court's existence and although not yet convinced by experience of its advantages, begin sending cases to it, and the number of these cases shall necessitate an important increase in the number of judges constituting the Court, to allow them to carry out successfully the duty imposed upon them, it will probably happen that a judge will be designated for each State, and chambers composed of a limited number of judges will be formed. These chambers would take up in turn the cases on the calendar, thus justice would remain international and a more complete equality between the nations would preside over its administration and its rendition.

But before we arrive at that moment, let us see what is the actual reality and let us remember that the 9th year after their election, the judges normally cease to exercise their functions. This system has the following disadvantages.: certain eminent men who must in order to live depend upon their personal labor will not be without hesitation at the thought of being obliged to give up their habitual labors and to risk the possibility of not finding them again upon their return, for a function certainly of the highest dignity in the world but yet temporary in its nature.

It is certain that nominations for life would to some extent eliminate the possibility that states other than those represented on the court may have in their turn a judge, but on the other hand the system of rotation offers another danger. It tends to diminish

the probability of the reelection of a good judge, forcing him thus to recommence a struggle for life after having consecrated nine years to international justice. But this problem has more than one solution and certainly a satisfactory one will presently be found.

However that may be, let us examine the economic aspect of the existence of the Court. Today, like the majority of international bodies, the Tribunal is supported by annual contributions written into the budgets of the various states and constituting part of the sums paid to the League of Nations. This method is the habitual and recognized method; its adoption has not presented any difficulties but it binds together the economic lot of the two institutions, of which one is more frequently attacked than the other, and causes justice to run the grave risk that either a war between two or more great Powers or a lack of equilibrium in the national budgets of certain states may put its existence or its functioning in the greatest danger.

It would be very easy to give it a moral personality and to establish a patrimony for it. One might attempt to give it a beginning of the realization of economic stability by augmenting the annual contributions by a relatively unimportant percentage destined to be capitalized. That sum which is left over out of its ordinary budget, that which is produced by its printed publications and that which perhaps the philanthropists of the world, who are more and more inclined toward such indubitable benefits for humanity, may give, all these things will, little by little, augment its wealth and go to diminish the contribution of the League of Nations to the point where the latter will be completely done away with. Consider the weight in each national Parliament which the voice of the representative who, when in the domestic affairs of a state the public services do not have sufficient money, computes the sum appropriated for paying a tribunal which has not been employed a single time during these years by the people who are supporting it in part, would have; imagine what may be the resistance to the acceptance of the statute in states whose budgetary strength is not great and who do not envisage in the immediate future any international complications. The success. the stability, the force of this new institution would have grown in an extraordinary fashion if for its financial life, it did not depend upon others than itself, and if it disposed of resources of its own to sustain itself and to grow steadily with the natural needs of international justice. (To be continued)